



# TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

*service ★ courtesy ★ integrity ★ accountability*

## COMMISSION MEETING

*September 22, 2015*

Texas Alcoholic Beverage Commission  
5806 Mesa Drive  
Austin, Texas 78731

*José Cuevas, Jr., Presiding Officer  
Midland*

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

*Ida Clement Steen, Member  
San Antonio*



# **AGENDA**

## **REGULAR COMMISSION MEETING**

**10:00 a.m. – September 22, 2015**

Shoal Crossing Event Center  
8611 North Mopac Expressway, Austin, Texas



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José Cuevas, Jr.  
*Presiding Officer-Midland*

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

Ida Clement Steen  
*Member-San Antonio*

Sherry Cook  
*Executive Director*

**Tuesday, September 22, 2015**

**10:00 a.m.**

**Agenda**

1.	<b>Call to Order</b>	<b>José Cuevas, Jr.</b>
2.	<b>Approval of Commission Meeting Minutes of July 28, 2015</b>	<b>José Cuevas, Jr.</b>
3.	<b>Commission Report: Executive Director and Agency Activities, Budget Issues, Staff Achievements, Legislative Activities</b>	<b>Sherry Cook</b>
4.	<b>Recognition of TABC Service Award Recipient – 50 years Mrs. Yvonne Tucek – September 6, 1965 to September 6, 2015</b>	<b>Emily Helm Judith Kennison</b>
5.	<b>Retirement Honoree Business Services Director Shelby Eskew</b>	<b>Sherry Cook</b>
6.	<b>Promotional Recognitions – Major Mark Menn, Region 1, Lubbock Enforcement Regional Office; Major Harry Nanos, Austin Enforcement Regional Office; Lieutenant Nick Gutierrez, Special Investigations Unit (SIU), Austin Headquarters; Fiscal Manager Marilyn Lindsay, Austin Headquarters</b>	<b>Robert Saenz Dexter Jones Vanessa Mayo</b>
7.	<b>Breaches of the Peace</b>	<b>Ed Swedberg</b>
8.	<b>Special Investigations Unit (SIU) Briefing</b>	<b>Dexter Jones</b>
9.	<b>Follow-Up Internal Audits: Enforcement Administration, Excise Tax Administration, Additional Follow-Up on Tax Administration-Ports of Entry</b>	<b>Monday Rufus</b>
10.	<b>Internal Audit of Business Continuity</b>	<b>Monday Rufus</b>
11.	<b>Proposed Internal Audit Plan for Fiscal Years 2016 and 2017</b>	<b>Monday Rufus</b>

12.	<b>Approve Publication of Proposed Amendment to Rule §31.1, Separation of Duties Between Commission and Administrator</b>	<b>Martin Wilson</b>
13.	<b>Approve Publication of Proposed Amendment to Rule §31.3, Petition for the Adoption of a Rule</b>	<b>Martin Wilson</b>
14.	<b>Approve Publication of Proposed Repeal of Rule §41.26, Railway Cars – Tax Returns</b>	<b>Martin Wilson</b>
15.	<b>Approve Publication of Proposed Repeal of Rule §41.47, Airline Beverage Permits</b>	<b>Martin Wilson</b>
16.	<b>Adopt Amendments to Rule §37.61, Suspensions</b>	<b>Martin Wilson</b>
17.	<b>Reception Honoring TABC Service Award Recipient Yvonne Tucek, TABC Retiree Shelby Eskew, and TABC Employee Promotions – Major Mark Menn, Major Harry Nanos, Lieutenant Nick Gutierrez, Fiscal Manager Marilyn Lindsay</b>	<b>José Cuevas, Jr.</b>
18.	<b>Executive Session to Consult with Legal Counsel Regarding Pending and Anticipated Litigation Against the Agency and to Deliberate on the Appointment, Employment, Evaluation, and Duties of the Positions of Executive Director and General Counsel (Govt. Code §551.071, §551.074, and Texas Alcoholic Beverage Code §5.11)</b>	<b>José Cuevas, Jr.</b>
19.	<b>Action on Items Discussed in Executive Session</b>	<b>José Cuevas, Jr.</b>
20.	<b>Public Comments</b>	<b>José Cuevas, Jr.</b>
21.	<b>Next Meeting Date: Tuesday, November 17, 2015</b>	<b>José Cuevas, Jr.</b>
22.	<b>Adjournment</b>	<b>José Cuevas, Jr.</b>

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

#### **NOTICE OF ASSISTANCE AT PUBLIC MEETINGS**

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice) (512) 206-3259 (fax). Relay Texas at 1-800-735-2989 (TTY/TDD), at least three (3) days prior to the meeting so that appropriate arrangements can be made.

# **MINUTES**

## **REGULAR COMMISSION MEETING**

**10:00 a.m. – September 22, 2015**

Shoal Crossing Event Center  
8611 North Mopac Expressway, Austin, Texas



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TEXAS ALCOHOLIC BEVERAGE COMMISSION

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## **COMMISSION MEETING MINUTES**

**September 22, 2015**

The Commissioners of the Texas Alcoholic Beverage Commission (TABC) met in Regular Session on Tuesday, September 22, 2015 at the Shoal Crossing Event Center, 8611 North Mopac Expressway, Austin, Texas.

**COMMISSIONERS  
PRESENT:**

José Cuevas, Jr.  
Steven Weinberg, MD, JD  
Ida Clement Steen

**STAFF PRESENT:**

Sherry Cook, Executive Director

Joshua Alexander, Audit Supervisor, Headquarters  
Toyce Alexander, Administrative Assistant, Legal Division  
Mona Appling, Data Base Administrator, Information  
Resources Division

Donnie Betts, Audit Supervisor, Houston Regional Office  
Gene Bowman, Director, Audit & Investigations Division  
David Brandon, Assistant Director, Information Resources  
Division

Kayla Bridgewaters, Education Specialist, Education &  
Prevention Division

Cecelia Brooks, Legal Assistant, Legal Division

Mindy Carroll, Director, Education & Prevention Division

Cathleen Cavazos, Lieutenant, Austin Regional Enforcement  
Office

Joe Cavazos, Lieutenant, Houston Regional Office

Randy Chatham, Lieutenant, Houston Regional Enforcement  
Office

Amanda Collins, Audit Regional Supervisor, Arlington  
Regional Office

Marc Decatur, Major, Houston Regional Enforcement Office

Ryan Decuire, Lieutenant, Houston Regional Enforcement Office  
Luann Dickerson, Executive Assistant, Executive Division  
Loretta Doty, Director, Human Resources Division  
Diana Figueroa, Executive Assistant, Office of Professional Responsibility  
Joe Fralin, Regional Manager, San Antonio Port of Entry  
John Graham, Lieutenant, Corpus Christi Enforcement Office  
Thomas Graham, Director, Excise Tax and Marketing Practices Division  
Loretta Green, Regional Licensing Supervisor, Arlington Regional Office  
Henry Guevara, Investigator, FCU San Antonio Regional Office  
Nick Gutierrez, Lieutenant, Special Investigations Unit  
Toni Hale, Project Manager, Education and Prevention Division  
Terri Hamby, Attorney, Legal Division  
Amy Harrison, Director, Licensing Division  
Emily Helm, General Counsel, Legal Division  
Joe Iagnemmo, Web Design Administrator, Information Resources Division  
Stacy Jackson, Regional Audit Supervisor, San Antonio Regional Office  
Richard Jauregui, Major, San Antonio Regional Office  
Tom Johnson, Interim Supervisor, Abilene Audit Office  
Dexter Jones, Assistant Chief, Audit & Investigations Division  
Shaun Jordan, Licensing Supervisor, Austin Regional Office  
Joann Joseph, Assistant Director, Licensing Division  
Judith Kennison, Deputy General Counsel, Legal Division  
Edgar Korzeniowski, Attorney, Arlington Regional Office  
Victor Kuykendoll, Major, Arlington Regional Enforcement Office  
Shanquetta Lewis, Legal Secretary, Legal Division  
Marilyn Lindsay, Manager, Fiscal Services Manager  
Shelia Lindsey, Attorney, Houston Legal  
Andrea Maceyra, Marketing Practices Supervisor, Excise Tax & Marketing Practices Division  
Vanessa Mayo, Interim Director, Business Services Division  
Brenda Meyers, Audit Supervisor, Austin Regional Office  
Mark Menn, Major, Lubbock Regional Enforcement Office  
Marvin Montero, Lieutenant, Enforcement Administration  
Sal Moralez, Lieutenant, El Paso Enforcement Office  
Mariann Morelock, Director, Communications and Governmental Relations  
Harold Nanos, Major, Austin Regional Office  
Sandra Patton, Attorney, Houston Legal Division  
Earl Pearson, Assistant Chief of Enforcement  
Andy Peña, Director, Office of Professional Responsibility

Ramona Perry, Attorney, Houston Legal Office  
Jose Pineda, HQ Supervisor, Licensing Division  
Chris Porter, Public Information Officer  
Yvette Price, Licensing Supervisor, San Antonio Regional  
Office  
Gloria Darden Reed, Executive Assistant, Executive Division  
Jeff Richards, Program Specialist, Licensing Division  
Carla Rios, Regional Supervisor, Ports of Entry Division  
Albert Rodriguez, Director, Training Division  
Julie Ross, Manager, Licensing Division  
Raul Salinas, Lieutenant, San Antonio Regional Enforcement  
Office  
John Sedberry, Attorney, Legal Division  
Karen Smithwick, Director, Ports of Entry Division  
Ed Swedberg, Deputy Executive Director, Executive Division  
Todd Talley, Management Analyst, Field Operations  
Jeff Taylor, Lieutenant, Lufkin Area Enforcement Office  
Dewayne Thompson, Agent, Special Investigations Unit  
Tana Travis, Lieutenant, Waco Enforcement Office  
Yvonne Tucek, Legal Secretary, Legal Division  
Nicole Walker, Lieutenant, Arlington Regional Office  
Jay Webster, Director, Information Resources Division  
Geoffery Weise, Lieutenant, Arlington Regional Office  
Brian Williams, Lieutenant, Lubbock Enforcement Office  
Martin Wilson, Assistant General Counsel, Legal Division  
Sarah Wolfe, Attorney, Legal Division

***GUESTS PRESENT:***

Dewey Brackin, Attorney, Gardere Wynn Sewell  
Vic Brooks, Vice President, Republic National Distributing  
Company  
Catherine Chamblee, Attorney, Gardere Wynn Sewell  
Rhonda Culp, Paralegal, Glazer's  
Rick Donley, President, The Beer Alliance of Texas  
Shelby Eskew, Guest & Honoree of TABC  
Kyle Frazier, Consultant, Texas Wine & Grape Growers  
Association  
Robert Gonzales, Certified Public Accountant  
Michael Graham, Manager, Austin Beerworks  
Steve Greinert, Wholesale Beer Distributors of Texas  
Michele Gutierrez, Guest of Lt. Nick Gutierrez  
Kyle Hill, Attorney, Martin, Frost, Hill, PC  
Mark Homer, Lobbyist, Texas Craft Brewer's Guild  
Cheri Huddleston, Legislative Consultant, Glazer's  
Chelsy Hutchison, Consultant, Republic National Distributing

Company  
Lance Lively, Executive Director, Texas Package Stores  
Association  
Cheryl Nanos, Guest of Harold Nanos  
Trapper Nanos, Guest of Harold Nanos  
Helene Nicholson, Director of Alcohol Compliance, Glazer's  
Robert Peeler, Attorney, Anheuser-Busch  
Fisher Reynolds, Analyst, Legislative Budget Board  
Tyler Rudd, Attorney, California Wine Institute  
Monday Rufus, Certified Public Accountant  
Jim Sheer - Vice President of Government Affairs, Texas  
Retailer's Association  
Tom Spilman, Executive Vice President, Wholesale Beer  
Distributors of Texas  
Jared Staples, Policy Advisor, Governor's Office  
Alan Steen, Vice President, Government Affairs, Glazer's  
Jeffrey Stuffings, Founder, Jester King Brewery  
Sue Tippett, Guest of Harry Nanos

### **CALL TO ORDER**

The meeting of the Texas Alcoholic Beverage Commission was called to order at 10:09 a.m. by Presiding Officer Jose Cuevas. Presiding Officer Cuevas noted that Commissioner Weinberg's flight had been delayed and would join the meeting at a later time.

### **APPROVAL OF COMMISSION MINUTES OF JULY 28, 2015**

**Presiding Officer Cuevas called for approval of the Commission meeting minutes of July 28, 2015. Commissioner Ida Clement Steen so moved to approve the minutes as written. Presiding Officer Cuevas seconded. The motion carried.**

### **COMMISSION REPORT: EXECUTIVE DIRECTOR AND AGENCY ACTIVITIES, BUDGET ISSUES, STAFF ACHIEVEMENTS, LEGISLATIVE ACTIVITIES**

Presiding Officer Cuevas called upon Executive Director Sherry Cook to present the Commission Report: Executive Director and Agency Activities, Budget Issues and Staff Achievements, and Legislative Activities.

After welcoming the Commissioners back to Austin, Executive Director Cook began her presentation by stating that the Agency has been wrapping up year end tasks, such as organizational changes and advertising and filling key positions. She added that she will cover these items in more detail later in her presentation. Executive Director Cook stated that she is excited that there are several employee promotions on the agenda today. She welcomed the family members that are present for the promotional recognitions.

Executive Director Cook announced that the Administrator's Leadership Conference will begin at 2 p.m. today. She added that this afternoon's conference is an open meeting and will cover new legislation and the implementation schedule for that legislation. Executive Director Cook stated that the conference will continue tomorrow as a closed meeting. She added that tomorrow's conference session will allow Agency leadership to discuss the health and wellbeing of our environment in determining the most effective strategies in making sure our employees have a clear expectation in regards to the mission of the Agency and how each play a vital role, in addition to our external stakeholders. Executive Director Cook stated that in preparation for this conference a committee consisting of field and headquarters personnel were assembled to formulate an agenda that focused on Agency wide areas of interest. She added that Assistant Director of Licensing, Jo Ann Joseph will facilitate the conference.

Executive Director Cook next spoke on how the Agency has been aggressively attacking the vacancy rate. She stated that the approach taken during the 84<sup>th</sup> Legislative Session, in terms of right sizing, reduced our FTE cap without changing funding levels. She added that while initially the FTE cap was reduced, the Agency was awarded certain positions back and the Agency operations are now fully funded. Executive Director Cook stated that the Agency can now fill all of the vacancies. She added that all vacancies with one exception should be filled by the first part of October. Executive Director Cook advised that by the November Commission meeting she will have good news to report in relation to the Agency's vacancy rate. She added that for the first time in history, Enforcement ranks should be completely filled.

Presiding Officer Cuevas inquired how many enforcement positions were lost.

Executive Director Cook responded that eleven enforcement positions were lost. She provided a breakdown on vacancies by division. Executive Director Cook stated that by October there will only be six vacancies, five of which are currently filled with temporary positions in the Ports of Entry Division. She added that the cruise ship schedules are very sporadic, it did not make sense to have full time employees in these positions.

Executive Director Cook stated that the Schedule C pay increases have helped the retention rate of CPOs in the Agency. She added that she expects the targeted civilian pay increases, awarded last legislative session, will help the Agency retain more of the Agency's civilian employees.

Presiding Officer Cuevas commented that he appreciates how hard the Agency continues to work behind the scenes to fill positions.

Executive Director Cook continued her presentation with a briefing on significant Agency activities. She stated that under significant activities the Agency continues to formulate partnerships, and recently partnered with the Austin Police Department (APD) to combat over-service. She added that the first operation of this partnership took place during the second week of July. Various violations were observed and cited.

Executive Director Cook stated that the Education and Prevention Division has begun video production that will include retailer topics regarding temporary permits, over service, alcohol by volume and intoxication. She added that a law enforcement training video on source investigations is also in production. These videos and PSAs are being funded by the Texas Department of Transportation (TxDOT) grants.

Executive Director Cook advised that during the 84<sup>th</sup> Legislative Session, statutory changes were made that will require minor changes to the seller server training program. Executive Director Cook stated that the Education and Prevention Division has already identified all necessary changes and the updates are currently being drafted. She added that the updated curriculum and a training program for providers are expected to be completed in October.

Executive Director Cook next spoke on the recent Auditor's Academy. She stated that the four week academy consisted of many great topics of interest to several divisions. She added that personnel from the Licensing, Legal and Ports of Entry divisions took advantage of the Auditor's Academy by attending key points of interest during the training.

Executive Director Cook continued her presentation with Agency accomplishments. Executive Director Cook advised that the Special Investigations Unit (SIU) and Financial Crimes Unit (FCU) continue to be successful in cancelling for cause operations including sale of alcohol to a minor which resulted in a sexual assault, subterfuge ownership, money laundering, prostitution, gambling, intoxicated employees, and an on-going drug trafficking investigation. Executive Director Cook stated that the focus of this unit is solely on a small percentage of licensee/permittees that have egregious criminal behavior and have no intention of becoming compliant. She added that the operations of these licensees/permittees are used to mask that criminal behavior. Executive Director Cook stressed that 90-95% of licensees and permittees will never have contact with the SIU.

Executive Director Cook stated that in June and July, a prohibited hours sweep resulted in six administrative cases for inspection refusal, nineteen administrative cases for permitting consumption during prohibited hours and one arrest of a patron for public intoxication and assault. She added that also during these investigations fourteen beverage samples were seized and sent to the lab to determine if they contain alcohol. Additional prohibited hours cases will be filed if the samples are found to contain alcohol.

Executive Director Cook stated that Operation Fake Out, another partnership with the Austin Police Department, resulted in the seizure of over 300 fake IDs from Austin area minors, an equal number of criminal charges for the possession and use of fake IDs to misrepresent age, and the arrest of two fake ID manufacturers. Executive Director Cook commented that if there are 300 fake IDs in just the Austin area, how many are in use across the state and how many universities and colleges are having these issues. She added that more discussions will be taking place on this subject to see if the Agency can partner and expand these operations.

Executive Director Cook announced that the Ports of Entry Division passed the \$5.7 million mark at the end of August. She added that this is a new record for this division.

Moving on to trends, Executive Director Cook stated that on average over the past six years, approximately 1,737 licensed businesses per year were charged with public safety offenses. She added that more than half of these businesses have been in business less than five years and almost 30% have been in business less than two years. Executive Director Cook stated that bars, convenience stores/gas stations and sexually oriented businesses account for almost two-thirds of the licensed locations charged with public safety offenses. She added that despite their relatively small numbers, the manner in which they operate their businesses poses the potential of great harm to both their patrons and the general public. For this reason, licensed businesses whose employees, managers or owners commit or permit public safety offenses on their premises are the primary focus of the Agency's law enforcement operations.

Executive Director Cook stated that during the FY 2015, the businesses cited for public safety offenses were equally divided between on-premise and off-premise retailers in two classes – BQ (Beer & Wine Off-Premise) and MB (Mixed Beverage) hold the majority of public safety offenses. She added that the licensed businesses charged with public safety offenses were found in all parts of the state in numbers proportionate to the distribution of the retail population as a whole. Executive Director Cook listed the types of offenses committed by these offenders as age-law violations, specifically "sale to minor" or "permitting a minor to possess or consume," are the primary reason why public safety offenders are cited.

Executive Director Cook stated that the tactical methods for discovery of public safety offenses include:

- Minor stings
- Undercover operations
- Open inspections
- Investigations other than inspections

Executive Director Cook added that minor stings were clearly the most productive method for uncovering public safety offenders, netting more than half of the offenders charged during the first eleven months of FY 2015. Executive Director Cook stated that the relative effectiveness of minor stings as a detection method and the frequency of its use is one reason age-law offenders constitute the majority of businesses cited for public safety offenses.

Executive Director Cook stated that while public safety offenders are equally divided between on-premise and off-premise retailers, repeat public safety offenders are predominately businesses licensed to sell alcoholic beverages for on-premises consumption. She added that the majority of these businesses also hold late hours permits. Executive Director Cook stated that Mixed Beverage Permit holders make up more than half of the repeat public safety offenders. Wine & Beer Retailer's Off-premise Permits (BQ) constitute a much smaller share of the repeat public safety

offender total. The only other license classes, other than MBs, with disproportionately large shares of the repeat offender population are Private Clubs. Executive Director Cook stated that a similar situation exists with bars and convenience stores/gas stations. She added that as was the case with public safety offenders generally, bars and convenience stores/gas stations are the largest groups of repeat public safety offenders. Executive Director Cook stated that repeat public safety offenders tend to have been in business slightly longer than all public safety offenders as a group. She added that other differences between the two groups (public safety offenders and repeat public safety offenders) included the frequencies of the types of violations cited and how the offenders were caught the second time around. Executive Director Cook stated that repeat public safety offenders tend to repeat their prior violation. She added that not all types of public safety offenders are equally likely to re-offend. Executive Director Cook noted that we have already seen that off-premises retailers were less likely to re-offend than businesses authorized to sell alcoholic beverages for on-premises consumption, especially bars holding a late hours permit.

Executive Director Cook stated that the largest category of public safety offenders in terms of the type of offense committed is age-law offenders. However, as seen this category contains an exceptionally low proportion of repeat offenders. Those charged with prostitution, prohibited hours, drug, intoxication, and breach offenses are far more likely to have a past history of public safety offenses, although none except prostitution offenders are more likely than not to have such a history. She added that in terms of the last violation committed, we see that age-law offenders constitute a much smaller portion of the re-offender total than they do for that of all public safety offenders as a group. Intoxication, breach, prohibited hours, and even drug and organized crime offenders claim a proportionally larger share of the repeat offender subset.

Executive Director Cook stated that In terms of the last violation committed, age-law offenders constitute a much smaller portion of the re-offender total than they do for that of all public safety offenders as a group. She added that intoxication, breach, prohibited hours, and even drug and organized crime offenders claim a proportionally larger share of the repeat offender subset. Executive Director Cook stated that while investigations played a significant role in the apprehension of both public safety offenders and repeat public safety offenders, proportionally more repeat offenders were caught as the result of complaint investigations.

On a final note about repeat public safety offenders, Executive Director Cook stated that those who are going to re-offend within a 12 month period tend to do so sooner, rather than later. She added that by the end of the ninth month, 84% have already re-offended, and most of these did so in the first six months.

Executive Director Cook advised that a state wide sweep of minor stings began in August as well as press releases designed to remind everyone the importance of keeping alcohol out of the hands of minors. She stated the TABC Public Information Officer Chris Porter did a great job getting the word out and working with every one to make sure there was as much visibility as possible for this campaign. She added that

she would be providing the Commissioners a report on the outcome of the minor sting sweep. Executive Director Cook reported that there was a 92% compliance rate during the minor sting sweep.

**Executive Director Cook will provide a report on the outcome of the minor sting sweep.**

Presiding Officer Cuevas commented that retail businesses advised him that they had been visited by TABC and made aware of the importance of keeping alcohol away from minors.

Executive Director Cook provided a draft of the November Commission meeting agenda. She stated that it will include the Agency's 80<sup>th</sup> Anniversary Celebration.

Executive Director Cook concluded her presentation by recognizing the accomplishments of two employees. She stated that both of these training sessions that these two employees attended were offered by the Federal Bureau of Investigation (FBI). She added that these are extensive executive level training sessions for law enforcement personnel.

Executive Director Cook first recognized Robert Saenz, Chief of Field Operations for his successful completion of "The Leadership Trilogy" conducted by the FBI Law Enforcement Executive Development Association. She added that focus is to provide real life contemporary, best-practice strategies and techniques in topics such as credibility, command discipline and liability, dealing with problem employees and leading change within an organization.



Presiding Officer José Cuevas, Chief of Field Operations Robert Saenz, Executive Director Sherry Cook, Commissioner Ida Clement Steen, Deputy Executive Director Ed Swedberg

Executive Director Cook next recognized Dexter Jones, Assistant Chief of Audit & Investigations for his successful completion of the The FBI National Academy. She stated that this is the first time in history that a TABC employee has completed this

academy. She added that this is a professional development course for U.S. and international law enforcement leaders. It serves to improve the administration of justice in police departments and agencies at home and abroad and to raise law enforcement standards, knowledge, and cooperation worldwide. Executive Director Cook presented a video clip of Assistant Chief Jones' graduation from the FBI National Academy.

Executive Director Cook asked Assistant Chief Jones to come forward and provide a short summary of his time at the academy. She added that she hopes that other TABC personnel will be able to take advantage of this opportunity.



Presiding Officer José Cuevas, Chief of Field Operations Robert Saenz, Assistant Chief of Audit & Investigations Dexter Jones, Executive Director Sherry Cook, Commissioner Ida Clement Steen, Deputy Executive Director Ed Swedberg

*Executive Director Cook's report is supported by a PowerPoint presentation. (Attachment 1)*

### **RECOGNITION OF TABC SERVICE AWARD- 50 YEARS MRS. YVONNE TUCEK- SEPTEMBER 6, 1965 TO SEPTEMBER 6, 2015**

Presiding Officer Cuevas called upon General Counsel Emily Helm and Deputy General Counsel Judith Kennison to present the next agenda item, Recognition of TABC Service Award- 50 Years Mrs. Yvonne Tucek – September 6, 1965 to September 6, 2015.

General Counsel Helm and Deputy General Counsel Kennison came forward to recognize Legal Secretary Yvonne Tucek for fifty years of service to TABC. General Counsel Helm spoke of Ms. Tucek's dedication and contributions to the Agency.

***Commissioner Steve Weinberg joined the meeting at 10:45 a.m.***

Presiding Officer Cuevas expressed his gratitude to Ms. Tucek for all her service to TABC over the last fifty years.



Commissioner Steve Weinberg, Presiding Officer José Cuevas, Deputy General Counsel Judith Kennison, Legal Secretary Yvonne Tucek, General Counsel Emily Helm, Commissioner Ida Clement Steen

### **RETIREMENT HONOREE BUSINESS SERVICES DIRECTOR SHELBY ESKEW**

Presiding Officer Cuevas called upon Executive Director Cook to present the next agenda item, Retirement Honoree, Business Services Director/Chief Financial Officer Shelby Eskew. Executive Director Cook asked Ms. Eskew to come forward and be recognized. Executive Director Cook stated that Ms. Eskew has been a tremendous asset to the Agency as CFO. She added that Ms. Eskew will be greatly missed both on a professional and personal level.

Commissioner Weinberg remarked that he has enjoyed working with Ms. Eskew, especially during the Legislative Sessions. He added that he appreciates all that Ms. Eskew has done for the Agency.

Commissioner Steen commented that Ms. Eskew was always very articulate in her presentations to the Commission. She thanked Ms. Eskew for the expertise she brought to her position at TABC.

Presiding Officer Cuevas wished Ms. Eskew the best. He added that he appreciates all of her service at TABC.



Executive Director Sherry Cook, Commissioner Steve Weinberg, Presiding Officer José Cuevas, Retired CFO Shelby Eskew, Commissioner Ida Clement Steen, Deputy Executive Director Ed Swedberg

**PROMOTIONAL RECOGNITIONS – MAJOR MARK MENN, REGION 1, LUBBOCK ENFORCEMENT REGIONAL OFFICE; MAJOR HARRY NANOS, AUSTIN ENFORCEMENT REGIONAL OFFICE; LIEUTENANT NICK GUTIERREZ, SPECIAL INVESTIGATIONS UNIT (SIU), AUSTIN HEADQUARTERS; FISCAL MANAGER MARILYN LINDSAY, AUSTIN HEADQUARTERS**

Presiding Officer Cuevas called upon Assistant Chief of Enforcement Earl Pearson, Assistant Chief of Audit and Investigations Dexter Jones and Interim Director of Business Services Vanessa Mayo to present the promotional recognitions.

Assistant Chief of Enforcement Earl Pearson called upon Major Mark Menn and Major Harry Nanos to come forward and be recognized. Assistant Chief Pearson read a bio for both Majors and spoke of their Agency contributions.



Chief of Field Operations Robert Saenz, Commissioner Steve Weinberg, Presiding Officer José Cuevas, Assistant Chief of Enforcement Earl Pearson, Major Mark Menn, Commissioner Ida Clement Steen, Executive Director Sherry Cook, Deputy Executive Director Ed Swedberg



Deputy Executive Director Ed Swedberg, Chief of Field Operations Robert Saenz, Presiding Officer José Cuevas, Assistant Chief of Enforcement Earl Pearson, Major Harold Nanos, Cheryl Nanos, Commissioner Steve Weinberg, Commissioner Ida Clement Steen, Executive Director Sherry Cook, (firt row) Trapper Nanos

Assistant Chief of Audit and Investigations Dexter Jones asked Lt. Nick Gutierrez to come forward and be recognized. Assistant Chief Jones read Lt. Gutierrez’s bio and spoke of his accomplishments during his tenure with TABC.



Commissioner Steve Weinberg, Presiding Officer José Cuevas, Chief of Field Operations Robert Saenz, Lt. Nick Gutierrez, Michele Gutierrez, Commissioner Ida Clement Steen, Executive Director Sherry Cook, Deputy Executive Director Ed Swedberg

Interim Business Services Director Vanessa Mayo came forward to recognize the Agency’s new Fiscal Services Manager, Marliyn Lindsay. Interim Director Mayo read Ms. Lindsay’s bio and spoke on her job responsibilities within the Business Services Division.



Commissioner Steve Weinberg, Presiding Officer José Cuevas, Interim CFO Vanessa Mayo, Fiscal Services Manager Marilyn Lindsay, Retired CFO Shelby Eskew, Commissioner Ida Clement Steen, Executive Director Sherry Cook, Deputy Executive Director Ed Swedberg

Presiding Officer Cuevas commented that he appreciates how the Agency continues to add high caliber employees to the TABC team.

## **BREACHES OF THE PEACE**

Presiding Officer Cuevas called upon Deputy Executive Director Ed Swedberg for the next agenda item, Breaches of the Peace.

Deputy Executive Director Swedberg began his briefing by providing background information on breaches of the peace. Deputy Executive Swedberg stated that breaches are disturbances, fights, shootings or violent acts on a licensed premise, including buildings, parking lots and vehicles that are under the control of the permittee. He added that often breaches can be more difficult to prove and require more time to investigate. Deputy Executive Director Swedberg stated that local law enforcement are typically the first to respond to a breach of the peace and are often the ones to file a complaint on a licensed location where a breach has occurred. Deputy Executive Director Swedberg defined the focus of a breach of the peace investigations into two categories.

- Whether the Actions/Inactions of Permittee Contributed to the Breach
- Whether/How the Breach was Addressed by the Permittee

Deputy Executive Director Swedberg discussed the three categories of administrative violations for a breach of the peace.

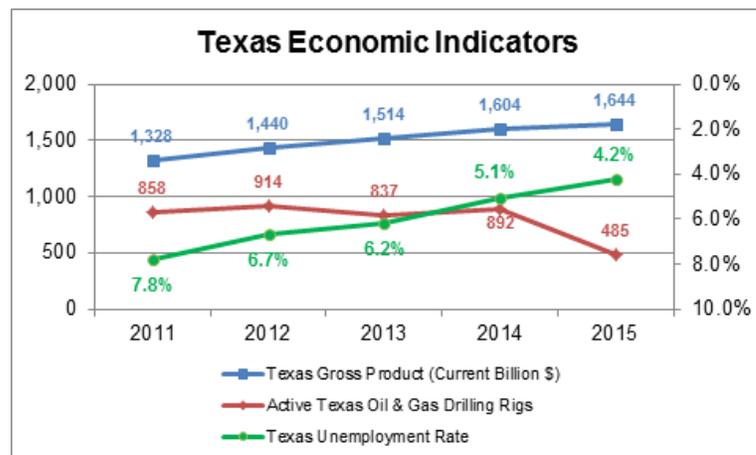
- 1) Aggravated Breach: the permittee is required to report to TABC within 24 hours any incident where a person shoots, stabs, causes serious injury to, or murders another person.

- 2) Simple Breach: the permittee is required to report to TABC within 5 days any incident where law enforcement or emergency medical services personnel respond, or where a disturbance is created on the premise by a person (bodily injury, threat with a weapon, firearm discharge, or destroyed property). This reporting requirement only applies when the licensee or someone allowed by the licensee is on the licensed premise and it interferes with normal business operations.
- 3) Failure to Report a Breach: failure to report a breach may result in the suspension or cancellation of a license or permit.

Deputy Executive Director Swedberg next discussed trends in statewide breach complaints. He stated that since FY11, the number of breach complaints opened annually has been reduced by 52%. He added that the majority of opened breach complaints do not result in any administrative action.

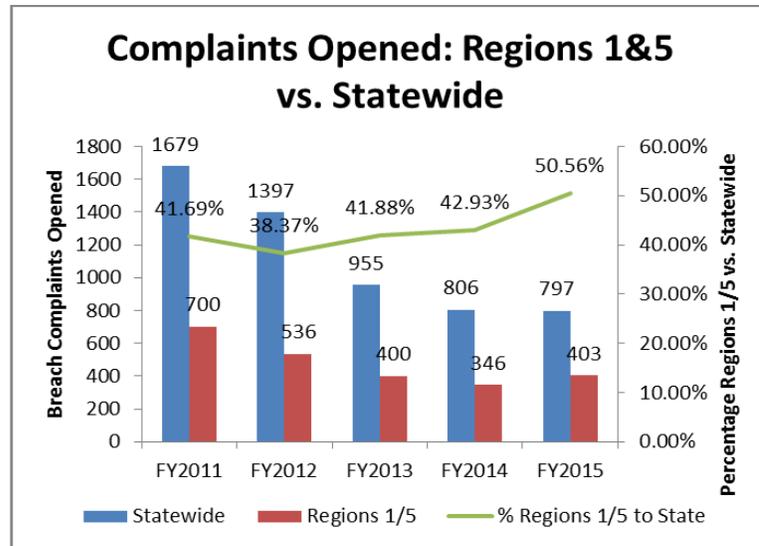
Deputy Executive Director Swedberg reported that on any given year the number of opened complaints is equal to the number of closed complaints. He added that this shows that enforcement is keeping up with the work load. Deputy Executive Director Swedberg stated that although opened breach complaints resulting in an administrative action are also trending downward, there is an increase in administrative actions as a percentage of total complaints. He added that this indicates a higher quality of cases.

Deputy Executive Director Swedberg spoke on the inverse correlation between state economic indicators and the downward trend in the number of complaints that are opened and the total number of administrative actions that are taken. He added that an example of this would be problems in bars and the economy in general. Deputy Executive Director Swedberg reported that a five year review of key economic indicators was pulled and there was some inverse correlation revealed.



Deputy Executive Director Swedberg stated that Regions One and Five were disproportionately affected due to the decrease in oil and gas activity. He added that

this correlates with the increase in breach of the peace complaints in those areas of the state. Executive Director Swedberg stated that the decrease in oil and gas activity not only directly affects the oil and gas workers, but also indirectly affects the other workers of businesses in those areas.



Deputy Executive Director Swedberg stated that there does seem to be some correlation between economic indicators and the number of breach of the peace complaints. He added that the Agency will monitor these trends.

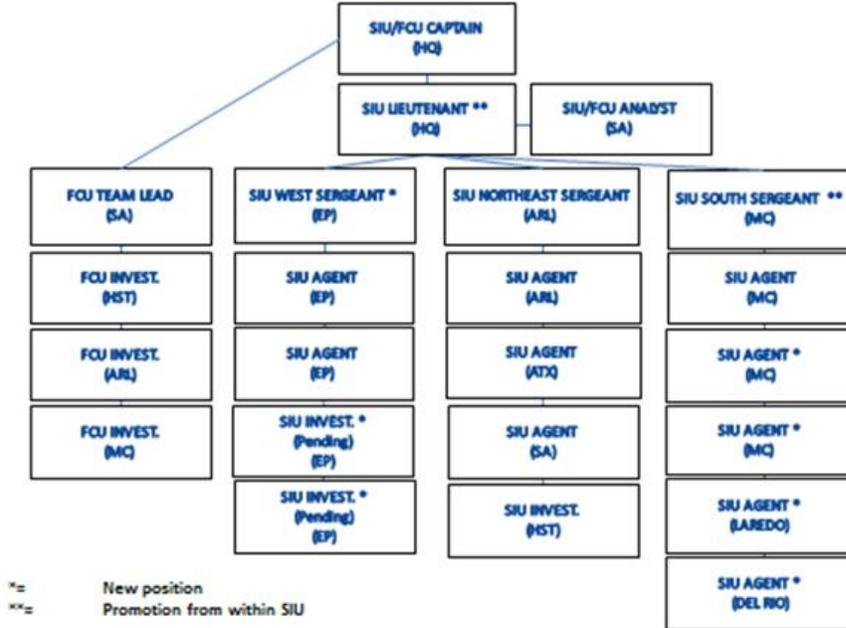
*Deputy Executive Director Swedberg's report is supported by a PowerPoint presentation. (Attachment 2)*

**SPECIAL INVESTIGATIONS UNIT (SIU) BRIEFING**

Presiding Officer Cuevas called upon Dexter Jones, Assistant Chief of Audit and Investigations to present the next agenda item, Special Investigations Unit Briefing.

Assistant Chief Jones began his briefing by recognizing two members of the Special Investigations Unit, Lieutenant Nick Gutierrez and Financial Crimes Team Lead Henry Guevara. Assistant Chief Jones stated that the mission of the Special Investigations Unit (SIU) is to identify and investigate habitual patterns of at-risk behavior occurring on licensed premises through covert operations. He added that SIUs primary focus is on organized criminal activity taking place at licensed locations. He added that both criminal and administrative actions can be taken against these permittees. Assistant Chief Jones next explained the organizational structure of the Special Investigations Unit.

**FY16 SIU Chain of Command and recent addition of FCU**



He added that six additional FTEs were allocated to SIU during the last legislative session which increases the number to twenty four SIU agents.

Assistant Chief Jones next outlined the chain of command structure of the SIU. He explained that SIU is divided into northern and southern areas of responsibilities. The northern sector covering the Arlington, Austin, and El Paso areas and the southern sector covering San Antonio, Houston and McAllen. The six FTEs allocated during the last legislative session have been assigned to duty stations along the Texas/Mexico border.

Assistant Chief Jones stated that currently there are 130 open investigations. He added that SIU Investigations include narcotics trafficking, human trafficking, alcohol beverage counterfeiting, tax stamp fraud, cargo theft, carrier related crimes, alcohol beverage theft, organized crime, money laundering and other violations.

Assistant Chief Jones stated that during FY15 there were a total of 94 organized criminal activity investigations closed by SIU, resulting in the cancellation of 24 permits. He added that also in FY15, there were a total of 726 joint trafficking operations conducted by SIU. Joint trafficking operations include inspections, undercover operations, exterior surveillance operations, knock and talk initiatives, and other investigative techniques. He added that SIU is on target to meet the performance measure goals for FY16.

Assistant Chief Jones stated that SIU has participated in several Task Force Operations resulting in asset forfeitures and seizures. He added that for FY15, \$127,733.29 in asset forfeitures have been awarded to TABC. As part of Task Force

Operations, over a million dollars has been seized and TABC will be allocated a percentage of this figure based on federal decisions in these cases.

Presiding Officer Cuevas inquired if the allocated dollars could be over \$500,000.00.

Assistant Chief Jones responded to the affirmative, but stated that exact percentages would not be known until those federal decisions are made.

During FY15, Assistant Chief Jones stated that SIU has worked with Federal and other Law Enforcement Agencies on narcotics seizures and arrests. Assistant Chief Jones provided a breakdown of those numbers for FY15.

Assistant Chief Jones stated that SIU cases are very time consuming and resource intensive. They require many man hours, extensive travel and undercover operations to fully investigate. Assistant Chief Jones outlined the SIU involvement in two cases, Operation Three Thorns and Operation Nat Geo. He then showed a film clip from the National Geographic documentary.

Assistant Chief Jones announced that the National Liquor Law Enforcement Association (NLLEA) has awarded TABC with the Agency of the Year award for 2015 for the creation of the SIU to combat organized crime occurring in licensed establishments. He added that SIU Captain Ron Swenson is currently in Colorado to attend the NLLEA Awards Luncheon to accept this award.

Commissioner Weinberg commended Assistant Chief Jones for a great presentation and the great job the SIU is doing in such a short amount of time.

Commissioner Weinberg also thanked Presiding Officer Cuevas for his involvement in the creation of the SIU and the Legislature for the extra personnel for the SIU unit.

Commissioner Steen commended Assistant Chief Jones for a great eye-opening presentation.

Presiding Officer Cuevas commented that he thinks SIU has done a wonderful job and he appreciates that SIU is staying focused on licensed individuals and the Agency's mission of public safety.

Presiding Officer Cuevas inquired about the longer length of these operations.

Assistant Chief Jones responded that the length of an operation depends on the lead agency for the operation and the type of operation. He added that in some cases, an administrative action may have to be delayed until all agencies are ready to proceed with the case.

Presiding Officer congratulated Assistant Chief Jones and the SIU team.

*Assistant Chief Jones' report is supported by a PowerPoint presentation.  
(Attachment 3)*

**FOLLOW-UP INTERNAL AUDIT OF ENFORCEMENT ADMINISTRATION, EXCISE TAX ADMINISTRATION, ADDITIONAL FOLLOW-UP ON TAX ADMINISTRATION- PORTS OF ENTRY**

Presiding Officer Weinberg called upon Internal Auditor Monday Rufus, CPA to present the next agenda item, Follow-Up Internal Audit of Enforcement Administration, Additional Follow-Up on Tax Administration- Ports of Entry.

Mr. Monday Rufus introduced his associate Mr. Robert Gonzales, CPA to begin the presentation.

Mr. Gonzales began his report to the Commission by stating that they have followed up on three previous audits and reviewed the status of those audit recommendations.

Mr. Gonzales stated that there were two findings in the Enforcement Administration Audit and management has implemented the audit recommendations for those findings.

**Finding #1: Miscoding of Investigation Case in CrisNet Database System**

Recommendation: The Status of inspections and complaints cases should be more closely monitored by Enforcement management to ensure proper and accurate reporting of enforcement cases.

Management Response: Management agrees with the findings and recommendation. When a complaint against a retailer is unfounded and no administrative case is filed, but more investigation is required, a second complaint should be opened against the person or persons being investigated. It is now standard operating procedure for the Agency to open a second complaint should the original be unfounded and further investigation against other individuals is necessary.

Current Status: Implemented

**Finding #2: Supporting documentation Lacking for Required Minor Sting Operatons Leters Sent to Representatives of Locations Not Selling Alcohol to Minors**

Recommendation: Management should include in the polices and procedures instructions on how a copy of the letter or a checklist should be saved (electronically or in paper form) after it is sent as evidence of complying with the written policies and procedures.

Management Response: Management agrees with the finding. A copy of each letter that is sent to licensees/permittees that refused to sell alcohol to a minor during a minor sting operation conducted on their premise is now being kept at each of the District Offices

Current Status: Implemented

Mr. Gonzales next reported on the audit findings on the follow up report on Excise Tax Administration. He added that this report had three audit recommendations.

**Finding #1: Missing Monthly Excise Tax Report**

Recommendation: Excise Tax Section management should properly document and monitor the location of each excise tax report, including coordination with other Commission divisions who use the same tax report documents in monitoring licensee/permittee compliance with the Texas Alcoholic Beverage Code. It will ensure that the report information in the computer system is supported by documents submitted and signed by the licensees/permittees and also comply with the document retention schedule.

Management Response: The Agency agrees with the internal audit findings and recommendation. Excise Tax section management will take action to reestablish policy with both Audit and Excise Staff regarding the proper documentation and monitoring the location of each excise tax report.

Additionally, the Excise Tax Division will conduct a monthly supervisory sample review to ensure reports are properly documented and stored in the appropriate location

Current Status: Implemented

**Finding #2: The 2% Discount on Excise Taxes Due Is Being Included On Monthly Tax Reports With Underpaid Excise Taxes Due**

Recommendation: The Agency should emphasize and enforce compliance with the *TABC Excise Tax Report Processing Manual* which states that the licensee/permittee is not entitled to the 2% discount if there is an underpayment of excise taxes discovered during the excise tax report verification process.

TABC management should consider making the excise tax report's calculation sheet *IT Active* online so that when licensees/permittees input their monthly alcoholic beverage activity totals the tax can be automatically calculated. This may ensure proper excise taxes are being paid timely and reduce the number of Excise Tax examiners report tax calculation adjustments, phone calls, letters sent, or emails to licensees/permittees.

Management Response: The Agency agrees with the internal audit findings and recommendations to the extent that the manual does not reflect the practice. Based on Sections 201.48 and 203.10, the 2% discount is not allowed on the amount not paid by the licensee as that amount was delinquent on the date it was due. The *Excise Tax Procedures Manual* will be updated to reflect this practice.

Additionally, the Agency will develop an intelligent online tax reporting form, to be completed in 90 days, so that when licensees/permitted input their monthly alcoholic beverage activity totals, the tax can be automatically calculated.

Current Status: Implemented

**Finding #3: Excise Tax Management Should Cross-Train Examiners Due to Turnover of Personnel and Continued Increase in Required Tax Paying and Informational Reports**

Recommendation: Excise Tax management should increase the number of supervisory reviews of monthly tax reports based on the recently hired tax report examiners (2) currently processing tax reports. Management should also have someone other than the tax report examiner recalculate the taxes due.

Management should cross-train employees in processing different types of excise tax reports for report processing continuity in the absence of an examiner(s).

Management should emphasize to permittees compliance with the Excise Tax Report Processing Procedures Manual.

Additionally, Excise Tax management should consider establishing an excise tax threshold dollar amount(s) for quarterly direct shipper's (and other) reports reviewed, taking into consideration excise tax requirements that are not being complied with, amount of taxes being paid, and the feasibility of sending a computer generated or examiner written violation notification letter.

Management Response: The Agency agrees with the internal audit findings and recommendation. During the summer of FY14, the Excise Tax Division hired one new accounts examiner to replace a tenured examiner retiring at the end of the fiscal year. The Excise Tax management will increase their review of the reports reviewed by the recently hired tax report examiner. All reports checked by Excise Tax Section personnel go through an additional review when an excise tax audit is conducted by field auditors.

The excise tax review is a very extensive manual process. In FY13, three FTE accounts examiner positions reviewed over 55,800 reports. The Agency felt that rotating assignments would not be an effective nor efficient use of staff personnel. However, moving forward, although each examiner specializes in the type of tax collected and tax corresponding report, all excise tax personnel will be cross trained to assist others as needed as resources allow. The Agency will also explore options for developing a knowledge repository where the expert in each permit type can store data regarding tax specific questions or issues that arise along with the solution.

Several requests have been made in past legislative sessions to fund an automated system for filing excise tax reports and taxes. Twice this request was approved and funded, however, due to mandatory budget reductions those funds were later returned. Once again, the Agency has moved forward with another funding request for

the upcoming 2015 Legislative Session for an automated system for filing excise tax reports and taxes.

Finally, before August 31, 2015, the Agency will study processes and explore options to better identify direct shipper reporting compliance and solutions. For example, the Agency may pursue Marketing Practices Advisories, form changes, direct shipper excise tax threshold dollar amounts and/or administrative action.

Current Status: Partially Implemented

Mr. Gonzales explained that this audit recommendation is only partially implemented as the Excise Tax Division is still working to cross train employees.

Mr. Gonzales continued his briefing with the additional follow up report on Tax Administration-Ports of Entry. He added that when the first follow up report was done, the Ports of Entry Division was in the process of reviewing the policies and procedures manual for approval. Mr. Gonzales stated that on this additional follow up report, the policies and procedures manual has been approved. He added that the audit recommendation has now been implemented.

Mr. Gonzales concluded his presentation on the follow up audit reports and inquired if the Commissioners had any questions or comments.

Commissioner Weinberg advised that the Audit Committee met the previous week to discuss these follow up reports. He added that the Agency has done a great job in the responses to these audit recommendations.

Commissioner Weinberg commented that cross training has been a problem in several areas of the Agency.

Commissioner Weinberg requested Excise Tax and Marketing Practices Director Thomas Graham to come forward and discuss how his division is working to cross train the employees.

Director Graham stated that his division is continuing to work on cross training employees. He added that due to employee turnover over the past two years, cross training is proving to be a valuable tool for employees by providing a back up system for their job duties. Director Graham stated that currently two employees in the Excise Tax Division are cross trained.

Commissioner Weinberg inquired if Director Graham would have three employees cross trained by the end of the year.

Director Graham responded to the affirmative.

Commissioner Weinberg commented that he hopes that other divisions will notice what a valuable resource cross training can be.

**Commissioner Weinberg moved to approve the Texas Alcoholic Beverage Commission's Follow-Up Internal Audit of the Enforcement Administration, Excise Tax Administration and Additional Follow-Up On Tax Administration-Ports of Entry as presented by the Internal Auditor, Mr. Robert Gonzales. Commissioner Steen seconded the motion. Presiding Officer Cuevas stated that a motion was made and seconded. The Follow-Up Internal Audit is approved.**

*Mr. Robert Gonzales' report is supported by a PowerPoint presentation.  
(Attachment 4)*

### **INTERNAL AUDIT OF BUSINESS CONTINUITY**

Presiding Officer Cuevas called upon Internal Auditor Monday Rufus, CPA to present the agenda item entitled Internal Audit of Business Continuity.

Mr. Rufus stated an internal audit was conducted of Business Continuity at the Texas Alcoholic Beverage Commission as of August 31, 2015. He added that the 80th Texas State Legislature mandated, in Senate Bill 908, that all state agencies and universities are required to have a business continuity plan in place. The Texas Alcoholic Beverage Commission (TABC) has documented their continuity of operations and the disaster recovery plans, which as a whole are considered the business continuity plan (COOP) for the TABC.

Mr. Rufus stated that the COOP is an overall approach to providing alternative paths for critical business processes in the event of an emergency, disaster, or other disruption. Mr. Rufus reviewed the audit findings.

#### **Finding #1: Develop and maintain an Agency-level training program for mission critical personnel of the Agency.**

Recommendation: The Agency should ensure that a continuity training program is developed and implemented

The Agency should ensure that key personnel are trained in their roles and responsibilities to ensure that mission-critical personnel are prepared to perform required continuity functions during an emergency.

Management Response: TABC concurs and will develop a formal training program and conduct formal Agency-level training to mission critical personnel. However, it is premature to develop an adequate training program before the Continuity of Operations Plan (COOP) is approved by the State Office of Risk Management (SORM).

Responsible Individual: Lieutenant Marvin Montero

Status: Not fully implemented. Planned Completion within 90 days after receipt of State Office of Risk Management (SORM) approval of the Continuity of Operations Plan (COOP)

**Finding #2: Ensure Periodic Testing of the full Continuity of Operation Plan.**

Recommendation: It is recommended that the Agency fully test the COOP to ensure the plan is workable and can provide reasonable assurance of recovery of the total business should there be a disaster or disruption.

Management Response: TABC concurs and will develop a formal testing program and conduct a formal test of the Continuity of Operations Plan. However, it is premature to conduct an adequate test before the Continuity of Operations Plan (COOP) is approved by the State Office of Risk Management (SORM).

Responsible Individual: Lieutenant Marvin Montero

Status: Not fully implemented. Planned Completion within 120 days after receipt of State Office of Risk Management (SORM) approval of the Continuity of Operations Plan (COOP)

Mr. Rufus concluded his presentation on the Internal Audit of Business Continuity and inquired if the Commissioners had any questions or comments.

Commissioner Weinberg emphasized the importance of the COOP to recover software, data and the operations of the Agency. He added that this plan must be practiced to be effective.

Commissioner Weinberg asked if SORM has approved the plan.

Deputy Executive Director Swedberg stated that he believed the COOP has been approved, but deferred the question to Lieutenant Marvin Montero.

Lt. Montero came forward and stated that the COOP was approved with minor revisions by SORM last Friday.

Commissioner Weinberg commented that the plan could not be practiced until it was approved by SORM.

Commissioner Weinberg inquired if Lt. Montero was the COOP Director.

Lt. Montero responded to the affirmative.

Deputy Executive Director Swedberg stated that Lt. Montero is the Special Response Team (SRT) Leader. He added that it was a natural decision to also put Lt. Montero in charge of the COOP process.

Commissioner Weinberg commented that he looks forward to being part of the COOP training drills. He added that he strongly recommends that the Agency have two recovery sites. One site in Austin and one site outside of the Travis County area. Commissioner Weinberg stated that this was a good audit.

Commissioner Weinberg quizzed Lt. Montero as to when a COOP practice drill might take place.

Lt. Montero responded that a COOP practice has been coordinated with Mr. Rufus to take place ninety days following approval of the plan by SORM. He added that the Training Division is already working to prepare on-line training for Agency executives and select supervisors.

Presiding Officer Cuevas inquired what the revisions were to the approved COOP.

Lt. Montero responded that all the revisions were very minor, such as corrections to citations in the document.

Presiding Officer Cuevas quizzed Lt. Montero how does the Agency go about getting a second recovery site.

Lt. Montero stated that because of the unique nature of this Agency, we have the capability of relocating to other TABC offices around the state and set up operations. He added that the Agency also has a mobile command vehicle that can be moved to different locations around the state.

Presiding Officer Cuevas inquired to how the testing would be carried out.

Lt. Montero responded that it can be carried out in two ways. Internal testing which would be submitted to SORM or have the Continuity of Operations Director of the Texas Facilities Commission (or other Agency) observe and grade the practice drill. Lt. Montero added that he would prefer to have someone from the outside grade the practice drill.

Presiding Officer Cuevas stated that he agreed that it would be beneficial to have someone from the outside grade the practice drill.

Commissioner Steen inquired if the Agency would be working with other agencies for COOP procedures.

Lt. Montero responded that in the past, COOP information was not shared outside of that Agency. Lt. Montero added that with the passage of legislation last session all of the plans have been opened up for discussion between agencies,

Deputy Executive Director Swedberg stated that the continuity of operations has multiple pieces. One component is disaster recovery of our IT systems and data. Deputy Executive Swedberg stated that most of the Agency servers that operate the core IT functions are located in the State Data Centers and are well protected.

Deputy Executive Director Swedberg stated that Lt. Montero's Special Response Team (SRT) team is made up of thirty CPOs who have specialized training in search/recovery missions as well as a variety of other functions. Deputy Executive Swedberg added that the Agency can provide those specialized services to other local law enforcement if there is an emergency. Deputy Executive Director Swedberg

advised that Lt. Montero has done a great job training the SRT members to respond and support other law enforcement.

Deputy Executive Director Swedberg stated that the business continuity plan details how Agency business functions are recovered. He added that this is the main focus of the COOP and is the aspect that is in need of the most development.

**Presiding Officer Cuevas called for a motion. Commissioner Weinberg moved to approve the Texas Alcoholic Beverage Commission's Internal Audit of Business Continuity as presented by the Internal Auditor Mr. Monday Rufus. Commissioner Steen seconded the motion. Presiding Officer Cuevas stated that a motion was made and seconded. The Internal Audit of Business Continuity is approved.**

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

### **PROPOSED INTERNAL AUDIT FOR FISCAL YEARS 2016 AND 2017**

Presiding Officer Cuevas called upon Internal Auditor Monday Rufus, CPA to present the agenda item entitled Proposed Internal Audit Plan for Fiscal Years 2016 and 2017.

As required by the Internal Auditing Act (Texas Government Code §2102.008), Mr. Rufus prepared the audit plan for Fiscal Years 2016 and 2017. He stated a risk assessment was prepared to determine the areas in the Texas Alcoholic Beverage Commission that should be considered for audit. Based on that risk assessment, the following areas were recommended for audit in Fiscal Year 2016:

- Label Product Approval Process
- Information Systems- Security
- Field Operations Audit Administration
- Risk Assessment and preparation of Audit Plan (Fiscal Years 2016-2017)

In addition to the categories listed above, Mr. Rufus stated a follow-up on prior year's audit recommendations would include: (1) Internal Audit of the Personnel Processes (Report date: February 20, 2015); (2) Internal Audit of Information Technology System Development (Report date: May 27, 2015). 3) Internal Audit of the Identification Stamps/Private Club Cards.

Mr. Rufus continued with the recommendations for audit in Fiscal Year 2017:

- Licensing Application and Processing
- Cash Receipts and Fee Processing
- Field Operations Investigations Administration
- Follow-up on Prior Internal Audit Recommendations

Commissioner Weinberg encouraged the other Commisisoners to suggest other audit topics.

**Commissioner Weinberg moved to approve the Texas Alcoholic Beverage Commission's Proposed Internal Audit Plan for Fiscal Years 2016 and 2017 as presented by the Internal Auditor, Mr. Robert Gonzales. Commissioner Steen seconded the motion. Presiding Officer Cuevas stated that a motion was made and seconded. The Proposed Internal Audit Plan for Fiscal Years 2016 and 2017 is approved.**

Presiding Officer Cuevas thanked Commissioner Weinberg for his participation on the Audit Committee.

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

**RECEPTION HONORING TABC SERVICE AWARD RECIPIENT YVONNE TUCEK, TABC RETIREE SHELBY ESKEW, AND TABC EMPLOYEE PROMOTIONS- MAJOR MARK MENN, MAJOR HARRY NANOS, LIEUTENANT NICK GUTIERREZ AND MARILYN LINDSAY**

Presiding Officer Cuevas announced that a reception will now take place to honor the recognized employees.

**EXECUTIVE SESSION TO CONSULT WITH LEGAL COUNSEL REGARDING PENDING AND ANTICIPATED LITIGATION AGAINST THE AGENCY AND TO DELIBERATE THE APPOINTMENT, EMPLOYMENT, EVALUATION, DUTIES OF THE POSITIONS OF EXECUTIVE DIRECTOR AND GENERAL COUNSEL (Govt. Code §551.071, §551.074 and Texas Alcoholic Beverage Code §5.11)**

Presiding Officer Cuevas announced the regular open session of the Texas Alcoholic Beverage Commission will be recessed at this time, 12:21 p.m. September 22, 2015 and an executive session will be held to consult with Legal Counsel regarding pending and anticipated litigation against the Agency and to deliberate and appointment, employment, evaluation, duties of the position of Executive Director and General Counsel (Govt. Code §551.071, §551.074 and Texas Alcoholic Beverage Code §5.11)

The Texas Alcoholic Beverage Commission has concluded its Executive session and is now in open regular session. The date is September 22, 2015 and the time is 1:45 p.m. No final action, decision or vote was made in Executive session.

**ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION**

Presiding Officer Cuevas stated that there is no action needed on items discussed in Executive Session.

Presiding Officer Cuevas called upon Assistant General Counsel Martin Wilson to present the next agenda items.

**APPROVE PUBLICATION OF PROPOSED AMENDMENT TO RULE §31.1,  
SEPARATION OF DUTIES BETWEEN COMMISSION AND ADMINISTRATOR**

Assistant General Counsel Wilson stated that during the Legislative Session, the Legislature was concerned about contracting authority and passed Senate Bill 20 (SB20) which has provisions regarding contracting for state agencies. Assistant General Counsel Wilson stated that there will be additional rules regarding SB20 in the future once the Department of Information Resources (DIR) and the Comptroller's Officer have issued their rules. He added that Rule §31.1, Separation of Duties Between Commission and Administrator, is the only rule before the Commission today relating to SB20.

Assistant General Counsel Wilson stated that SB20 provides that a contract that has a value exceeding one million dollars must be approved by the governing body of the Agency and signed by the Presiding Officer, unless that authority of delegated to the Executive Director. He added that Rule §31.1 deals with delegation of authority to the Executive Director, but does not address contract approval. Assistant General Counsel Wilson advised the Commissioners of their options for the amendment to Rule §31.1.

Option A. Delegate authority to Executive Director to approve all contracts.

Option B. Delegate authority to Executive Director to approve all contracts only under one million dollars.

Assistant General Counsel Wilson also advised the Commissioners that they also have the option not to delegate any authority to the Executive Director relating to contract approval.

**Presiding Officer Cuevas called for a motion. Commissioner Weinberg moved to Approve Publication of Proposed Amendment to Rule §31.1, Separation of Duties Between Commission and Administrator, for a 30 day period comment period in the *Texas Register*. The amendment will include a new paragraph (c)(11) delegating the authority to the Executive Director to execute all contracts on behalf of the Agency, including contracts for the purchase of goods or services that have a value exceeding one million dollars. Commissioner Steen seconded the motion and the motion passes.**

**APPROVE PUBLICATION OF PROPOSED AMENDMENT TO RULE §31.3,  
PETITION FOR THE ADOPTION OF A RULE**

Assistant General Counsel Wilson began by stating that the proposed amendment to Rule §31.3, Petition For The Adoption of a Rule is also from new legislation, House Bill 763 (HB763) from the last Legislative Session. He added that HB763 defines who is able to file a petition for rule making. Assistant General Counsel Wilson noted that the Commission recently amended this rule, but the new legislation was not taken into consideration. He added that in the new legislation, "interested person" is now defined

as a resident of Texas. Assistant General Counsel Wilson stated the amendment to Rule §31.3, Petition For The Adoption of a Rule will reflect the change in the legislation.

**Presiding Officer Cuevas called for a motion. Commissioner Weinberg moved to Approve Publication of Proposed Amendment to Rule §31.3, Petition For The Adoption of a Rule, for a 30 day period comment period in the *Texas Register*. Commissioner Steen seconded the motion and the motion passes.**

Presiding Officer Cuevas called up agenda items 16 and 17 together.

**APPROVE PUBLICATION OF PROPOSED REPEAL OF RULE §41.26, RAILWAY CARS- TAX RETURNS**

**APPROVE PUBLICATION OF PROPOSED REPEAL OF RULE §41.47, AIRLINE BEVERAGE PERMITS**

Assistant General Counsel Wilson stated that the repeal of both of these rules implement requirements that are in House Bill 1905 (HB1905) from the last Legislative Session. Currently, railway cars and airlines are required to file monthly excise tax returns. He added that HB1905 eliminates the need for filing monthly excise tax returns. Assistant General Counsel Wilson stated that there is no longer a purpose for these two rules and recommends that the rules be repealed.

Commissioner Weinberg inquired if Deputy General Counsel Wilson knew how much the state was collecting from railcars and airplanes when these rules were in effect?

Thomas Graham, Director of Excise Tax and Marketing Practices came forward to address Commissioner Weinberg's question.

Director Graham stated that the Agency receives approximately \$350,000 per year. He added that the Agency refunds a large percentage of that amount back to the permittees for alcohol that is served on airlines out of state.

Commissioner Weinberg commented that the Agency probably spends more collecting these taxes than on the tax itself.

**Presiding Officer Cuevas called for a motion. Commissioner Weinberg moved to Approve Publication of Proposed Repeal of Rule §41.26, Railway Cars- Tax Returns and §41.47, Airline Beverage Permits, for a 30 day period comment period in the *Texas Register*. Commissioner Steen seconded the motion and the motion passes.**

**ADOPT AMEMDMENTS TO RULE §37.61, SUSPENSIONS**

Assistant General Counsel Wilson stated that the amendment to Rule §37.61, Suspensions was proposed at the July Commission meeting. No written or oral comments were received after publication in the *Texas Register* or at the Public

Hearing. Assistant General Counsel Wilson recommends the amendment be approved for adoption as proposed.

**Presiding Officer Cuevas called for a motion. Commissioner Weinberg moved to Approve Adoption of Proposed Amendment of Rule §37.61, Suspensions. Commissioner Steen seconded the motion and the motion passes.**

### **PUBLIC COMMENTS**

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

### **NEXT MEETING DATES**

Presiding Officer Cuevas announced the next meeting date is scheduled for Tuesday, November 17, 2015.

### **ADJOURN**

**Presiding Officer Cuevas called for a motion to adjourn. Commissioner Weinberg made a motion. Commissioner Steen seconded. The motion was made and seconded. The motion passes. Presiding Officer Cuevas announced that the meeting was adjourned at 1:54 p.m.**

# **Attachment 1**

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



**Commission Meeting September 22, 2015**  
**Executive Director**  
**Sherry Cook**

# Administrator's Leadership Conference

## September 22-23, 2015

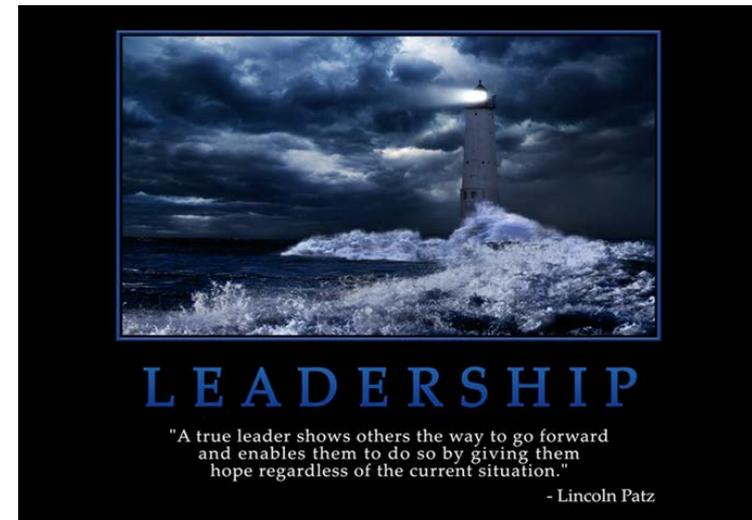
- September 22 – Commission Meeting 10:00-1:00
- September 22 – Conference Begins 2:00 P.M.
  - Attendees
    - Commissioners
    - Industry
    - Executive Team
    - Field Leadership
  - Welcome
  - Overview 84<sup>th</sup> Legislative Session (Training)
  - New Organizational Structure



# Administrator's Leadership Conference

## September 22-23, 2015 (Draft)

- September 23 – Closed Meeting
  - Welcome
  - Keynote Chairman Cuevas
  - Gold Stars/Wish Upon a Star
  - Effective Communications
  - Customer Service
  - Opportunities for Growth
  - Leadership and Life/Work Balance
  - Wrap-Up and Action Items



# Leadership Conference Committee

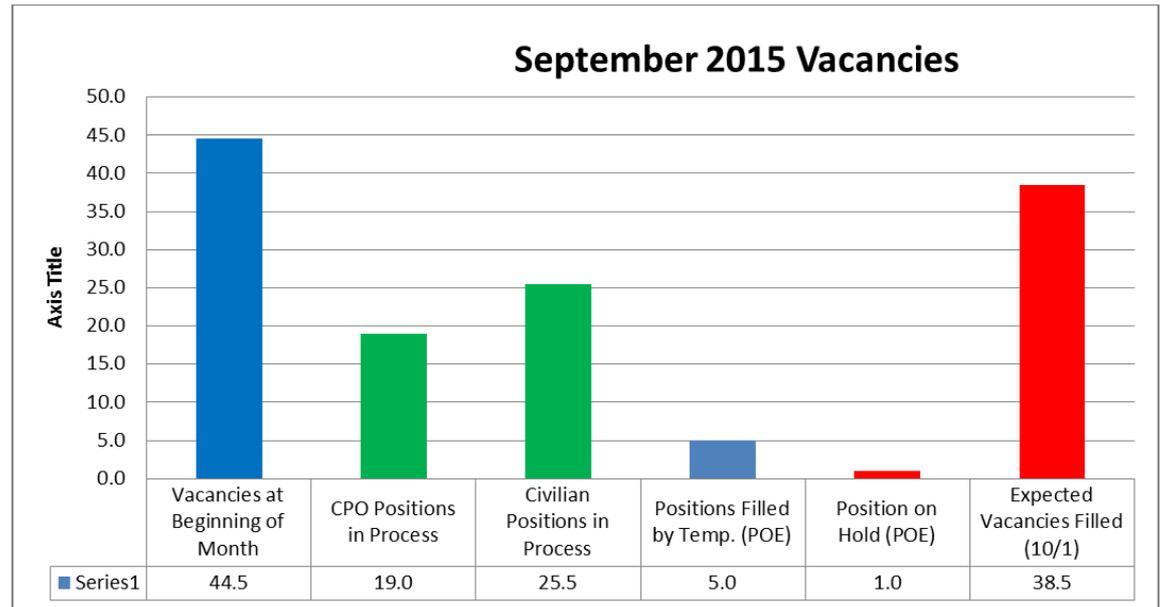
- Jo Ann Joseph, Assistant Director of Licensing Division
- Mariann H. Morelock, Director of Communications and Governmental Relations
- Chris Porter, Public Information Officer
- Maj. Victor Kuykendoll, Regional Supervisor of Enforcement, Region 2
- Stacy Jackson, Regional Supervisor of Audit, Region 5
- Carla Rios, Regional Manager, Ports of Entry



# Vacancy Update

## FTE CAP 639 (FY16-FY17)

- Audit & Investigations (6 Positions)
  - Background, Repost, Interviews, Posted, Offer Pending
- Business Services (5 Positions)
  - Posted, Interviews, Filled w/Temp., Requisition Pending
- Enforcement (19 Positions)
  - Interviews, Background
- HRD (1 Position)
  - Requisition Pending
- Licensing (3 Positions)
  - Interviews
- POE (4 Positions)
  - Offer Made, Screening, Requisition Pending
- Tax (1 Position)
  - Interviews



**TOTAL IN PROCESS 38.50**

**NOTE:** 5 Positions within POE are filled with Temporary employees and one position is currently on hold pending reallocation.

# Significant Activities

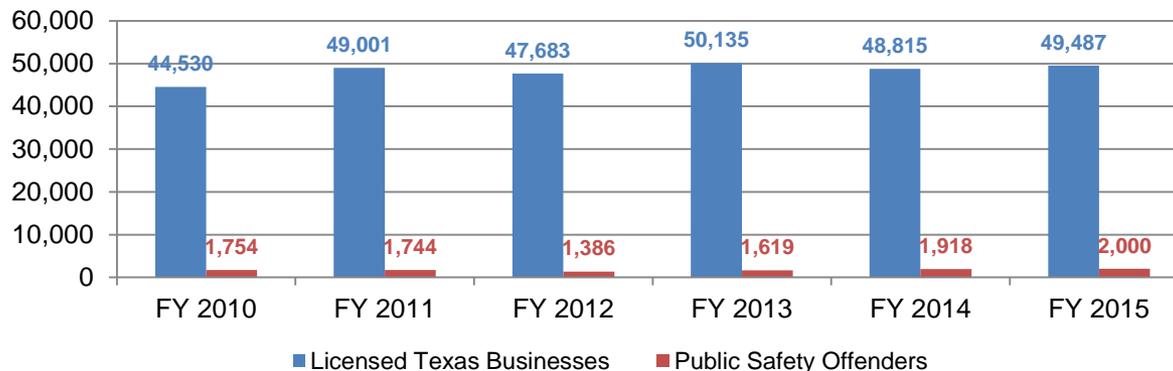
- **Partnerships:** The Austin Police Department and the TABC have combined resources to combat the over-service of alcoholic beverages in downtown bars and nightclubs.
- **Education and Prevention Division** reports that video production has begun for four retailer and one law enforcement mini training series.
- **Statutory changes** enacted by the 84th Legislature will require minor changes the TABC's existing curriculum for seller training programs.
- **Auditors' Academy (4 Weeks)** concluded with the graduation of new auditors who will be stationed in Houston, Austin, and San Antonio. Several Ports of Entry supervisors and a number of licensing personnel also took advantage of the academy's course offerings and attended classes of specific interest.

# Accomplishments

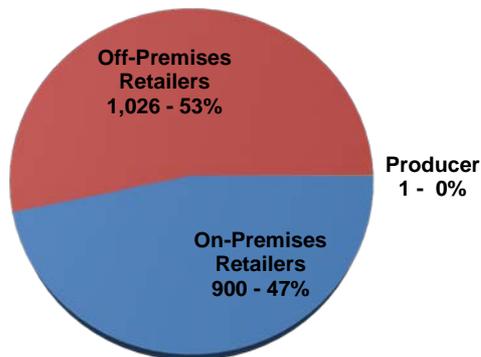
- **SIU/FCU** operations resulted in four cancellations for cause, one voluntary cancellation, and a 10-day suspension/\$3000 civil penalty in July.
- **Prohibited Hours:** In June and July, Houston TABC agents, working in partnership with officers from various Harris County law enforcement agencies, conducted a sweep of 102 licensed businesses that had been previously charged with prohibited hours violations.
- **“Operation Fake Out”** : Over the past several months, the TABC, the Austin Police Department, and area retailers have joined forces to conduct a series of “Operation Fake Out” fake ID stings.
- **Ports of Entry** revenue for FY 2015 passed the \$5.7 million mark by the end of August, a new record for that division.

# TRENDS

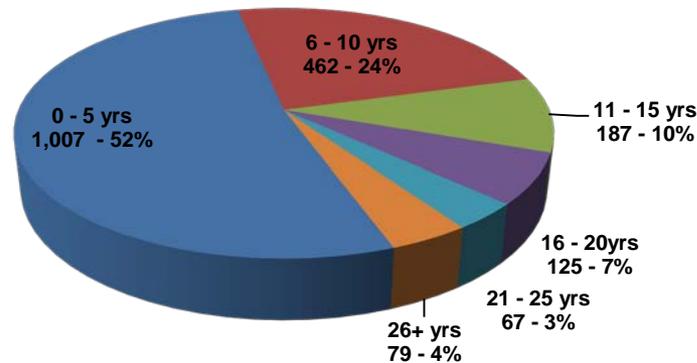
**Licensed Texas Businesses & Public Safety Offenders**  
FY 2010 - FY 2015



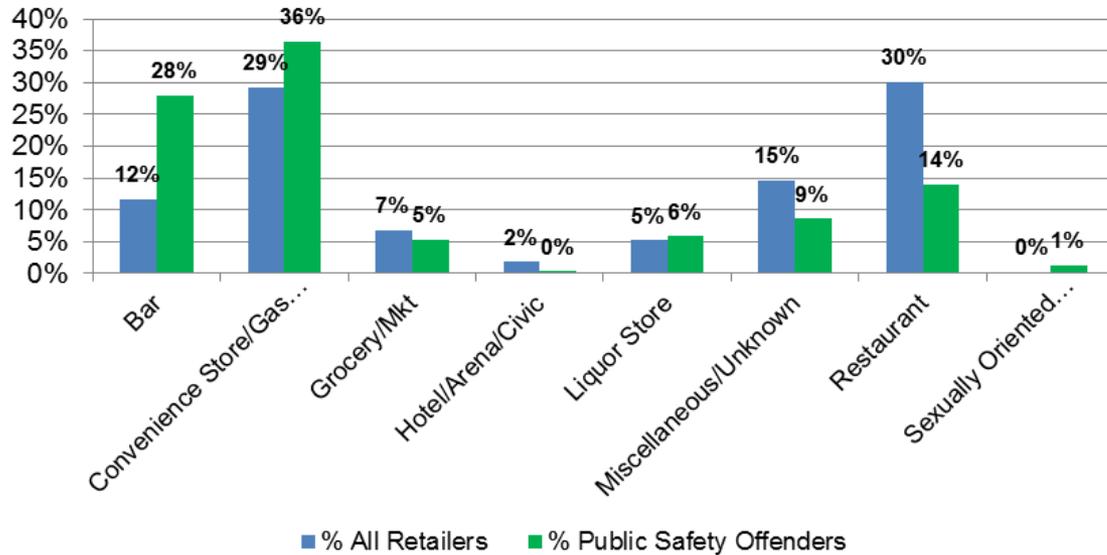
**Public Safety Offenders by License Type**  
FY 2015: September - July



**Licensed Businesses Charged with Public Safety Offenses by Years in Business**  
FY 2015: September - July

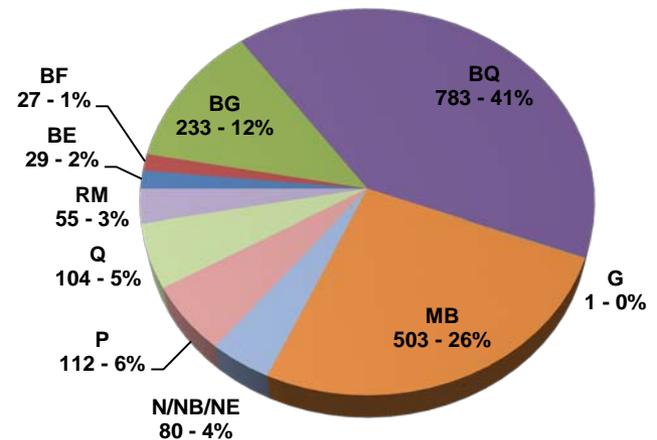


### Comparison by Business Type: Percentage of All Retailers & Percentage of Public Safety of Offenders



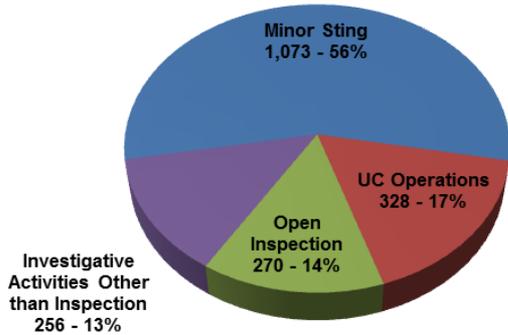
# TRENDS

### Public Safety Offenders by License Class FY 2015: September - July

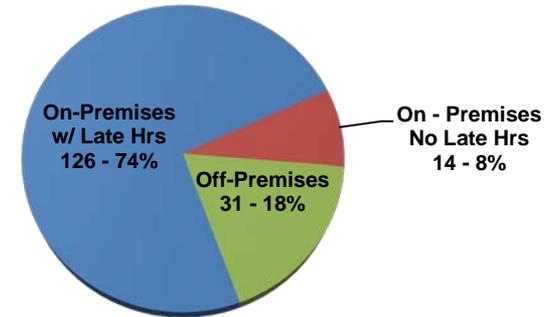


# TRENDS

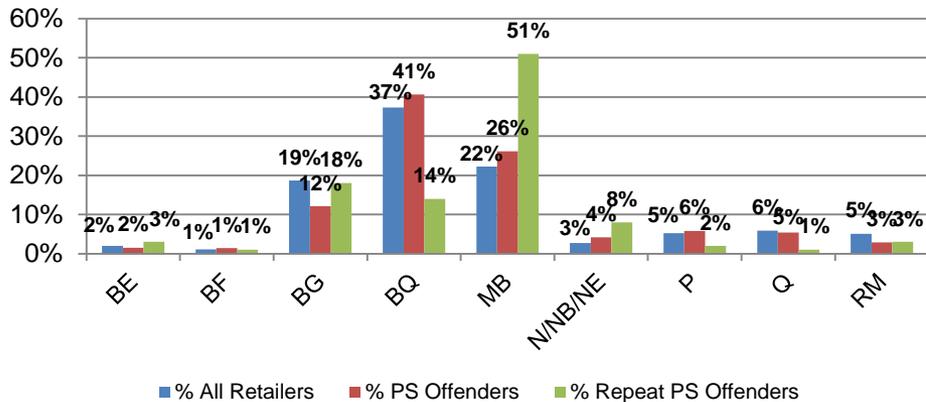
**Sources of Public Safety Offenders' Most Recent Admin Cases**  
FY 2015: September - July



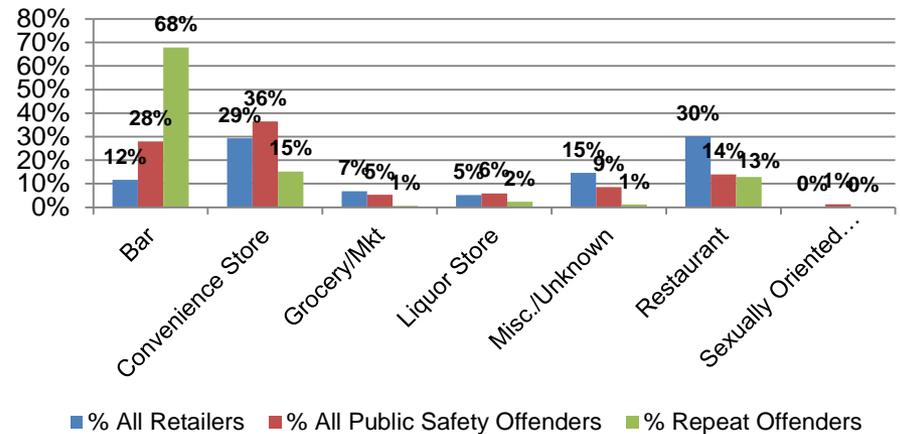
**Repeat Public Safety Offenders by License Type**  
FY 2014: September - July



**Comparison: License Class Share of All Retailers, All PS Offenders, & All Repeat PS Offenders**



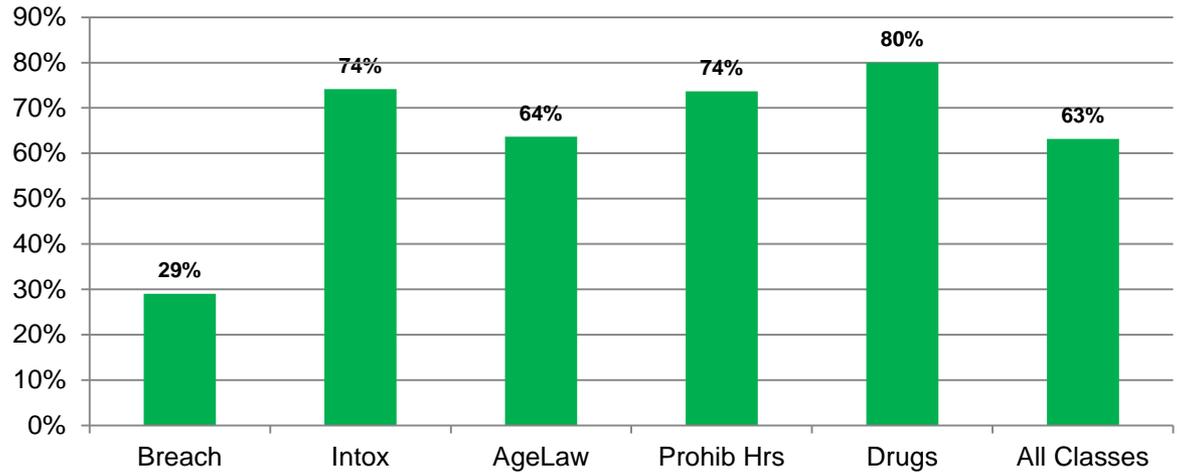
**Comparison: Business Type Share of All Retailers, All PS Offenders, and All Repeat PS Offenders**



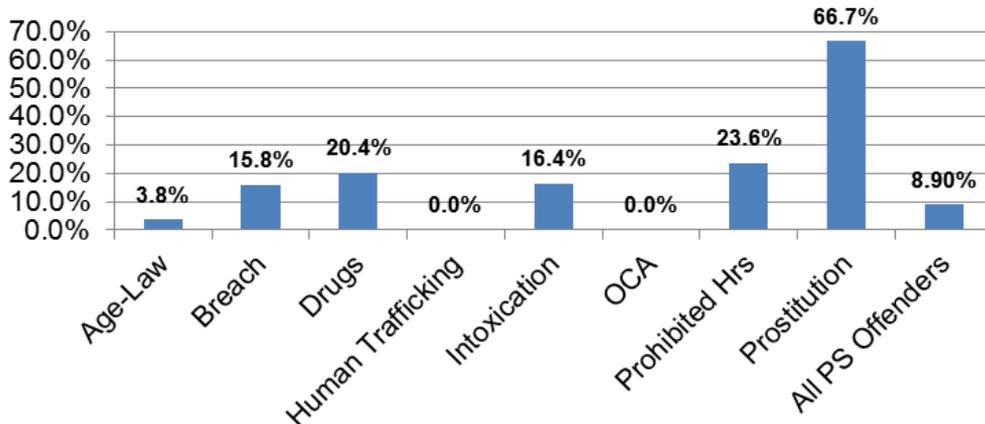
**Years in Business  
FY 2015 Public Safety Offenders**

	All PS Offenders	Repeat PS Offenders
<b>Averages</b>		
Mean	7.6 years	7.9 years
Median	5 years	6 years
Mode	1 year	1 year
<b>Other</b>		
Range	0 yrs. to 72 yrs.	0 yrs. to 44 yrs.
% 0 - 2 yrs.	29%	28%
% 0 - 5 yrs.	52%	48%

**Percentage of Repeat PS Offenders Charged with Same Class of Offense in Both 1st and 2nd Cases by Offense Class**



**Percentage of Public Safety Offenders with a Prior PS Violation in Past 12 Months by Type of Offense**

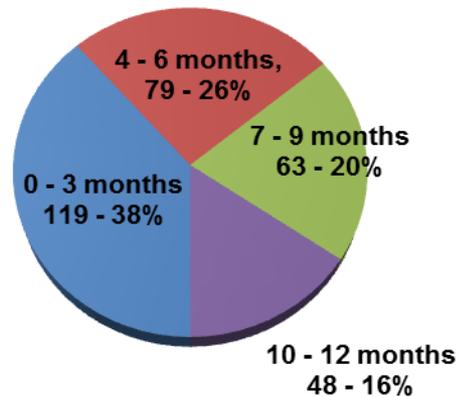


**TRENDS**

## Licensed Businesses, Public Safety Offenders, & Repeat Public Safety Offenders FY 2010 - FY 2015



## Time between 1st & 2nd Offense for FY 2015 Public Safety Repeat Offenders



# “In The News”



- **Aug. 24 – Back-to-School Minor Stings**

TABC announced its intention to begin statewide undercover operations designed to identify off-premise retailers who illegally sell alcohol to minors. The operation aligns with college students’ return to fall classes, along with the expected increase in alcohol sales and consumption. More than 40 Texas print and broadcast outlets picked up the story, helping to get the word out to retailers across the state. The release also led to several opinion pieces on the importance of keeping alcohol out of the hands of minors.



November 17 (tentative), 2015  
Commission Meeting Agenda  
(Draft)

- TABC's 80<sup>th</sup> Anniversary Proclamation
- Administrators Update
- Year-End Performance Measurements  
– (2016-2017 Performance Measurements)
- Training Update
- Rules
- Promotions/Recognition

EMPLOYEE

RECOGNITION

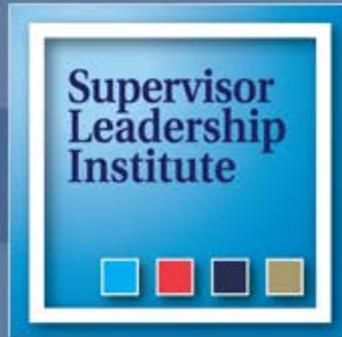
# AWARD

## Chief Robert Saenz

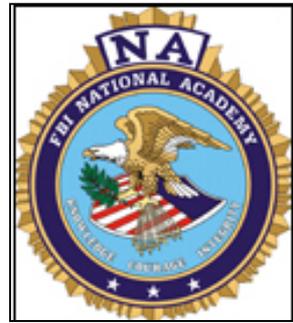
For Successfully Completing  
“The Leadership Trilogy”



**FBI-LEEDA**



# Assistant Chief Dexter Jones



The FBI National Academy is a professional development course for U.S. and international law enforcement leaders. It serves to improve the administration of justice in police departments and agencies at home and abroad and to raise law enforcement standards, knowledge, and cooperation worldwide.

Its mission is “to support, promote, and enhance the personal and professional development of law enforcement leaders by preparing them for complex, dynamic, and contemporary challenges through innovative techniques, facilitating excellence in education and research, and forging partnerships throughout the world.”



# Assistant Chief Dexter Jones





**Questions?**

# **Attachment 2**

**Breaches of the Peace**



# Breaches of the Peace

Ed Swedberg

September 22, 2015



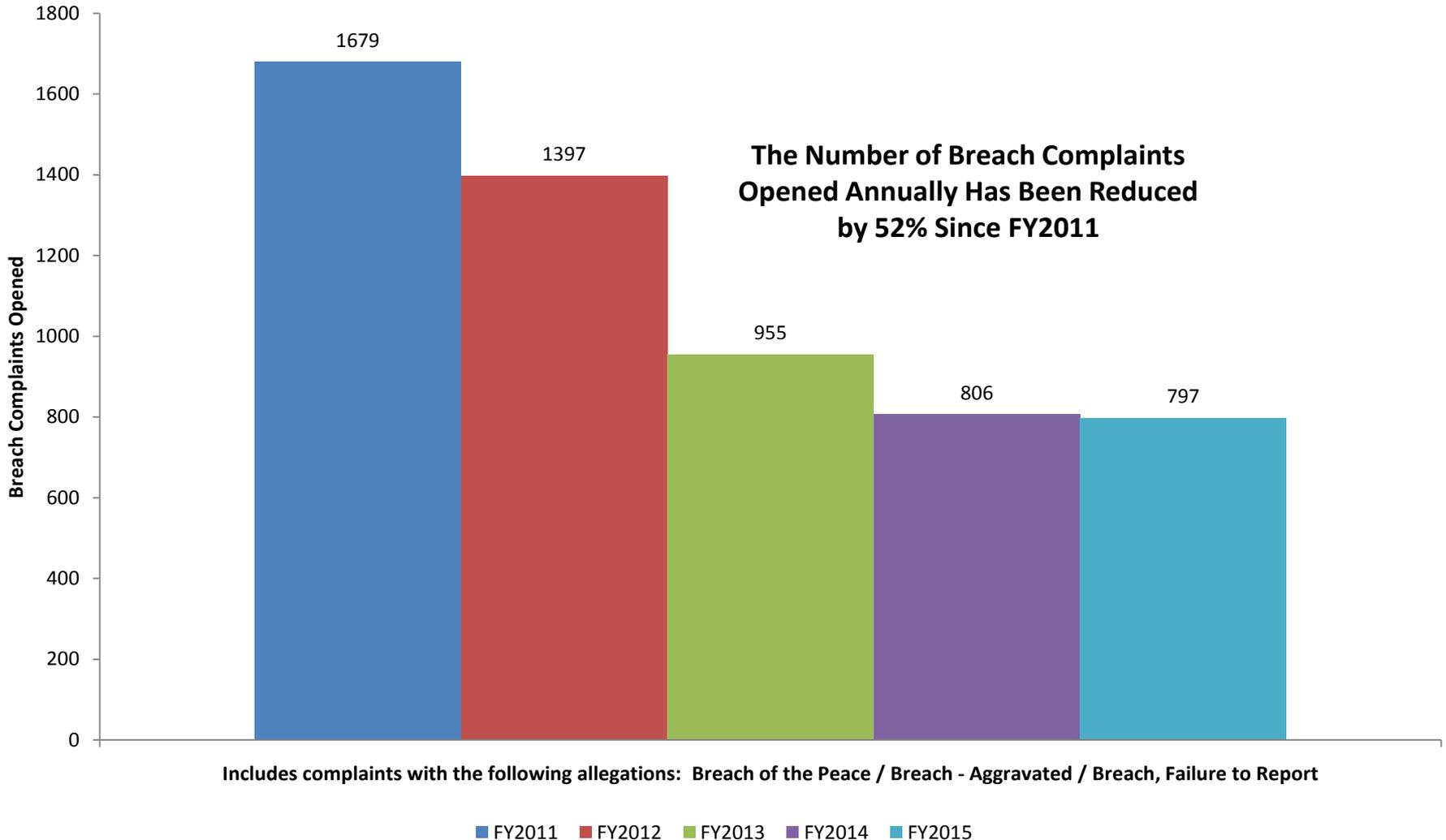
# Breaches of the Peace

- Include Disturbances, Fights, Shootings or Violent Acts on a Licensed Premises (Buildings, Parking Lots, Vehicles,... that are Under Control of Permittee)
- Local Patrol Agency is Typically First to Respond
- Focus of a TABC Breach of the Peace Investigation:
  - Whether the Actions/Inactions of Permittee *Contributed* to the Breach
  - Whether/How the Breach was Addressed by the Permittee
- Permittee is Required to Report to TABC within 24 Hours any Incident Where a Person Shoots, Stabs, Causes Serious Bodily Injury to, or Murders Another Person (in Most Cases, this Will be Investigated as an **Aggravated Breach**)
- Permittee is Required to Report to TABC within 5 Days any Incident where Law Enforcement or Emergency Medical Services Personnel Respond or where a Disturbance is Created on the Premises by a Person (Bodily Injury, Threat with Weapon, Firearm Discharge, Destroyed Property)
- Failure to Promptly Report a Breach may Result in Suspension or Cancellation



# Breaches of the Peace

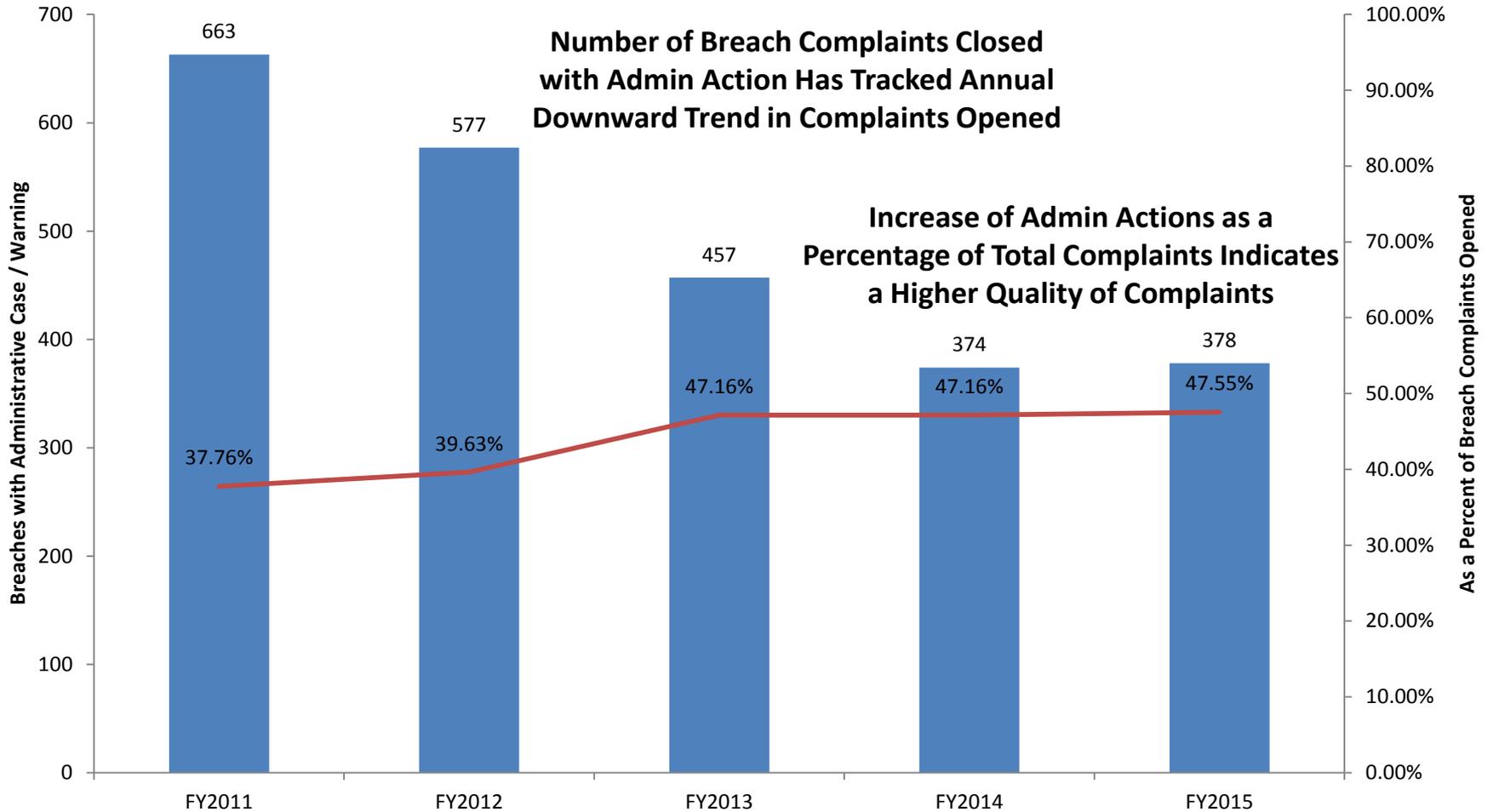
## Statewide Breach Complaints Opened by Fiscal Year



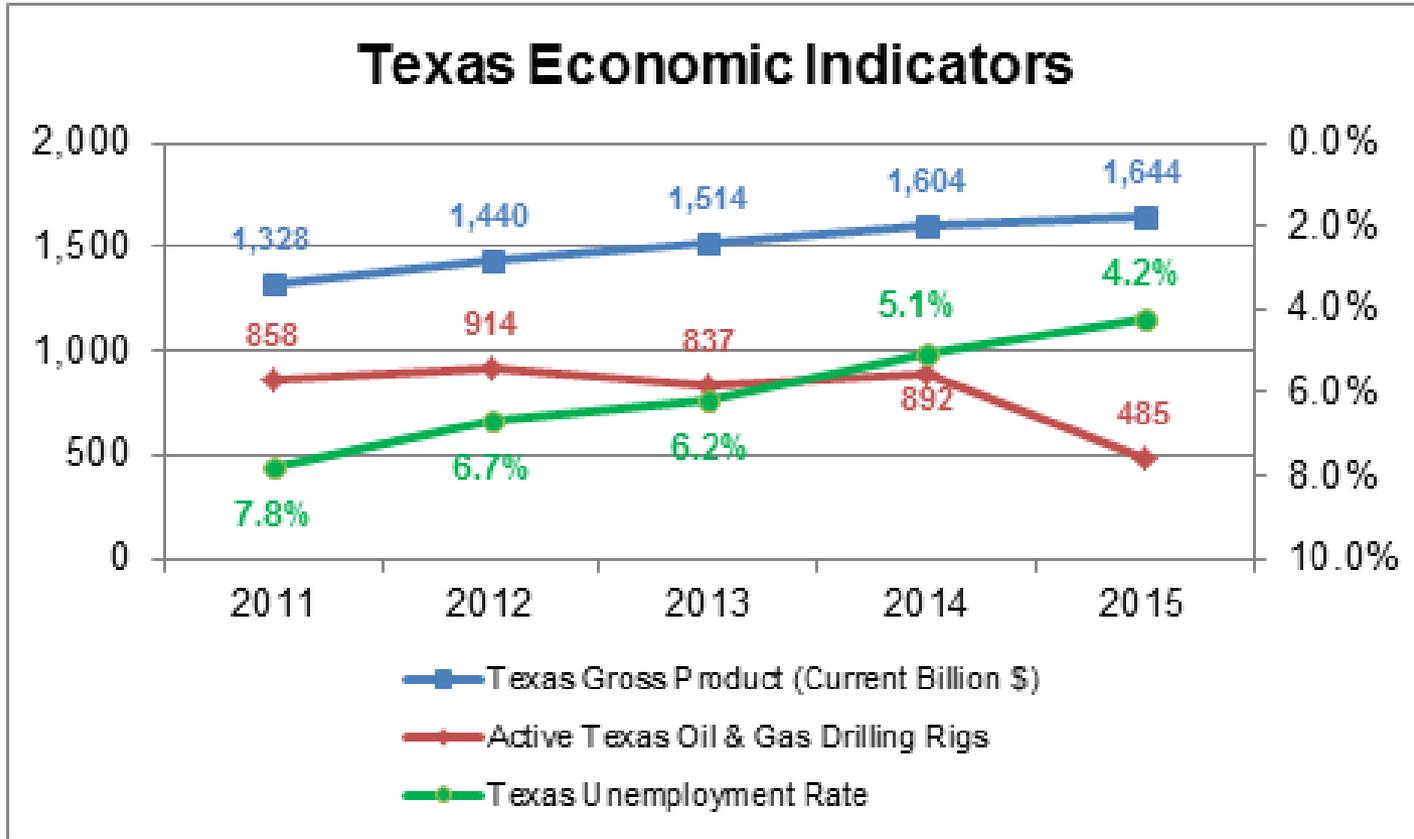


# Breaches of the Peace

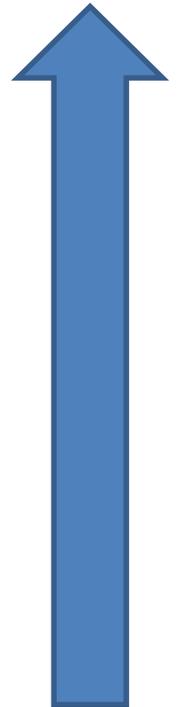
## Statewide Breach Complaints Closed With Administrative Case or Warning



# Breaches of the Peace



Up is Good

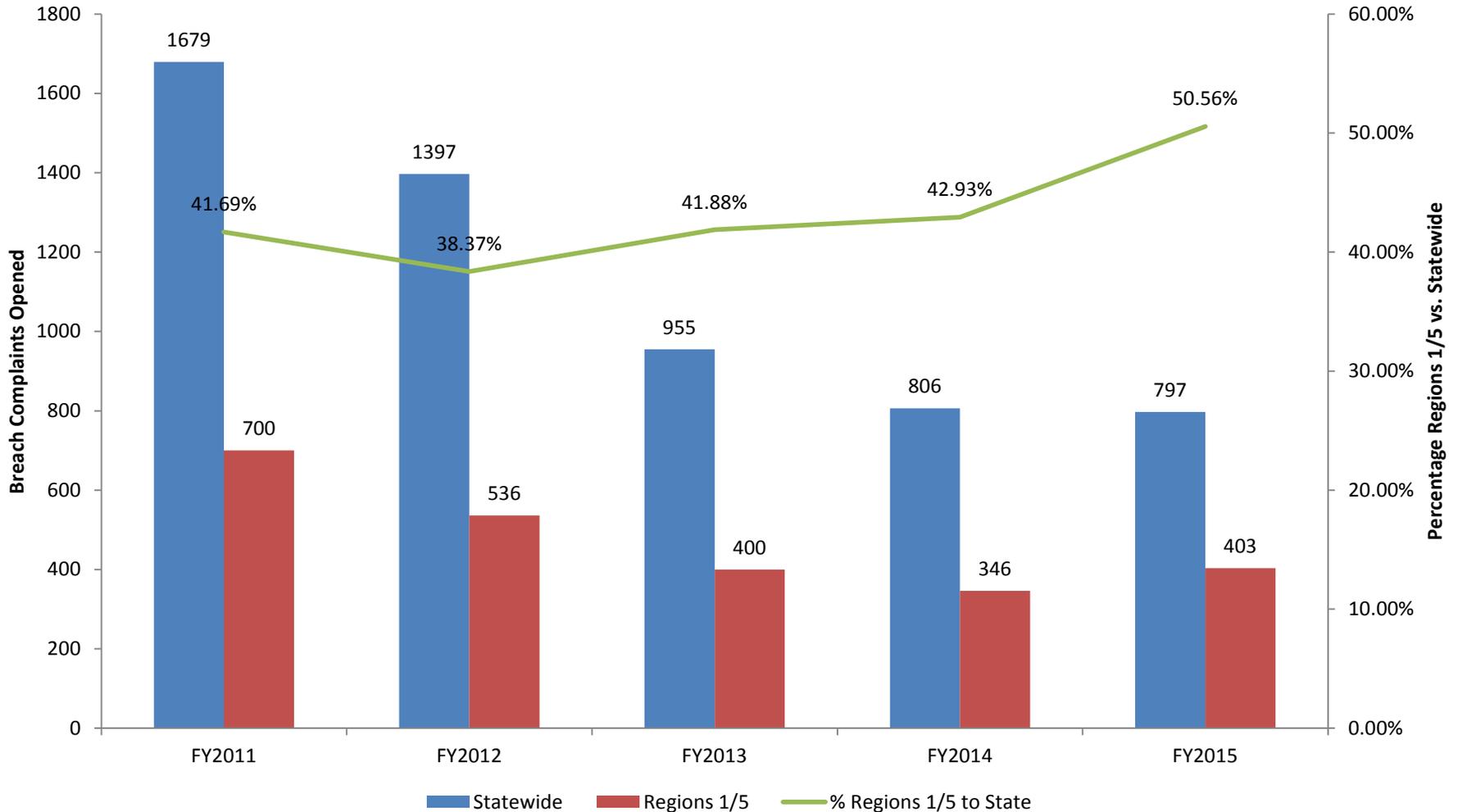


**Economic Indicators Reflecting the Health of the Texas Economy Have Been For the Most Part Trending Upward Since 2011**



# Breaches of the Peace

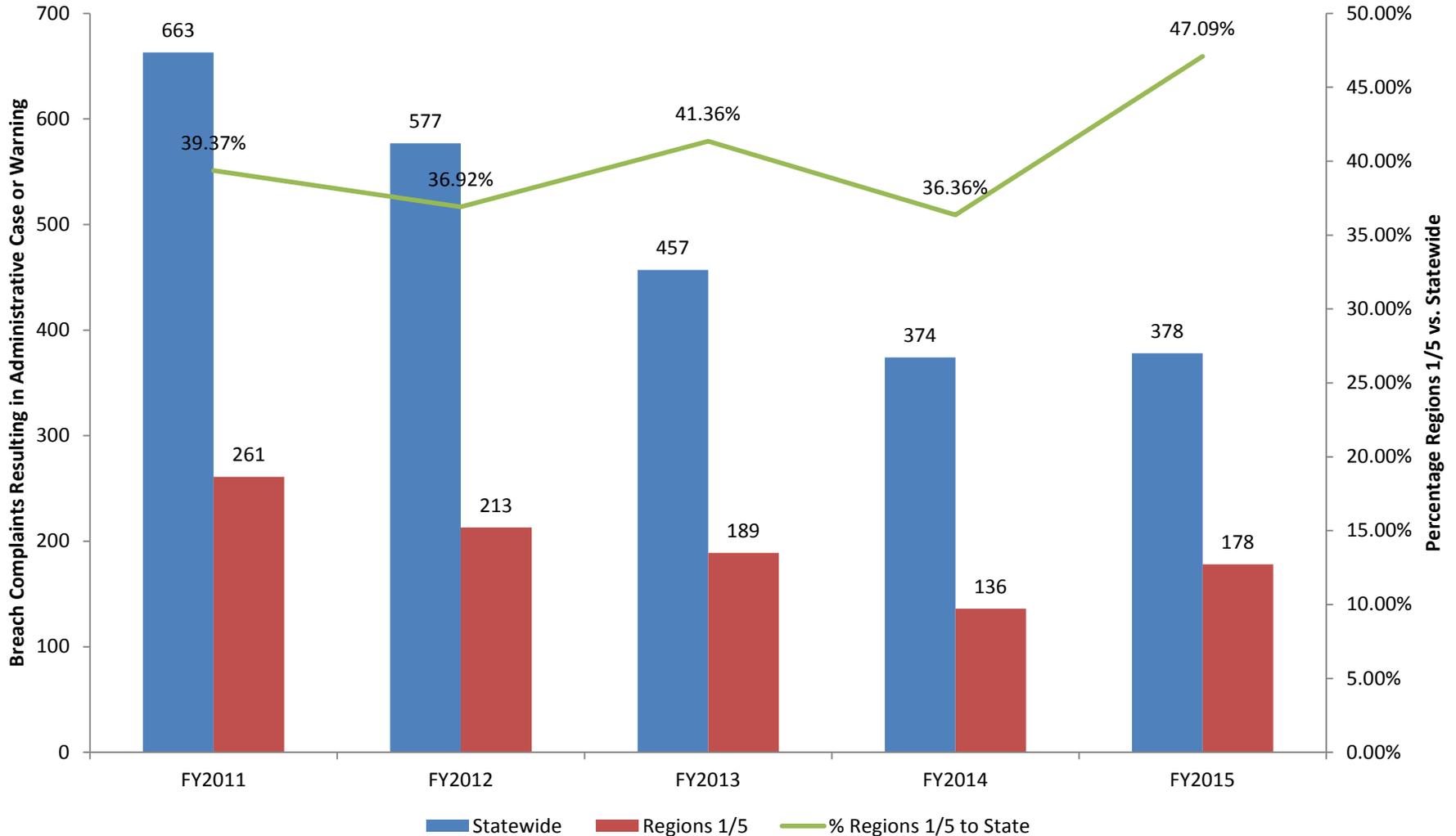
## Complaints Opened: Regions 1&5 vs. Statewide



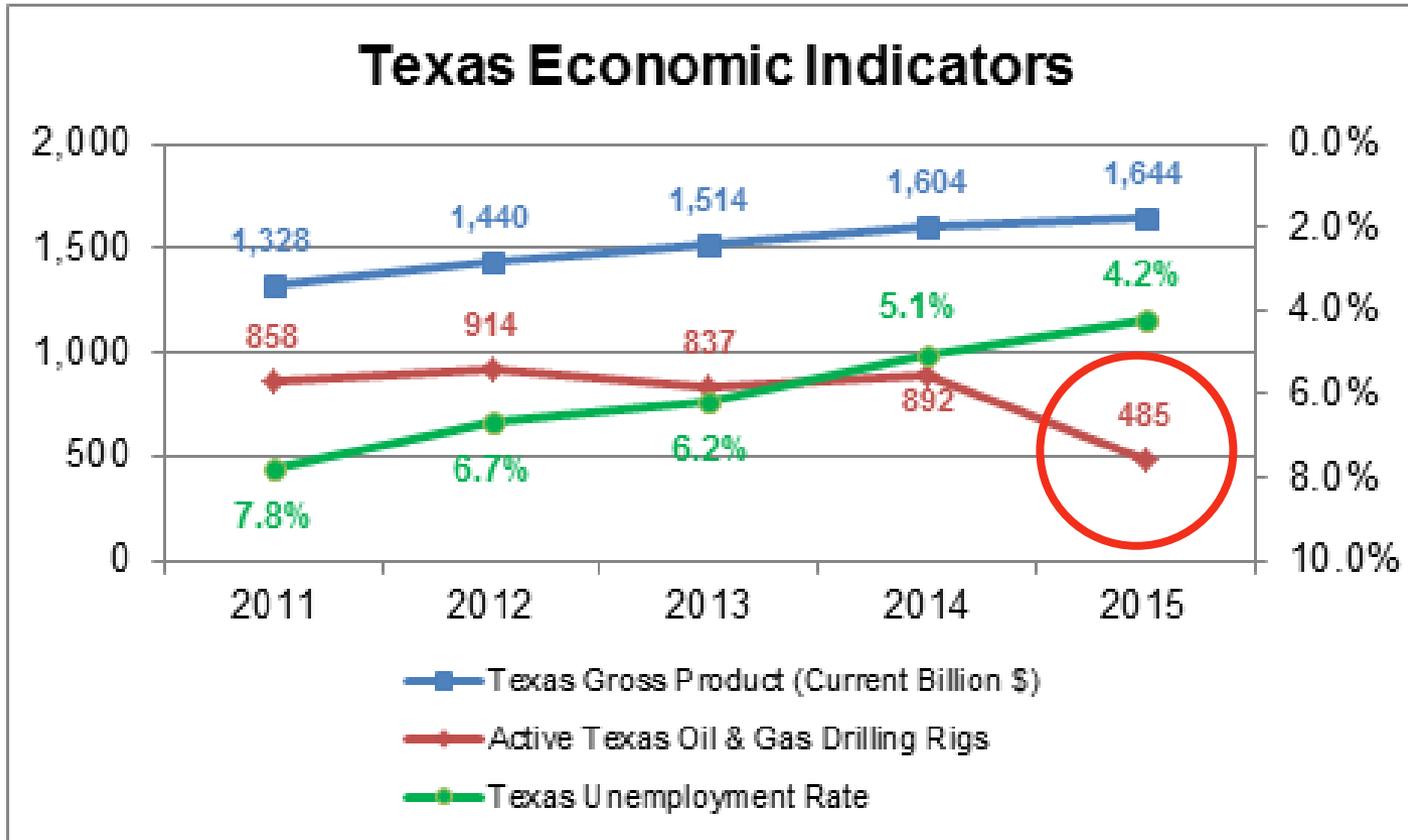


# Breaches of the Peace

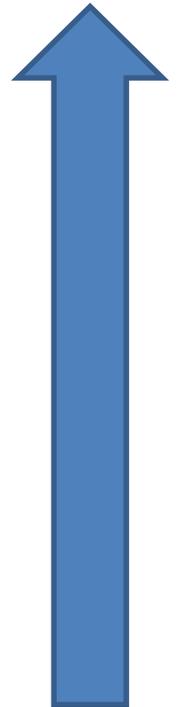
## Complaints Closed w/ Admin Case/Warning: Regions 1&5 vs. Statewide



# Breaches of the Peace



Up is Good





# Breaches of the Peace

- Summary
  - Total Statewide Breach of the Peace Complaints Opened by TABC are Down Significantly in the Past Five Years
  - Total Statewide Breach of the Peace Complaints Closed with Some Admin Action are Also Down in the Past Five Years
    - Total Closed with Admin Action are Up as a Percentage of Total Opened
  - There Seems to be a High Degree of Correlation Between Economic Indicators and the Number of Breach of the Peace Complaints Opened and Those Closed with Admin Action
  - In the Past Year, Regions One and Five Provide an Anomaly to the Downward Trends....Possibly Due to the Reduction in Oil and Gas Drilling Activity
  - The Agency will Monitor these Trends in Order to Determine if any Changes to Priorities or Resource Allocation are Needed

# **Attachment 3**

**Special Investigations Unit (SIU) Briefing**



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

*service ★ courtesy ★ integrity ★ accountability*

**AUDIT AND INVESTIGATIONS  
SPECIAL INVESTIGATIONS UNIT**

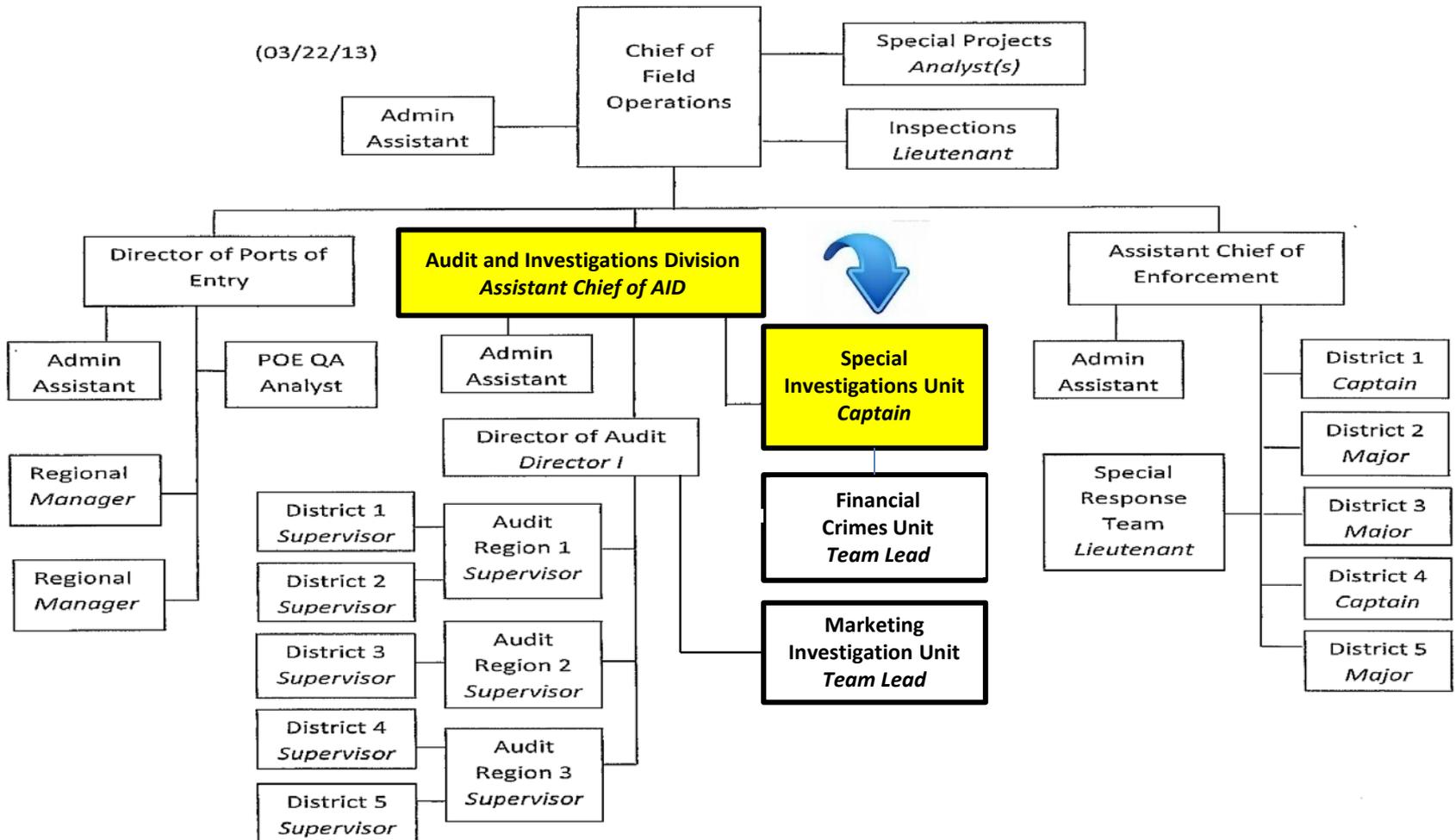


## Special Investigations Unit Mission and Purview

- To identify and investigate habitual patterns of at-risk behavior of permittees through covert operations and may act in a routine open capacity as applicable in the performance of their day to day task. SIU conducts both pro-active and re-active administrative and criminal investigations.
- The primary focus is to exercise administrative and criminal powers to suppress or dismantle organized criminal activity related to functions of the Commission.
- Most of the unit's investigations are long term and complex. Investigations conducted by SIU include narcotics trafficking, human trafficking, alcohol beverage counterfeiting, tax stamp fraud, cargo theft, carrier related crimes, alcohol beverage theft, organized crime, and other violations.

# TABC ORGANIZATIONAL STRUCTURE

## Special Investigations Unit



The goal of this specialized unit is to investigate criminal behavior occurring on licensed premises and seek cancellation of those permits.

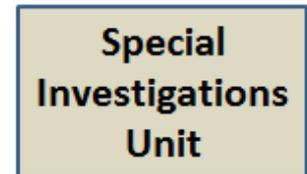


## Regulatory & Enforcement Oversight

### *Licensee and Permittee Behavior*



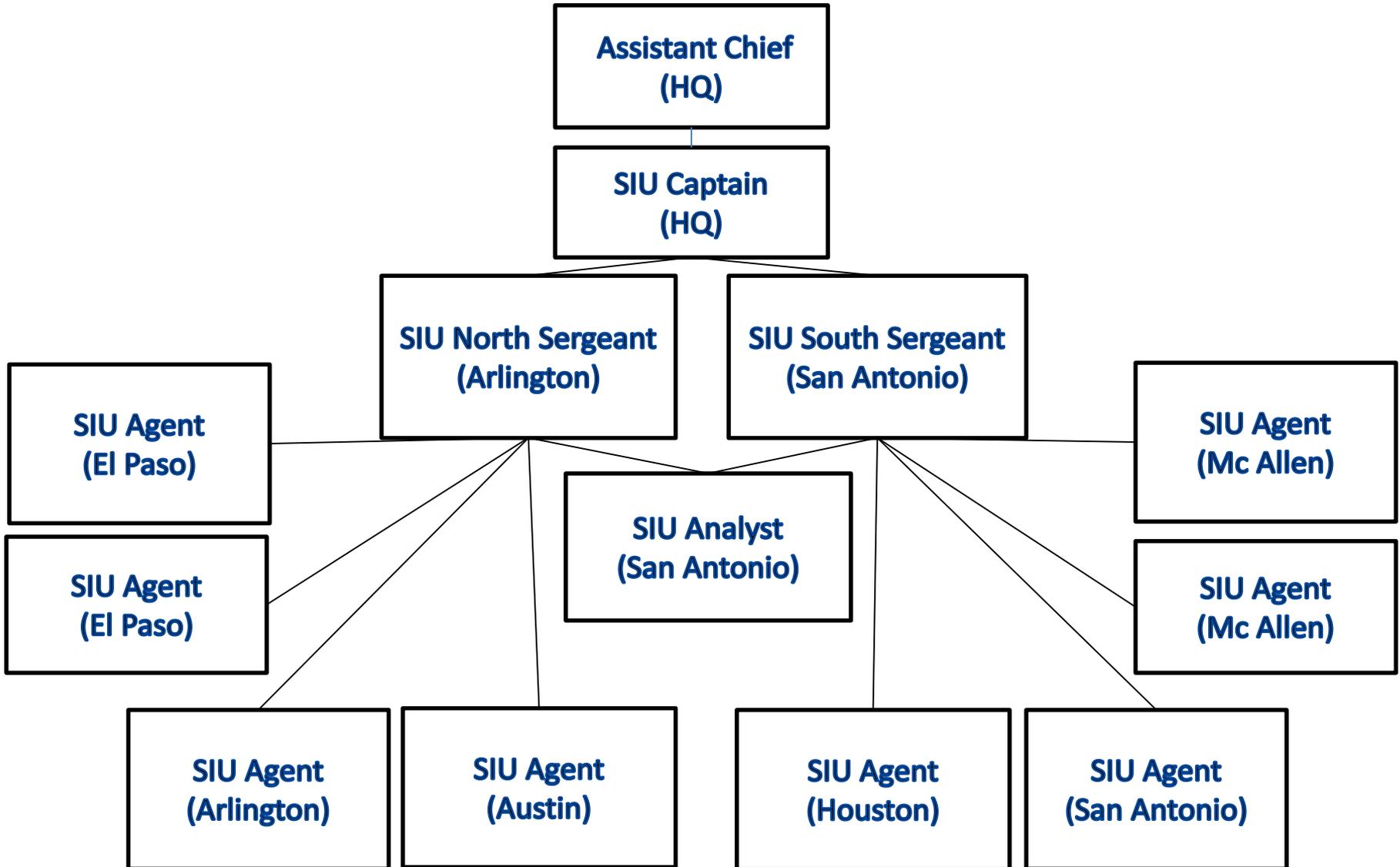
### *TABC Division/Unit Oversight*



The SIU Chain of command was divided into two Area's of Responsibility:

North: Arlington, Austin and El Paso

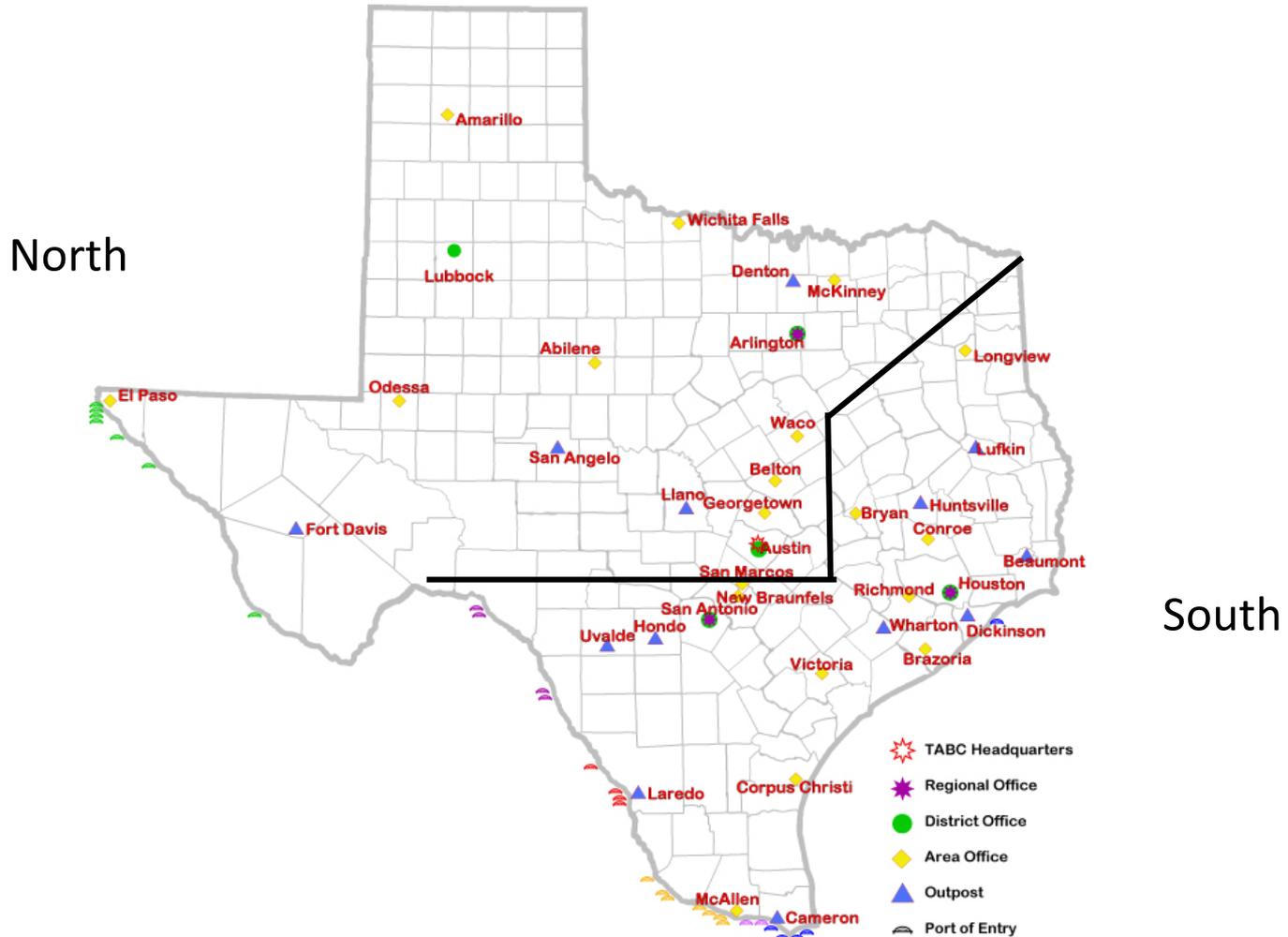
South: San Antonio, Houston and McAllen



# Previous SIU Agent Assignments:

North = 1 Sergeant / 4 Agents

South = 1 Sergeant / 4 Agents



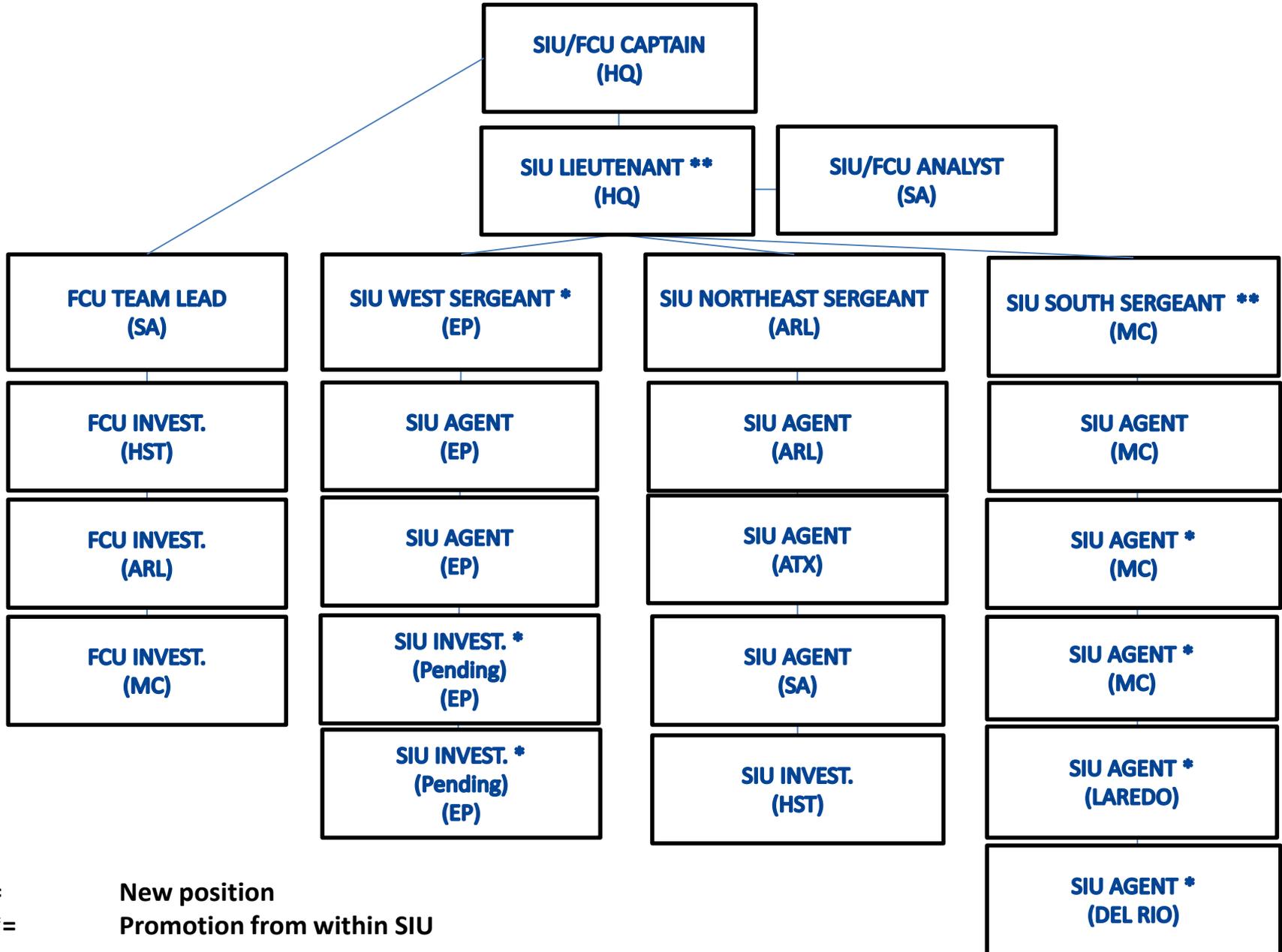
*June 2013 to September 2015*

# SIU was approved a Legislative Appropriations Request for more Agents

## from the 84<sup>th</sup> Legislative Session

- One (1) additional Sergeant and five (5) additional Agents. The additional Sergeant will help with the logistical issues of supervising undercover operations in remote areas of the state; this would also enable SIU to run more undercover operations and consequently complete more investigations in a timely manner.
- These positions were approved and assigned to Border Areas to help assist with related issues. These positions became effective September 1<sup>st</sup> 2015. Four were hired from the Enforcement Division and two were hired externally and are expected to start the new agents academy in October of 2015.
- These additional positions will also minimize SIU from having to utilize the TABC Enforcement Division to supervise or provide cover-team support during SIU UC operations. In addition it will prevent TABC Enforcement from delaying operations related to public safety due to lack of manpower and resources while they were assisting with SIU operations.

# FY16 SIU Chain of Command and recent addition of FCU



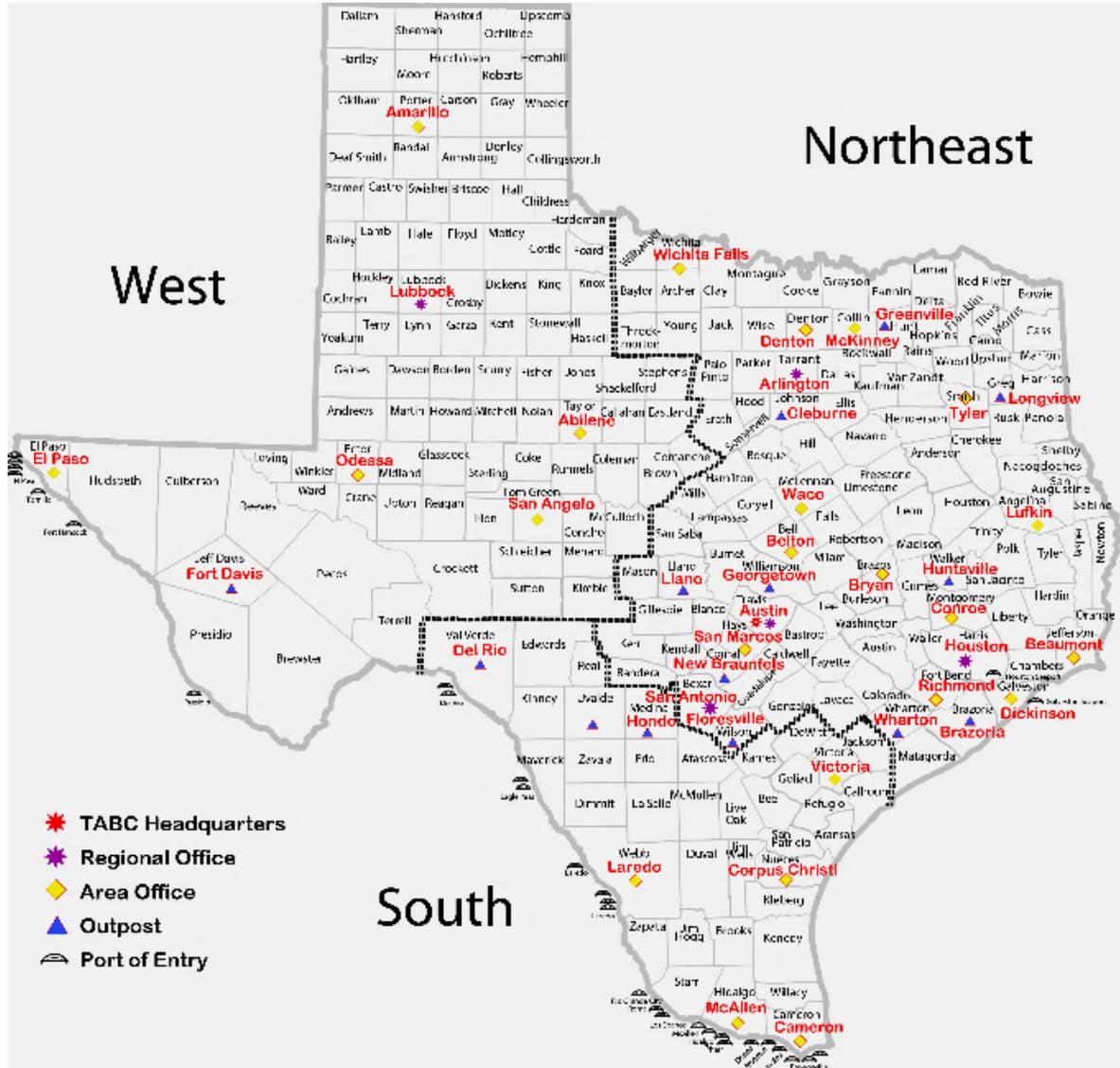
\* = New position  
 \*\* = Promotion from within SIU

# FY16 SIU Agent Assignments:

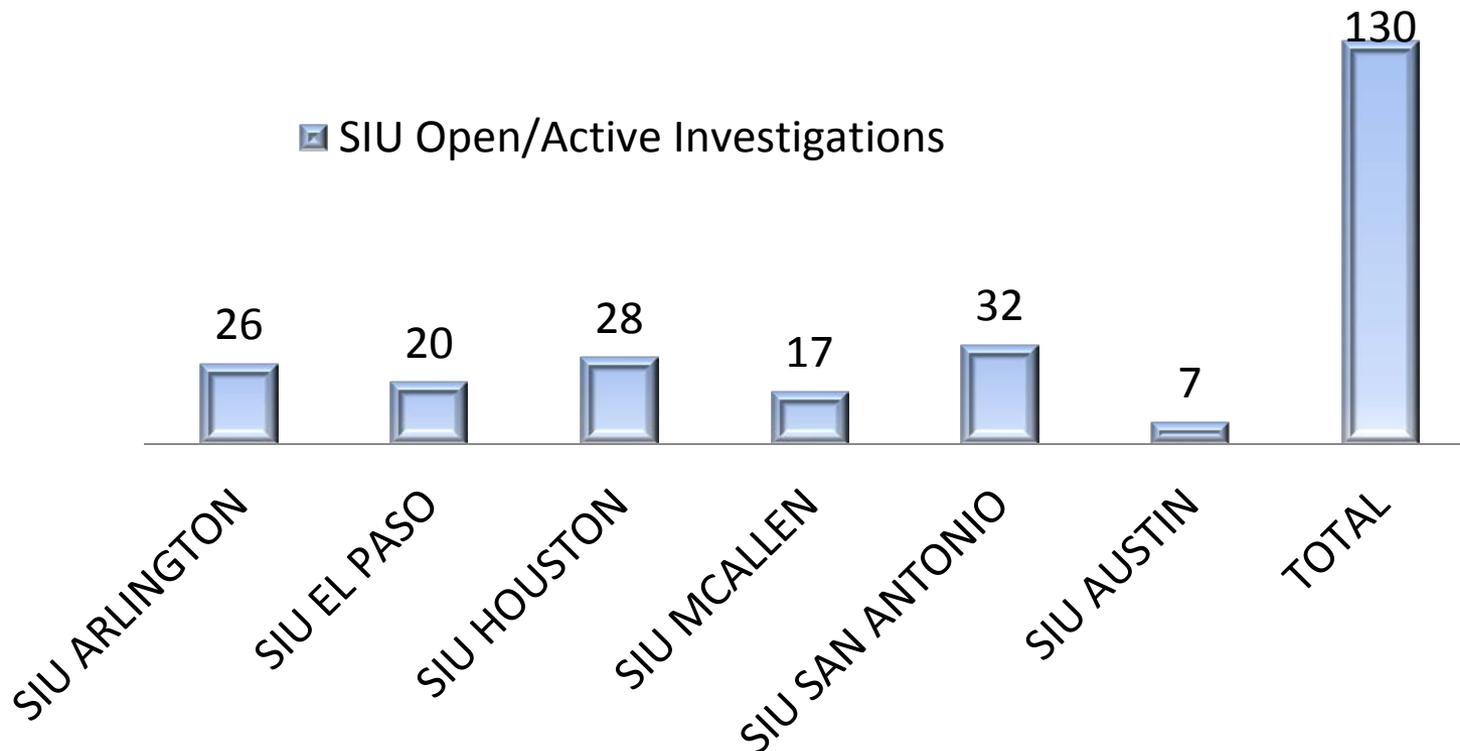
West = 1 Sergeant / 4 Agents

South = 1 Sergeant / 5 Agents

Northeast = 1 Sergeant / 4 Agents



# Current SIU Investigations

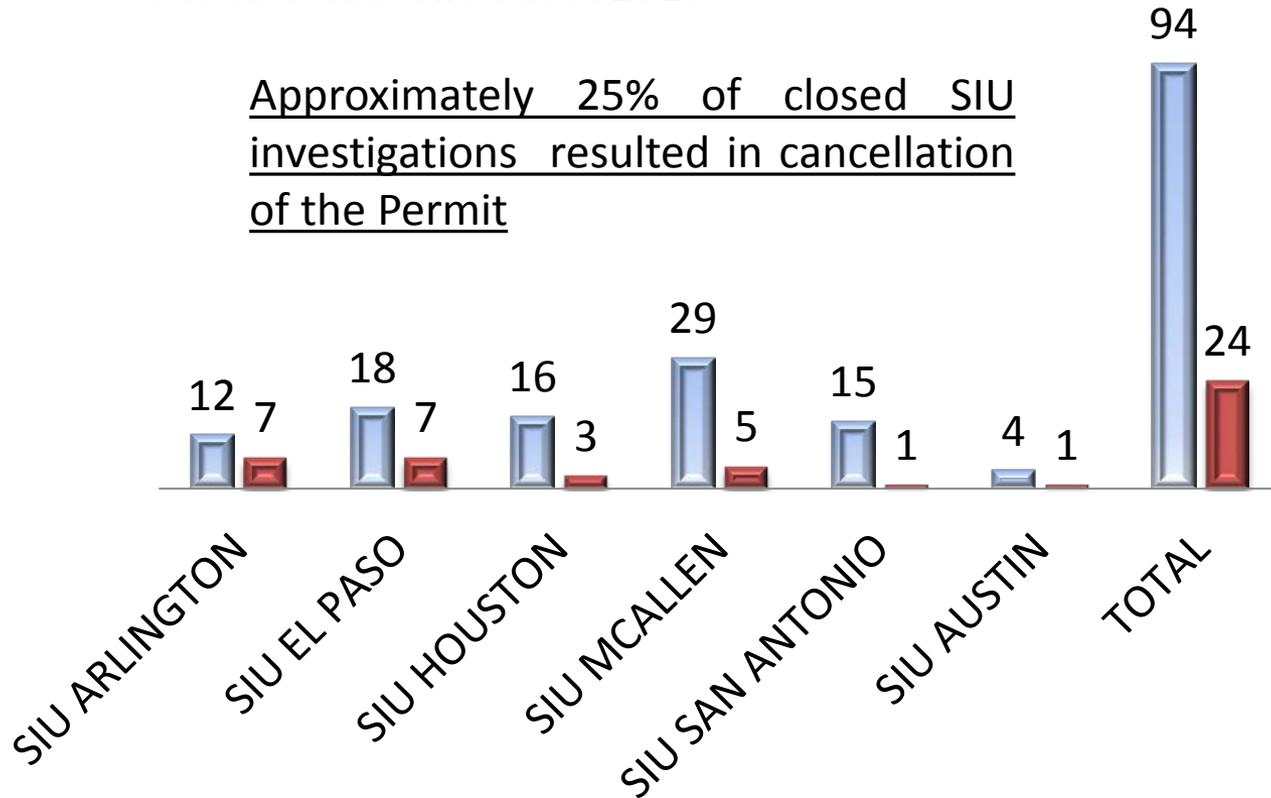


SIU Investigations include narcotics trafficking, human trafficking, alcohol beverage counterfeiting, tax stamp fraud, cargo theft, carrier related crimes, alcohol beverage theft, organized crime, money laundering and other violations.

# Organized Criminal Activity Investigations Closed by SIU

- OCA / Trafficking Joint Investigations Closed FY2015
- Permits Cancelled in FY2015\*

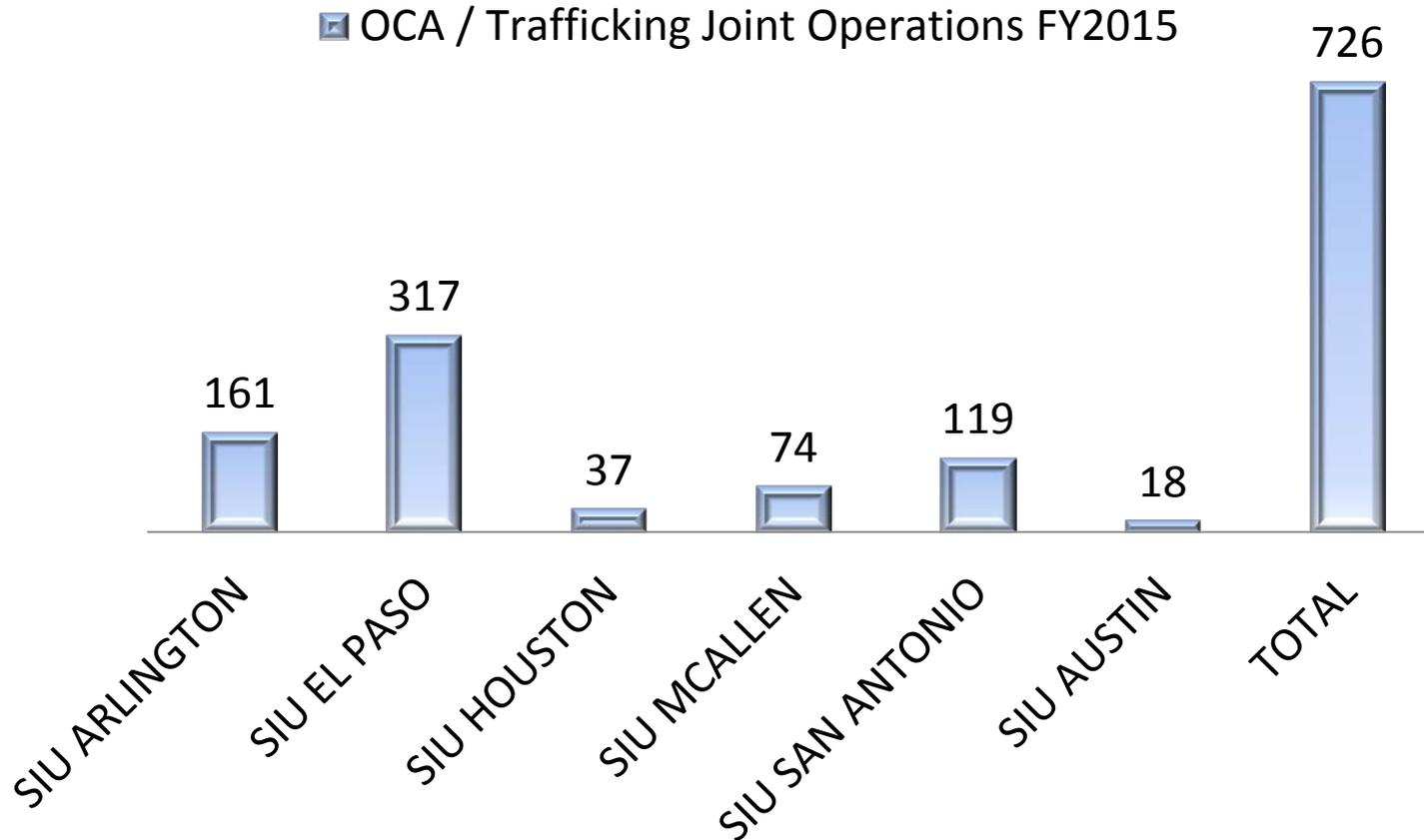
Approximately 25% of closed SIU investigations resulted in cancellation of the Permit



Since SIU's inception in June of 2013 over 50 permits have been Cancelled or had action taken to ensure compliance.

*\*This does not include cases closed with a Civil Penalty, pending in Legal, or a closed Protest investigation that resulted in proactively keeping bad-actors out of business.*

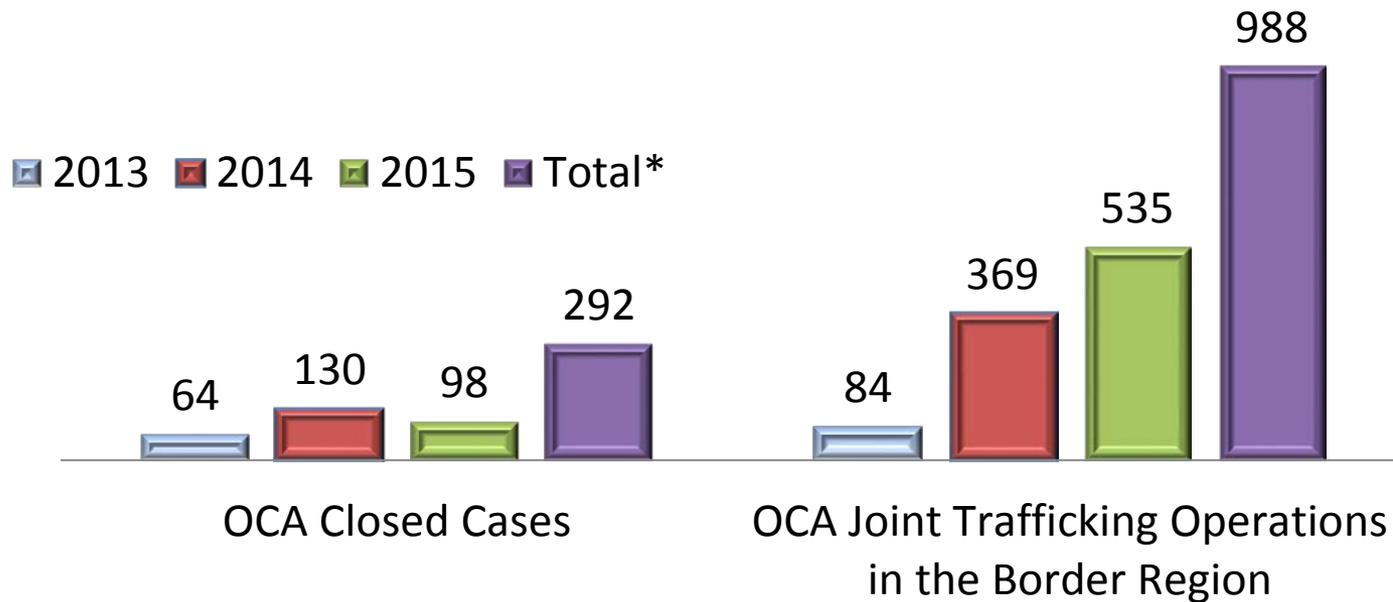
# Joint Trafficking Operations Conducted by SIU for FY2015



*Joint Trafficking Operations include inspections, undercover operations, exterior surveillance operations, knock and talk initiatives, and other investigative techniques.*

# TABC

## Organized Criminal Activity (OCA) Performance Measures



Performance Measures for FY16 are set at “100 OCA Closed Cases” and “360 OCA Operations in the Border Region” – Using those measures TABC/SIU is on target to meet those goals. However, it is expected that the measures will be increased considering the new SIU Agents.

# Asset Forfeiture

SIU has participated in several Task Force Operations. These task force operations have a nexus to the Alcoholic Beverage Industry and have provided an opportunity to seize criminals asset's. This has proven to be an effective method of dismantling and disrupting Organized Criminal Activity.

FISCAL YEAR	AMOUNT FORFEITED TO TABC
FY2011	\$9,835.00
FY2012	\$0
FY2013	\$20,000.00
FY2014	\$11,472.37
<b>FY2015</b>	<b>\$127,733.29</b>
<b>SOME FUNDS HAVE BEEN USED ON LAW ENFORCEMENT PURPOSES</b>	
<b>CURRENT AMOUNT AVAILABLE:</b>	<b>\$146,457.86</b>

SIU has several pending applications for additional Asset Forfeiture opportunities. Those cases are pending federal decisions. It is unknown percentage amounts that may be awarded; however it could be over \$500,000.00.

# SEIZED NARCOTICS AND ARRESTS FOR FY2015

The SIU Analyst tracks items purchased as evidence and those seized through Task Force Operations or other methods. She also tracks arrests made by TABC or as part of their Task Force Partners:

NARCOTIC	SEIZED	PURCHASED
COCAINE	64,582 GRAMS	192 GRAMS
MARIJUANA	14,148 LBS.	0
METH	7,078 GRAMS	839 GRAMS
HEROIN	0	75 GRAMS

ARRESTS	
SIU LEAD	3
TASK FORCE LEAD	52
TOTAL ARRESTS	55

# SIU CASES:

- SIU has 130 Active Investigations at various licensed locations throughout Texas.
- This averages out to more than 15 cases per agent.
- These cases are very time consuming, resource intensive and require many man-hours to complete. Most require extensive travel and undercover operations to fully investigate.
- An example and summary of some SIU cases is highlighted in the next few slides:

# Operation Three Thorns

- Operation Three Thorns involved 3 Bars in El Paso which SIU Agents investigated for over 2 years:
  - George Washington (Cancelled)
  - Golden Nugget (Cancelled)
  - Doll House (Cancelled)
- TABC Agents seized over 44 grams of cocaine and were able to identify 26 suspects, most being employees, involved in the distribution of narcotics.
- The DPS Criminal Investigations Division was essential in assisting TABC with manpower for cover-team support, analytical research, and logistical support throughout.
- Because of the amount of arrest warrants and the number of TABC administrative violations (100) needing to be issued, TABC activated the Special Response Team (SRT) and sent 42 TABC Agents to El Paso. SIU also utilized local TABC Enforcement Agents and obtained assistance from several Federal, State and Local Law Enforcement Agencies. Just over 90 Law Enforcement Officers participated in this operation.
- Working closely with the TABC Legal Division, The El Paso County Attorney's Office filed Temporary Restraining Orders at each location using ABC 101.01. This shut the establishments down for approx. 1 month. The establishments were then allowed to re-open under strict agreement with the County not to violate any laws.
- SIU conducted additional investigations and found that all three establishments were continuing with similar illegal conduct. Violations of the Temporary Restraining Order were filed and their permits were cancelled on May 17<sup>th</sup> 2015.

# Operation Nat Geo



- This operation included two bars in Houston. Both were suspected of Human Trafficking, Narcotics, Drink Solicitation and Prostitution.
  - Linda's Bar (Cancelled)
  - Lolitas Sports Bar (Out of Business)
- The FBI requested TABC's assistance in conducting an operations at these locations on May 15<sup>th</sup> 2014. TABC was in a support role for manpower and assistance with administrative issues.
- National Geographic was also involved in this investigation because they were filming a documentary on the issues of Human Trafficking, Forced Labor, Sex Trade, etc. (Pimp City – The Trade)
- A subterfuge violation was discovered at Linda's and that permit was cancelled immediately. Lolita's permit expired during the investigation and the location remains unlicensed. No outcry's of Human Trafficking were made, but additional intelligence was gathered and similar investigations continue.



National Liquor Law Enforcement Association

NLLEA

AWARD

Joseph L. Cannon  
President  
Virginia

Wes Kuhl  
Vice President  
Arizona

James A. Jones Jr.  
Secretary/Treasurer  
Pennsylvania

Jermaine Galloway  
Sergeant At Arms  
Idaho

Frederick Mahony  
Past President  
Massachusetts

Rebecca Ramirez  
Executive Director

11720 Beltsville Drive  
Suite 900  
Calverton, MD 20705

Phone (301) 755-2795  
Fax (301) 755-2799  
www.nllea.org

September 3, 2015

Sherry Cook  
Executive Director  
Texas Alcoholic Beverage Commission  
5806 Mesa Drive  
Austin, TX 78731

Dear Director Cook:

On behalf of the National Liquor Law Enforcement Association (NLLEA) I am honored to inform you that your agency was selected for this year's *Liquor Law Enforcement Agency of the Year* award. The NLLEA Liquor Law Enforcement Agency of the Year award is given to an agency that demonstrates agency effectiveness through model programs and practices.

Your agency's creation of the Special Investigative Unit (SIU) to combat organized criminal activities occurring in licensed establishments throughout the State of Texas and the strong success you have seen from SIU since its creation makes your agency the ideal recipient of the *NLLEA Liquor Law Enforcement Agency of the Year* award.

This award will be presented as part of the NLLEA Conference Awards Luncheon on Wednesday, September 23 at 12:30 p.m. in Westminster, Colorado. Please let NLLEA's Project and Training Coordinator, Lara Morford, know who will be accepting this award by calling 301-755-2795 or emailing [lara.morford@nllea.org](mailto:lara.morford@nllea.org).

Thank you for your continued hard work and dedication to the field of alcohol law enforcement.

Sincerely,

Joseph Cannon  
President

TABC recently won the National Liquor Law Enforcement **Agency of the Year Award**. The creation of the SIU to combat Organized Crime occurring in licensed establishments made TABC the "ideal recipient".

cc: Ronald Swenson, Captain

# QUESTIONS?





# TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

*service ★ courtesy ★ integrity ★ accountability*

# **Attachment 4**

**Follow-Up Audits: Enforcement Administration,  
Excise Tax Administration, Additional Follow-Up  
on Tax Administration-Ports of Entry**

Follow-Up: Internal Audit of The  
Enforcement Administration  
Excise Tax Administration  
Additional Follow-up On  
Tax Administration-Ports of Entry  
As of August 21, 2015  
At The  
Texas Alcoholic Beverage Commission

**MONDAY N. RUFUS, P.C.**  
**Certified Public Accountants & Consultants**

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**Member: American Institute of Certified Public Accountants**

Commission Members  
Texas Alcoholic Beverage Commission  
Austin, Texas

We have reviewed the status of our internal audit recommendations related to the following as of August 21, 2015:

- Enforcement Administration (Report Date: January 14, 2014)
- Excise Tax Administration (Report Date: July 11, 2014)
- Additional Follow-up on Tax Administration – Ports of Entry (Original Report Date: July 21, 2014)

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

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

*Monday N. Rufus, P.C.*

August 21, 2015  
Austin, Texas

# Internal Audit Results

The scope of this internal audit follow-up was limited to following up on the findings and recommendations included in the following:

- Enforcement Administration (Report Date: January 14, 2014)
- Excise Tax Administration (Report Date: July 11, 2014)
- Additional Follow-up Tax Administration – Ports of Entry (Original Report Date: July 21, 2014)

*Appendix 1 (Enforcement Administration), Appendix 2 (Excise Tax Administration), and Appendix 3 (Additional Follow-up Tax Administration-Ports of Entry) summarize and provide the status and steps taken by the management of the Commission to the recommendations made in these reports.*

# Enforcement Administration

# Finding 1

## Finding #1

### **Miscoding of Investigation Case in CrisNet Database System.**

During testing of enforcement agent investigation files by the internal auditors at District 4, we found that an Open Compliance check conducted (ARTS case #1318270) which had resulted in no violations had been miscoded and entered by the enforcement agent into the CrisNet database system as a Source investigation with administrative and criminal violations. Management has recoded the case file to properly reflect the nature of the investigation.

# Finding 1 (cont'd)

## **Recommendation**

The status of inspections and complaints cases should be more closely monitored by Enforcement management to ensure proper and accurate reporting of enforcement cases.

## ***Management's Response:***

*Management agrees with the findings and recommendation. When a complaint against a retailer is unfounded and no administrative case was filed, but more investigation is required, a second complaint should be opened against the person or persons being investigated. It is now standard operating procedure for the agency to open a second complaint should the original be unfounded and further investigation against other individuals is necessary.*

## **Current Status: Implemented**

- The auditors obtained and reviewed copy of management's weekly enforcement activity report (week ending August 16, 2015) for District 4 which is used to report the current status of inspections, investigations, source complaints opened and closed, minor sting operations and training classes for alcoholic businesses.
- Using the Agency Reporting and Tracking System (ARTS), the auditors reviewed a Source complaint from the original complaint being opened and closed with no violations found, to a second complaint being opened on the same business based on additional investigation evidence.

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

# Finding 2

## **Finding #2**

### **Supporting Documentation Lacking for Required Minor Sting Operations Letters Sent To Representatives of Locations Not Selling Alcohol to Minors.**

Section 3.6 (m) of the Enforcement manual policies and procedures requires supervisors at the Enforcement districts to write and send letters to representatives of locations where sting operations were conducted but no alcohol was sold to the minor, acknowledging the location for complying with the law. During our testing of minor sting operations case files entered into the ARTS system we noticed that 3 of 5 minor sting operations case files reviewed in District 4, and 7 of 8 minor sting operations case files reviewed in District 5 where no alcohol was served to the minor, did not have copies of the letters or evidence that the letters were sent.

Enforcement administration management recently developed a Minor Sting operations electronic complimentary letter to be sent to licensees/permittees who refused to sell alcohol to a minor during a minor sting operation conducted on their premise.

# Finding 2 (cont'd)

## **Recommendation**

Management should include in the policies and procedures instructions on how a copy of the letter or a checklist should be saved (electronically or in paper form) after it is sent as evidence of complying with the written policies and procedures.

## ***Management's Response:***

*Management agrees with the finding. A copy of each letter that is sent to licensees/permittees that refused to sell alcohol to a minor during a minor sting operation conducted on their premise is now being kept at each of the District Offices.*

## **Current Status: Implemented**

- The auditors met with Enforcement management personnel in District 4 (Austin) to obtain information on the process used in issuing Minor Sting Operations compliance letters to businesses who did not serve alcohol to minors.
- The auditors had Minor Sting Operations compliance letters from 08/11/2015 thru 08/15/2015 accessed and printed for review from the ARTS system SQL Server Reporting Services (SSRS Report) ENF 1045-Minor Sting Compliance program.
- Reviewed Minor Sting Operations letters to verify that the letters were signed by enforcement upper management before being sent out. Copies of the sting letters are filed at the District office.

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

# Excise Tax Administration

# Finding 1

## **Finding #1**

### **Missing Monthly Excise Tax Report**

The supporting paper documents for a monthly excise tax report randomly selected for testing by the internal auditors could not be located. The report was a Texas Direct Shipper's Report for the month of December 2012. According to the Commission's computer reporting system the tax report had been reviewed and processed along with an excise tax payment collection of \$29.20.

### **Recommendation:**

Excise Tax section management should properly document and monitor the location of each excise tax report, including coordinating with other Commission divisions who use the same tax report documents in monitoring licensee/permittee compliance with the Texas Alcoholic Beverage Code. It will ensure that the report information in the computer system is supported by documents submitted and signed by the licensees/permittees and also comply with the document retention schedule

# Finding 1 (cont'd)

***Management's Response:***

*The Agency agrees with the internal audit findings and recommendation. Excise Tax section management will take action to reestablish policy with both Audit and Excise Staff regarding the proper documentation and monitoring the location of each excise tax report.*

*Additionally, the Excise Tax Division will conduct a monthly supervisory sample review to ensure reports are properly documented and stored in the appropriate location.*

## **Current Status: Implemented**

- The auditors met with Excise Tax division management for latest corrective action update on the prior audit report's recommendations.
- The auditors obtained and reviewed copy of TABC Tax Division Report and Order Processing Manual which was revised to ensure proper and accurate documentation and monitoring of the location of each excise tax report received.
- Obtained and reviewed copies of the Excise Tax Manager Review spreadsheets (09/2014 thru 06/2015) of monthly tax reports randomly selected and tested for accuracy and appropriate locations prepared by the Supervisor and Tax Director .

No further audit work is deemed necessary in this area at the time

# Finding 2

## Finding #2

### **The 2 % Discount on Excise Taxes Due Is Being Included On Monthly Tax Reports With Underpaid Excise Taxes Due**

The Excise Tax Report Processing Manual requirements state that licensees/permittees will not be entitled to the 2% discount for underpayment of taxes. Four (4) of the 40 excise tax reports had incorrect taxes calculated which resulted in underpayment of taxes by a total of \$57.15. The underpaid tax amounts on the 4 reports were \$52.02, \$5.00, \$.07, and \$.06. The calculations in the monthly reports tested did not show any evidence of the 2% discount amount being disallowed. Although the incorrect taxes from our sample are relatively insignificant, individually and in aggregate, the deficiency in internal control poses a major risk of maximizing excise tax revenue when applied to all the excises tax reports processed by the Excise Tax Division.

#### **Recommendations:**

The Commission should emphasize and enforce compliance with the *TABC Excise Tax Report Processing Procedures Manual* which state that the licensee/permittee is not entitled to the 2% discount if there is an underpayment of excise taxes discovered during the excise tax report verification process.

TABC management should consider making the excise tax report's calculation sheet *IT active* online so that when licensees/permittees input their monthly alcoholic beverage activity totals the tax can be automatically calculated. This may ensure proper excise taxes are being paid timely and reduce the number of Excise Tax examiners report tax calculation adjustments, phone calls, letters sent, or emails to licensees/permittees.

# Finding 2 (cont'd)

***Management's Response:***

*The Agency agrees with the internal audit findings and recommendations to the extent that the manual does not reflect the practice. Based on Sections 201.48 and 203.10, the 2% discount is not allowed on the amount not paid by the licensee as that amount was delinquent on the date it was due. The Excise Tax Procedures Manual will be updated to reflect this practice.*

*Additionally, the Agency will develop an intelligent online tax reporting form, to be completed in 90 days, so that when licensees/permittees input their monthly alcoholic beverage activity totals, the tax can be automatically calculated.*

## **Current Status: Implemented**

- The auditors obtained and reviewed a copy of the TABC Tax Division Report and Order Processing Manual. The manual's policies were updated and now state that the 2% discount on taxes is not allowed if the tax amount on their reports are not paid by the report's due date.
- Additionally, the Agency has updated, and are in final review, the online tax reporting forms which can automatically calculate report taxes. The updated tax forms are scheduled to be placed on the TABC website on September 1, 2015.

No further audit work is deemed necessary in this area at the time

# Finding 3

## **Finding #3**

### **Excise Tax Management Should Cross-Train Examiners Due to Turnover of Personnel and Continued Increase in Required Tax Paying and Informational Reports**

Excise Tax section has three report examiners who review all the excise tax reports, including all the supporting documents and reports submitted by the manufacturers and suppliers. Each examiner has assigned responsibility to review certain types of licensee/permittee report(s). During fiscal year 2013 there were 55,810 wholesale and manufacturing reports analyzed comprised of (11) excise tax paying reports and six (6) informational reports (Appendix 2) . The examiners' responsibilities include the report examination, identifying compliance violations and reporting errors, generating correspondence to taxpayers on discrepancies noted, collecting delinquent compliance revenue, tracking the hours and activities performed for divisional purposes. Each examiner performs these functions on the particular types of monthly reports they are assigned to review.

During the testing of 40 excise tax reports, the auditors tested two tax reports which had been reviewed and processed by the excise tax examiners as having no errors. During the recalculation of the report totals by the internal auditors it was noticed that one report had miscalculated the 2% tax discount resulting in an overpayment of taxes by \$0.07, and the other tax report had overstated the inventory (wine) subject to tax, resulting in an overpayment of \$.21 . The reports items (numbers) had been checked off as having been verified by the examiner, but the corrected amount had not been recalculated or written above the taxpayer's entry as required by the Excise Tax Report Processing Procedures Manual. The current procedures do not require an independent verification of calculations other than the examiner reviewing the reports and random supervisory reviews of the monthly tax reports. Although these incorrect calculations are relatively small, there is a risk that a significant error could be made without timely detection by the Commission since excise tax report payments tested by the auditors ranged from \$.32 to \$329,404.02. Additionally, the Commission's policies and procedures manual does not specify an error threshold amount considered to be negligible and possibly waived.

# Finding 3 (cont'd)

During our testing we found seven (64%) of eleven quarterly Texas Direct Shipper's Reports (Form C-240) tested were in noncompliance with the Excise Tax Report Processing Procedures Manual requirement of 3 gallons of wine limit per shipment to any single customer. The total excise taxes collected for the eleven quarterly tax reports was \$426.14 ranging from \$.32 to \$102.29 per report.

The Excise Tax Report Processing Procedures Manual states that report examiners issue compliance violation notification letters when the permittees have not correctly complied with the reporting requirements. Some of the violation notification letters are computer generated while others may require a letter prepared by the examiner reviewing the tax report. Letters are written by the report examiners based on an evaluation of the entire tax report and if they determine a letter is needed.

During our audit engagement we noticed that the Excise Tax Section was having employee turnover. Two new examiners had recently been hired to replace two examiners who had left or retiring. The examiners who were leaving had many years of experience and had continually reviewed the same type of tax reports for some of the same licensees/permittees for years. Due to the lack of cross-training, the changes in personnel could significantly affect continuity and ultimately effectiveness of operations.

## **Recommendation:**

Excise Tax management should increase the number of supervisory reviews of monthly tax reports based on the recently hired tax report examiners (2) currently processing tax reports. Management should also have someone other than the tax report examiner recalculate the taxes due.

Management should cross-train employees in processing different types of excise tax reports for report processing continuity in the absence of an examiner(s).

Management should emphasize to permittees compliance with the Excise Tax Report Processing Procedures Manual.

Additionally, Excise Tax management should consider establishing an excise tax threshold dollar amount(s) for quarterly direct shipper's (and other) reports reviewed, taking into consideration excise tax requirements that are not being complied with, amount of taxes being paid, and the feasibility of sending a computer generated or examiner written violation notification letter.

# Finding 3 (cont'd)

## ***Management's Response***

*The Agency agrees with the internal audit findings and recommendation. During the summer of FY14 the Excise Tax Division hired one new accounts examiner to replace a tenured examiner retiring at the end of the fiscal year. The Excise Tax management will increase their review of the reports reviewed by the recently hired tax report examiner. All reports checked by Excise Tax Section personnel go through an additional review when an excise tax audit is conducted by field auditors.*

*The excise tax review is a very extensive manual process. In FY2013, 3 FTE accounts examiner positions reviewed over 55,800 reports. The agency felt that rotating assignments would not be an effective nor efficient use of staff personnel. However moving forward, although each examiner specializes in the type of tax collected and tax corresponding report, all excise tax personnel will be cross trained to assist others as needed as resources allow. The Agency will also explore options for developing a knowledge repository where the expert in each permit type can store data regarding tax specific questions or issues that arise along with the solution.*

*Several requests have been made in past legislative sessions to fund an automated system for filing excise tax reports and taxes. Twice this request was approved and funded, however, due to mandatory budget reductions those funds were later returned. Once again, the agency has moved forward with another funding request for the upcoming 2015 Legislative Session for an automated system for filing excise tax reports and taxes.*

*Finally, before August 31, 2015, the Agency will study process and explore options to better identify direct shipper reporting compliance and solutions. For example, the Agency may pursue Marketing Practices Advisories, form changes, direct shipper excise tax threshold dollar amounts and/or administrative action.*

# Finding 3 (cont'd)

## Current Status: Partially Implemented

- The auditors met with Excise Tax Director and determined that cross-training is being implemented so that if one tax report examiner was absent another examiner would perform the tax reports review function.
- Obtained and reviewed copies of the Excise Tax Manager Review spreadsheets (09/2014 thru 06/2015) of monthly tax reports randomly selected and tested by the Tax Supervisor or Tax Director for accuracy of tax calculations.

We encourage the management of the Commission to continue making concerted efforts to ensure cross-training of staff.

No further audit work is deemed necessary in this area at the time

# Additional Follow-up On Tax Administration-Ports of Entry

# Finding

## Finding

**Taxpayer Compliance Officer (TCO) weekend cash box audits are not being conducted at least once a month as required by the POE Policy, Procedures manual.**

Each TCO at the ports of entry is assigned his/her cash box to use while on duty. The POE Policies and Procedures manual requires the port of entry Supervisors and Assistant Supervisors to conduct three (3) TCO cash box audits each month with one (1) of the three cash box audits being conducted on a weekend during the month.

During the twelve (12) month period audited (2/1/2012 – 1/31/2013) only 68 (31.50%) weekend TCO cash box audits were conducted by the Supervisor and Assistant Supervisor from a projected 216 TCO weekend cash box audits.

Also for the same 12 month period audited the port of entry Supervisor and Assistant Supervisor conducted a total of 663 TCO cash box audits resulting in 152 overages and shortages totaling a net minus (\$14.10).

# Finding (cont'd)

**Recommendation:**

Ports of Entry – Headquarters management should re-evaluate the POE Policies and Procedures regarding the monthly number and specific days of TCO cash box audits required at the ports of entry. POE Headquarters management should take into consideration the TCO revenue collection process controls in place, revenue and stamps reconciliation, reporting controls in the Port of Entry Tax Collection System (POETCS), potential revenue risks, and compare to the feasibility of personnel time and compliance costs involved in the current POE manual requirements.

***Management's Response:***

*Management Concur with the findings and is in the process of re-evaluating and re-writing the policy and procedure regarding TCO cash box audits, taking into consideration risk based factors in determining the monthly number of audits per TCO and the number of weekday and weekend audits required. Updated policy and procedure should be tested and fully implemented by 08/31/2013.*

### **Auditor's Comments on Prior Year's Follow-up**

Internal auditors determined that Ports of Entry management completed an update of the Policies and Procedures related to "TCO Audits" but they are waiting approval by the Policy Review Committee prior to the implementation of the changes. We encouraged management to continue its efforts to ensure full implementation of our recommendation. Our objective of this engagement is to determine the current status of our recommendation related to the above finding.

### **Current Status: Implemented**

Internal auditors communicated with the Director of Ports of Entry and obtained copy of the TABC Ports of Entry Policy & Procedures Manual which was approved by the Policy Review Committee effective 09/30/2014. Policy No. 6.1 includes the new TCO cash box audit procedures conducted By Port Supervisors.

No further audit work is deemed necessary in this area at the time

# Report Distribution

## **Report Distribution**

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

### **Governor's Office of Budget, Planning and Policy**

Attn: Kate McGrath

internalaudits@governor.state.tx.us

### **Legislative Budget Board**

Attn: Ed Osner

Ed.Osner@lbb.state.tx.us

### **State Auditor's Office**

Attn: Internal Audit Coordinator

iacoordinator@sao.state.tx.us

### **Sunset Advisory Commission**

Attn: Ken Levine

sunset@sunset.state.tx.us

### **Texas Alcoholic Beverage Commission**

Jose Cuevas, Jr., Presiding Officer

Steven M. Weinberg, MD, JD

Ida Louise "Weisie" Steen

### **Texas Alcoholic Beverage Commission Management**

Sherry Cook, Executive Director

# **Attachment 5**

**Internal Audit of Business Continuity**

**Internal Audit of Business  
Continuity  
As of August 31, 2015  
At The  
Texas Alcoholic Beverage Commission**

**MONDAY N. RUFUS, P.C.**  
**Certified Public Accountants & Consultants**

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**Member: American Institute of Certified Public Accountants**

Audit Committee  
and Commissioners  
Texas Alcoholic Beverage Commission  
Austin, Texas

We have conducted the internal audit of the Texas Alcoholic Beverage Commission regarding the Business Continuity as of August 31, 2015. The results of our internal audit disclosed that the Commission has implemented good controls over Business Continuity. However, we noted some opportunities for strengthening the controls in place. The report that accompanies this letter summarizes our comments and recommendations.

We appreciate the courtesy and cooperation the management of the Commission showed during the course of the engagement.

*Monday N. Rufus, P.C.*

August 31, 2015  
Austin, Texas

# **Internal Audit Results**

# Summary of Internal Audit Results

The Commission has partially implemented a COOP. Its COOP contains an updated Disaster Recovery Plan (DRP) and back-up and storage procedures for critical data, but other Texas State Agency Continuity Planning Policy Guidance Letter have not been fully completed. To fully comply with the requirements, the Commission should ensure that an agency-level training is developed and maintained and the plan fully tested.

# Finding 1

**Finding #1: Develop and maintain an agency-level training program for mission critical personnel of the agency.**

**Criteria:**

By October 31, 2014, develop an agency-level continuity training program to ensure mission critical personnel are prepared to perform required continuity functions during an emergency in accordance with the Texas State Agency Continuity Planning Policy Guidance Letter dated October 23, 2013 signed by the Executive Directors of the Texas Department of Public Safety, Texas Department of Information Resources, and State Office of Risk Management; and sent by the Texas Department of Public Safety to all the agency heads.

**Condition:**

The Commission developed some training courses predicated toward the recovery of information technology. Agency-level training should include the business functions as well as the information technology function. This training program is required to ensure that mission critical personnel are prepared to perform required continuity functions during an emergency.

**Cause:**

The Commission has not required the Business Continuity Coordinator to develop an agency-level training program that would be used to train critical staff in the area of business continuity.

# Finding 1(cont'd)

## **Effect:**

Because the TABC has not developed an agency-level training program to include the business critical personnel, there is no reasonable assurance that the agency would be able to recover both the business and the computer functions should there be a disaster.

## **Recommendation:**

We recommend that:

1. The TABC ensure that a continuity training program is developed and implemented.
2. The TABC ensure key agency personnel are trained in their roles and responsibilities to ensure that mission-critical personnel are prepared to perform required continuity functions during an emergency.

# Finding 1(cont'd)

## Management Response:

*TABC concurs and will develop a formal training program and conduct formal agency-level training to mission critical personnel. However, it is premature to develop an adequate training program before the Continuity of Operations Plan (COOP) is approved by the State Office of Risk Management (SORM). The COOP was submitted to SORM on July 1, 2015 and awaits approval. Regarding the timing of the submission to SORM, the Continuity Coordinator had to be adequately trained prior to creation and submission of plan. With limited courses available and multiple pre-requisites, it took one year for the Continuity Coordinator to be adequately trained and certified.*

*Meanwhile, TABC has determined the training approach (subject to change):*

<b>Course</b>	<b>Audience</b>	<b>Method</b>	<b>Frequency</b>	<b>Instructional Topics</b>
<i>Continuity of Operations Module 1 The Employee's Role in COOP</i>	<i>All TABC Employees</i>	<i>Computer-Based Training (similar to the Security Awareness Training Program)</i>	<i>Biennially</i>	<i>Purpose of the COOP Terminology Roles and Responsibilities Emergency Preparedness</i>
<i>Continuity of Operations Module 2 Executing the COOP</i>	<i>Mission Critical Personnel (Executives and Directors)</i>	<i>Computer-Based Training And/Or In-Person Group Training</i>	<i>Annually</i>	<i>Roles and Responsibilities Mission Essential Functions Incident Command Leadership During Emergencies Virtual Tabletop Exercises Testing Requirements</i>

*Responsible Individual: Lieutenant Marvin Montero*

*Status: Planned Completion within 90 days after receipt of State Office of Risk Management (SORM) approval of the Continuity of Operations Plan (COOP)*

# Finding 2

## **Finding #2: Ensure Periodic Testing of the full Continuity of Operation Plan.**

### **Criteria:**

To ensure that the Continuity of Operation Plan is complete and workable, the plan must be fully tested.

### **Condition:**

The Commission's Continuity of Operation Plan addresses proper planning and alternate procedures in the event of business interruption. Key personnel have been assigned specific tasks and responsibilities in order to properly deal with disaster or any disruption. The Agency's goal includes ensuring the safety of staff, the security of data, and the ability to provide quality services to their clients. The Commission has a process in place for testing the disaster recovery plan aspect of the COOP, and we noted evidence of periodic testing of the critical automation activities. However, there is no documented evidence of testing of the full COOP which includes the total business of the Commission, not just information resources.

### **Cause:**

The Commission has not instituted a process for testing the full COOP.

# Finding 2(cont'd)

## **Effect:**

Because the COOP has not been fully tested, there is no reasonable assurance the plan is workable and that the agency would be able to recover both the business and the computer functions should there be a disaster or disruption.

## **Recommendation:**

We recommend that the Commission fully test the COOP to ensure the plan is workable and can provide reasonable assurance of recovery of the total business should there be a disaster or disruption.

## **Management Response:**

*TABC Concur and will develop a formal testing program and conduct a formal test of the Continuity of Operations Plan. However, it is premature to conduct an adequate test before the Continuity of Operations Plan is approved by the State Office of Risk Management (SORM) and before TABC employees have been trained (see Finding #2, above.) Therefore, TABC expects to conduct the first test within 30 days after the training program has been instituted. The COOP was submitted to SORM on July 1, 2015 and awaits approval. Regarding the timing of the submission to SORM, the Continuity Coordinator had to be adequately trained prior to creation and submission of plan. With limited courses available and multiple pre-requisites, it took one year for the Continuity Coordinator to be adequately trained and certified.*

*TABC has tested the Business Resumption Plan (BRP), the predecessor to the Continuity of Operations Plan (COOP). We realize the COOP institutes additional controls and rigor into the planning and testing, rendering BRP tests inadequate to accommodate new guidelines.*

*TABC believes there is reasonable assurance that the computer functions would be recovered should there be a disaster or disruption as demonstrated fully through the Disaster Recovery Plan.*

*Responsible Individual: Lieutenant Marvin Montero*

*Status: Planned Completion within 120 days after receipt of State Office of Risk Management (SORM) approval of the Continuity of Operations Plan (COOP)*

# Report Distribution

## Report Distribution

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

### **Governor's Office of Budget and Planning**

Attn: Kate McGrath

Phone: (512) 463-1778

[Internalaudits@governor.state.tx.us](mailto:Internalaudits@governor.state.tx.us)

### **Legislative Budget Board**

Attn: Ed Osner

Phone: (512) 463-1200

[Ed.Osner@lbb.state.tx.us](mailto:Ed.Osner@lbb.state.tx.us)

### **State Auditor's Office**

Attn: Internal Audit Coordinator

Phone: (512) 936-9500

[iacoordinator@sao.state.tx.us](mailto:iacoordinator@sao.state.tx.us)

### **Sunset Advisory Commission**

Attn: Ken Levine

Phone: (512) 463-1300

[sunset@sunset.state.tx.us](mailto:sunset@sunset.state.tx.us)

### **Texas Alcoholic Beverage Commission**

Jose Cuevas, Jr., Presiding Officer

Steven M. Weinberg, MD, JD

Ida Louise "Weisie" Steen

### **Texas Alcoholic Beverage Commission Management**

Sherry Cook, Executive Director

# **Attachment 6**

**Proposed Internal Audit Plan for Fiscal Years  
2016 and 2017**

# **Internal Audit Plan**

Fiscal Years 2016 and 2017

Texas Alcoholic Beverage Commission

**MONDAY N. RUFUS, P.C.**  
**Certified Public Accountants & Consultants**

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Member: American Institute of Certified Public Accountants

September 15, 2015

Audit Committee and Commissioners  
Texas Alcoholic Beverage Commission  
Austin, Texas

Dear Commissioners:

As required by the Internal Auditing Act (Texas Government Code, Section 2102.008), we have prepared the audit plan for Fiscal Years 2016 and 2017.

We prepared a risk assessment to determine the areas in the Texas Alcoholic Beverage Commission that should be considered for audit. Based on that risk assessment, the following areas are recommended for audit in Fiscal Years 2016 and 2017, respectively:

**Fiscal Year 2016**

**Estimated Hours**

- |  |     |
|--|-----|
| • Label/Product Approval Process   | 150 |
| • Information Systems – Security   | 150 |
| • Field Operations Audit Administration                                  | 150 |
| • Risk Assessment and preparation of Audit Plan (Fiscal Years 2016-2017) | 30  |
| • Follow-up on prior year’s audit recommendations:                       |     |
| <i>Internal Audit of the Personnel Processes</i>                         |     |
| (Report Date: February 20, 2015)   | 30  |
| <i>Internal Audit of Information Technology System Development</i>       |     |
| (Report Date: May 27, 2015)  | 30  |
| <i>Internal Audit of the Identification Stamps/Private Club Cards</i>    | 30  |

*Internal Audit of Business Continuity*      30  
(Report Date: August 31, 2015)  
**Total Hours**      **600**

**Fiscal Year 2017**

• Licensing Application and Processing	200
• Cash Receipts and Fee Processing	160
• Field Operations Investigations Administration	150
• Follow-up on Prior Internal Audit Recommendations	90
	—
<b>Total Hours</b>	<b>600</b>

Your approval is required to enable the internal auditor to begin the audit activities for fiscal year 2016 and 2017, respectively.

Sincerely,

*Monday N. Rufus, P.E.*

CC:

1. Sherry Cook, Executive Director, TABC
2. Ed Swedberg, Deputy Executive Director, TABC

# Internal Audit Plan Methodology

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

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

We made inquiries of key personnel of the Agency through a questionnaire. The main purpose of our inquiries was to obtain a generalized overview of how each function fits financially and non-financially into the framework of the Agency. One of the major factors in performing our inquiries, rather than relying solely on the amounts budgeted to each function in determining risk assessment, was to identify how much effect one function has on another function, thereby identifying the total impact that a particular function has on the Agency. These inquiries were standardized to achieve responses to basic questions concerning each function. Questions related to business objectives, inputs, outputs, systems, critical success factors, process activities and business risks and controls. An assessment of the function's risk was also included, based on our inquiries and review of information obtained from the Agency.

In planning internal audit procedures, financial, operational, as well as compliance issues are considered in determining processes/systems of interest. Functional areas that cross many divisions and the interaction between divisions are key criteria in the process of identifying areas of interest. Agency financial reports, planning documents, laws, rules, and regulations, in addition to soliciting input from management, were all considered in developing the list of areas of interest. Upon completion of this list, each area was subjected to our risk analysis process.

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

- Licensing Applications and Processing
- Fixed Assets Management
- Label/Product Approval Process
- Marketing Practices
- Field Operations Audit Administration
- Field Operations Investigations Administration
- Accounting and Budgeting

- Cash Receipts and Fee Processing
- Business Continuity
- Enforcement Administration
- Cash Disbursements and Travel Processing, Payables and Payroll
- Information Technology System Development
- Performance Measures Reporting
- Education and Prevention

- Information Systems – Security
- Professional Responsibility
- ID Stamps/Private Club Cards
- Ports of Entry
- Personnel Processes
- Excise Tax Administration

- Legal Services
- Open Records Request
- Training
- Mailroom Services
- Executive Administration
- Historically Underutilized Business (HUB) Compliance
- Communications/Government Relations

There are numerous other areas that may be identified during the process of performing internal audit procedures over the next year. Continuing input from both the commissioners and management will be essential in identifying additional or new areas of risk that should be considered in the future.

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

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

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

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

The other factors noted are not considered to be as critical to the internal control structure of the Agency. However, all factors were considered in assessing risk and were taken into consideration for each process/system as to their impact on the Agency. Once each area of interest was evaluated, it was assigned a risk factor of high, moderate or low. The following is the result of our risk assessment process.

Processes Identified as High Overall Risk

None

## **Processes Identified as Moderate Overall Risk**

Licensing Applications and Processing

Fixed Assets Management

Label/Product Approval Process

Marketing Practices

Field Operations Audit Administration

Field Operations Investigations Administration

Accounting and Budgeting

Cash Receipts and Fee Processing

Business Continuity

## **Processes Identified as Moderate Overall Risk(cont'd)**

Enforcement Administration

Cash Disbursements and Travel Processing,  
Payables and Payroll

Information Technology System Development

Performance Measures Reporting

Education and Prevention

Information Systems – Security

## Processes Identified as Moderate Overall Risk(cont'd)

Professional Responsibility

ID Stamps/Private Club Cards

Ports of Entry

Personnel Processes

Excise Tax Administration

Legal Services

Open Records Request

Training

## Processes Identified as Low Overall Risk

Mailroom Services

Executive Administration

Historically Underutilized Business (HUB)  
Compliance  
Communications/Government Relations

# Appendix A: Summary of Audit Risk Assessment

**High** = 38 and up

**Mod** = 30 – 37

**Low** = Less than 30

	<u>Total Risk</u>	<u>Risk Rank</u>
Licensing Applications and Processing	36	1
Fixed Assets Management	36	2
Label/Product Approval Process	35	3
Marketing Practices	35	4
Field Operations Audit Administration	35	5
Field Operations Investigations Administration	35	6
Accounting and Budgeting	35	7
Cash Receipts and Fee Processing	35	8
Business Continuity	34	9
Enforcement Administration	34	10
Cash Disbursements and Travel Processing, Payables and Payroll	34	11

# Appendix A: Summary of Audit Risk Assessment (cont'd)

	<u>Total Risk</u>	<u>Risk Rank</u>
Information Technology System Development	34	12
Performance Measures Reporting	34	13
Education and Prevention	34	14
Information Systems – Security	33	15
Professional Responsibility	33	16
ID Stamps/Private Club Cards	33	17
Ports of Entry	33	18
Personnel Processes	32	19
Excise Tax Administration	32	20
Legal Services	32	21
Open Records Request	31	22
Training	31	23

# Appendix A: Summary of Audit Risk Assessment (cont'd)

	<u>Total Risk</u>	<u>Risk Rank</u>
Mailroom Services	29	24
Executive Administration	29	25
Historically Underutilized Business (HUB) Compliance	29	26
Communications/Government Relations	27	27

# Internal Audit Plan

## Fiscal Year 2016

## Estimated Hours

• Label/Product Approval Process	150
• Information Systems – Security	150
• Field Operations Audit Administration	150
• Risk Assessment and preparation of Audit Plan (Fiscal Years 2016-2017)	30
• Follow-up on prior year’s audit recommendations:	
<i>Internal Audit of the Personnel Processes</i>	30
(Report Date: February 20, 2015)	
<i>Internal Audit of Information Technology System Development</i>	30
(Report Date: May 27, 2015)	
<i>Internal Audit of the Identification Stamps/Private Club Cards</i>	30
<i>Internal Audit of Business Continuity</i>	30
(Report Date: August 31, 2015)	
	<hr/>
	<b>600</b>

# Internal Audit Plan (cont'd)

## Fiscal Year 2017

• Licensing Application and Processing	200
• Cash Receipts and Fee Processing	160
• Field Operations Investigations Administration	150
• Follow-up on Prior Internal Audit Recommendations	90
	—
<b>Total Hours</b>	<b>600</b>

# **Attachment 7**

**Rules, Agenda Items 12-18**

## **September 22, 2015 Commission Meeting**

### **Agenda Item 12: Approve Publication of Proposed Amendments to Rule §31.1, Separation of Duties Between Commission and Administrator**

The Texas Alcoholic Beverage Commission proposes amendments to §31.1, relating to Separation of Duties Between Commission and Administrator.

Section 31.1 implements Alcoholic Beverage Code §5.12 and §5.34(b) by specifying which duties and authorities the commission retains and which duties and authorities it delegates to the administrator. The proposed amendments would change references to "administrator" in the title and throughout the section to "executive director". Alcoholic Beverage Code §5.11(b) provides that the administrator is also known as the executive director.

Government Code §2261.254 was added by section 18 of Senate Bill No. 20, 84<sup>th</sup> Regular Session of the Texas Legislature. Government Code §2261.254 provides that a contract for the purchase of goods or services that has a value exceeding \$1 million must be approved by the governing body of the agency and signed by the presiding officer of the governing body, unless the governing body delegates the approval and signature authority to the executive director of the agency.

**[If Option A is selected, insert these sentences:** The proposed amendments would add a new paragraph (c)(11) to this section delegating the authority to the executive director to execute all contracts on behalf of the agency, including contracts for the purchase of goods or services that have a value exceeding \$1 million. The authority regarding contracts for the purchase of goods or services that have a value exceeding \$1 million could not then be delegated by the executive director to anyone else.]

**[If Option B is selected, insert these sentences:** The proposed amendments would add a new paragraph (c)(11) to this section delegating the authority to the executive director to execute all contracts on behalf of the agency, except contracts for the purchase of goods or services that have a value exceeding \$1 million. Contracts for the purchase of goods or services that have a value exceeding \$1 million would have to be approved by the commission and signed by the presiding officer.]

Section 31.1 is also being reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for reoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended.

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

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

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because the roles of the commission and the executive director regarding contracting will be specified.

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

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, October 22, 2015 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code [If Option A is selected, add this language: ], and by Government Code §2261.254(d), which allows a governing body to delegate to the executive director the authority to approve and sign contracts for the purchase of goods or services that have a value exceeding \$1 million].

The proposed amendments affect Alcoholic Beverage Code §5.31, and Government Code §2001.039 [If Option A is selected, add this language: and §2261.254(d)].

### **§31.1 Separation of Duties Between Commission and Executive Director Administrator.**

(a) This rule implements §5.12 of the Alcoholic Beverage Code (Code), which requires the Texas Alcoholic Beverage Commission (commission) to adopt rules to clearly separate the policy-making authority of the commissioners from the management responsibilities of the executive director administrator, and §5.34(b) of the Code, which requires the commission to develop and implement policies that clearly define the respective responsibilities of the commission and staff.

(b) The commission retains the duty and authority to:

- (1) Establish agency policies and goals to carry out the duties and authority granted to the commission under the Code;
- (2) Provide leadership and direction to ensure agency laws, rules, policies and goals are implemented in a responsible, effective and cost efficient manner;
- (3) Ensure accountability and transparency within the agency and to the Governor, the Legislature, the public, and persons regulated;
- (4) Appoint and remove the executive director administrator;
- (5) Adopt agency rules to implement statutory duties and agency policies;

(6) Employ or appoint and terminate or remove an internal auditor, adopt an audit plan, approve audit findings and ensure agency compliance with audit requirements;

(7) Exercise any authority and carry out any duty of the commission not delegated to the executive director administrator; and

(8) Employ and terminate the general counsel, who shall report directly to the commission.

(c) The commission delegates the following duties and authority to the executive director (under Alcoholic Beverage Code §5.11(b), also referred to as the administrator in the Alcoholic Beverage Code and the commission's rules):

(1) Plan and implement an effective and an efficient operational and organizational structure;

(2) Act as the agency liaison and resource to the executive and legislative branch;

(3) Prepare and submit the agency budget and appropriations requests;

(4) Employ or appoint an executive management team with the skills, knowledge and commitment necessary to achieve the goals and implement the policies adopted by the commission;

(5) Assign and delegate to each member of the executive management team and the general counsel the responsibility and authority necessary to effectively administer all agency operations, duties and functions, implement policy, and manage staff and resources, including the authority to further delegate and assign the essential duties and responsibilities of the agency to ensure the highest and best use of agency staff and resources;

(6) Develop, monitor and report measures or expectations for the administrative, regulatory and enforcement functions of the agency to ensure that the agency goals are accomplished and policies followed;

(7) Develop and implement comprehensive and agency-wide internal policies and procedures necessary to carry out each essential function, duty, policy or goal of the agency;

(8) Ensure that all agency staff has access to, knowledge of and responsibility for consistently following policies adopted by the commission and agency-wide internal policies and procedures;

(9) Administer the oath of office or commission to agency staff and agents;

(10) Render, or delegate to agency staff, the agency decision or order in any matter over which the agency has final decision-making authority; ; and

#### **OPTION A**

(11) Execute contracts, specifically including but not limited to approving and signing contracts for the purchase of goods or services that have a value exceeding \$1 million. Notwithstanding paragraph (5), the authority to approve and sign contracts for the purchase of goods or services that have a value exceeding \$1 million shall not be delegated by the executive director to staff.

**OR**

#### **OPTION B**

(11) Execute contracts that have a value of \$1 million or less.

**September 22, 2015 Commission Meeting**

**Agenda Item 13: Approve Publication of Proposed Amendments to Rule §31.3, Petition for the Adoption of a Rule**

The Texas Alcoholic Beverage Commission proposes amendments to §31.3, relating to Petition for the Adoption of a Rule.

Government Code §2001.021 allows an interested person to file a petition requesting that a state agency adopt a rule. Section 31.3 provides procedures for such a petition. House Bill No. 763, 84<sup>th</sup> Regular Session of the Texas Legislature added subsection (d) to Government Code §2001.021, defining who is an "interested person" and thus who is qualified to file such a petition. The proposed amendments to §31.3 incorporate the statutory definition of "interested person".

In addition, the proposed amendments change references to the "Administrator" throughout the section to the "Executive Director", consistent with Alcoholic Beverage Code §5.11(b).

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

The proposed amendments will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. The inability of out-of-state businesses or persons to file a petition for rulemaking is attributable to Government Code §2001.021 and not to the proposed amendments. There is no anticipated negative impact on local employment.

Mr. Wilson has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because it will be clear who may file a petition for rulemaking with the commission.

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

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on Thursday, October 22, 2015 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

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

Code §2001.021(b), which requires a state agency to prescribe by rule the procedure for submission, consideration and disposition of a petition for rulemaking.

The proposed amendments affect Alcoholic Beverage Code §5.31, and Government Code §2001.021.

### **§31.3 Petition for the Adoption of a Rule.**

(a) Purpose. This section implements Government Code §2001.021 and provides procedures for any interested person (petitioner) to request the Alcoholic Beverage Commission (commission) to adopt a rule. The petitioner must be:

- (1) a resident of this state;
- (2) a business entity located in this state;
- (3) a governmental subdivision located in this state; or
- (4) a public or private organization located in this state that is not a state agency.

(b) Content of Petition.

(1) The petition must be in writing. No form is required but all information must be provided, or a reason why required information cannot be provided given.

(2) The petition must contain the following:

(A) petitioner's name, address, organization or affiliation, if any, and the name of the person or entity on whose behalf the petition is filed, if different from the person submitting the petition;

(B) a plain and brief statement about why a rule or change in an existing rule is needed, required, or desirable, including the public good to be served and any effect on those who would be required to comply with the rule;

(C) an estimate of the fiscal impact on state and local government as a result of enforcing or administering the proposed rule, an estimate of the economic impact on persons required to comply with the proposed rule, whether there may be an effect on local employment, and the facts, assumptions and methodology used to prepare estimates and impacts required by this subparagraph;

(D) a statement on the commission's authority to adopt the proposed rule;

(E) the proposed text of a new rule, or proposed changes to an existing rule;

and

(F) a list of individuals, organizations or affiliations that may be interested or affected by the proposed rule, if known.

(c) Submission. A petition is submitted on the date it is received by the Executive Director Administrator. The petition must be addressed to the Executive Director Administrator, Texas Alcoholic Beverage Commission, and mailed to P.O. Box 13127, Austin, Texas 78711-3127, or hand delivered to the Executive Director Administrator at commission headquarters in Austin, Texas.

(d) Review. The Executive Director Administrator will review the petition for compliance with the requirements of this section. If all requirements of this section are met, the Executive Director Administrator will bring the petition to the commission, except as provided otherwise in this section.

(e) Decision to Deny or Accept. The commission will deny a petition for rulemaking, or accept, in whole or in part, a petition for rulemaking within 60 days from the date the petition is

submitted. If the commission neither denies nor accepts the petition within 60 days from the date it is submitted, agency staff will initiate the rulemaking process under Chapter 2001, Subchapter B, of the Government Code. In such case, agency staff may redraft the proposed text to conform to style and format requirements for the agency's rules.

(1) The Executive Director Administrator will notify the petitioner in writing if the petition is denied and state the reason or reasons for the denial.

(2) The commission will refer an accepted petition to agency staff to initiate the rulemaking process under Chapter 2001, Subchapter B, of the Government Code. Agency staff may redraft the proposed text to conform to style, format and policy decisions of the agency.

(f) Repetitive petitions. The Executive Director Administrator may refuse to bring a petition for rulemaking to the commission if, within the preceding year, the commission has considered a previously submitted petition for the same rule.

**September 22, 2015 Commission Meeting**

**Agenda Item 14: Approve Publication of Proposed Repeal of Rule §41.26, Railway Cars – Tax Returns**

The Texas Alcoholic Beverage Commission proposes the repeal of §41.26, relating to Railway Cars – Tax Returns.

Section 41.26 currently requires the operator of railway buffet, club or dining cars to file excise tax reports on wine and beer sold in Texas, and pay the tax due, each month. House Bill No. 1905, 84<sup>th</sup> Regular Session of the Texas Legislature amended Alcoholic Beverage Code §48.04 to remove the obligation to pay such excise taxes. The proposed repeal of §41.26 is necessary to conform the rule to the Code.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed repeal will be in effect, there will be no fiscal impact on state or local government attributable to the repeal. Any fiscal impact from the loss of excise taxes is attributable to the legislative amendment of Alcoholic Beverage Code §48.04.

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

Mr. Wilson has determined that for each year of the first five years that the proposed repeal will be in effect, the public will benefit because the commission's rules will conform with the Alcoholic Beverage Code.

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

The staff of the commission will hold a public hearing to receive oral comments on the proposed repeal on Thursday, October 22, 2015 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

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

The proposed repeal affects Alcoholic Beverage Code §5.31 and §48.04.

**~~§41.26 Railway Cars--Tax Returns.~~**

~~Each operator of railway buffet, club or dining cars in Texas shall within 20 days after the close of each calendar month file with the commission at Austin, Texas, a sworn report of the amount of wine and beer sold in Texas during such period for which the state excise tax upon such wine and beer is due, and shall attach thereto payment of the full amount due.~~

**September 22, 2015 Commission Meeting**  
**Agenda Item 15: Approve Publication of Proposed Repeal of Rule §41.47, Airline Beverage Permits**

The Texas Alcoholic Beverage Commission proposes the repeal of §41.47, relating to Airline Beverage Permits.

Section 41.47 currently requires the holder of an airline beverage permit to file excise tax reports on alcoholic beverages served in Texas, and pay the tax due, each month. House Bill No. 1905, 84<sup>th</sup> Regular Session of the Texas Legislature amended Alcoholic Beverage Code §34.04 to remove the obligation to pay such excise taxes. The proposed repeal of §41.47 is necessary to conform the rule to the Code.

Martin Wilson, Assistant General Counsel, has determined that for each year of the first five years that the proposed repeal will be in effect, there will be no fiscal impact on state or local government attributable to the repeal. Any fiscal impact from the loss of excise taxes is attributable to the legislative amendment of Alcoholic Beverage Code §34.04.

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

Mr. Wilson has determined that for each year of the first five years that the proposed repeal will be in effect, the public will benefit because the commission's rules will conform with the Alcoholic Beverage Code.

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

The staff of the commission will hold a public hearing to receive oral comments on the proposed repeal on Thursday, October 22, 2015 at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

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

The proposed repeal affects Alcoholic Beverage Code §5.31 and §34.04.

**§41.47 Airline Beverage Permits.**

~~—(a) Monthly Report of Individual Services and Excise Tax Due.~~

~~—(1) Each holder of an airline beverage permit shall make a monthly report (Monthly Report of Individual Services and Excise Tax Due) to the commission on forms prescribed by the administrator.~~

~~—(2) Said report shall be made and filed by said permittee with the commission at its offices at Austin, Texas, on or before the 15th day of the month following the calendar month for which the report is made. The total payment due for the month shall accompany each report and payment shall be made in the form of a cashier's check, certified check, or postal money orders made payable to the State Treasurer of Texas. The report shall show the following:~~

~~—(A) The month for which the report is made, the permittee's name and address, and the permit number.~~

~~—(B) Total of daily individual services, monthly total of services and service fee due for month.~~

~~—(C) Total number of distilled spirits miniatures served daily and monthly totals of these services which are subject to excise taxes.~~

~~—(D) Daily totals of wine gallons on which excise tax is due for all classifications of alcoholic beverages (excepting distilled spirits miniatures) and monthly totals of these gallons which are subject to excise taxes.~~

~~—(E) The resulting excise tax due for month computed on subparagraphs (C) and (D) of this paragraph.~~

~~—(F) The total payment due for month.~~

~~—(b) Refunds. The holder of an airline beverage permit may apply to the commission for a refund of the excise tax on any liquor on which the state tax has been paid upon proper proof that the liquor was sold or disposed of outside the boundaries of the State of Texas. The claim shall contain the following:~~

~~—(1) Two affidavits (duplicate originals) containing the following information for purchases from suppliers within this state:~~

~~—(A) Total number of containers purchased during the month by seller, type of beverage and size of container.~~

~~—(B) Total gallonage of all such purchases.~~

~~—(C) Total excise taxes upon all such purchases.~~

~~—(D) A statement outlining that all such purchases will be shipped out of Texas unless sold or served by the permittee in Texas and that if such purchases are sold or served in Texas the applicable Texas excise taxes will be reported and paid on or before the 15th day of the next succeeding month.~~

~~—(2) Submit with each claim a single copy of the seller's invoice covering any alcoholic beverages described in the affidavits.~~

~~—(3) Any claim to be considered by the commission must be filed by the airline beverage permittee not later than 120 days after the date of the earliest purchase date on the claim.~~

~~—(4) Each claim submitted must include only purchases for one calendar month.~~

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

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

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

## September 22, 2015 Commission Meeting

### Agenda Item 16: Adopt Amendments to Rule §37.61, Suspensions

The Texas Alcoholic Beverage Commission adopts without change the amendments to §37.61, relating to Suspensions, proposed in the August 14, 2015 issue of the *Texas Register* (40 TexReg 5133).

The amendments add a new subsection (a) referencing Alcoholic Beverage Code §11.64(a), which is the Code provision that is implemented by the rule, and renumber subsequent subsections appropriately.

New subsection (b) includes all of the violations for which Alcoholic Beverage Code §11.64(a) allows the administrator to exercise discretion in deciding whether to allow a civil penalty as the sanction in lieu of suspension. New subsection (b) includes solicitation of drinks in paragraph (13), in accordance with House Bill 3982 from the 2015 legislative session.

New subsection (c) clarifies that the administrator has discretion to allow a civil penalty in lieu of suspension for the violations listed in subsection (b) after considering certain circumstances, but is not required to allow a civil penalty. New subsection (d) lists specific circumstances that the administrator must consider in determining whether to allow a civil penalty for these violations, while new subsection (e) provides a non-exclusive list of some additional circumstances the administrator may consider.

Section 37.61 was reviewed under Government Code §2001.039, which requires each state agency to periodically review and consider for re-adoption each of its rules. The commission has determined that the need for the section continues to exist but that it should be amended.

No comments were received.

The amendments are adopted pursuant to 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 each state agency to periodically review and consider for re-adoption each of its rules.

#### **§37.61 Suspensions. [showing amendments adopted]**

(a) This section implements Alcoholic Beverage Code §11.64(a), which requires the commission to adopt rules addressing when a suspension may be imposed without the opportunity to pay a civil penalty.

(b) ~~(a)~~ The administrator may deny a licensee or permittee the option of paying a civil fine in lieu of a suspension of the license or permit if the licensee or permittee has violated one or more of the following provisions of the Alcoholic Beverage Code:

- (1) §11.61(b)(14): sale to an intoxicated person by a permittee;
- (2) §22.12: breach of the peace on the premises of a package store;
- (3) §28.11: breach of the peace on the premises of a mixed beverage permittee;
- (4) §32.17(a)(2): refuse to allow an authorized agent or representative to come onto the premises;
- (5) §32.17(a)(3): refuse to furnish requested information to the commission or its agents or representatives;
- (6) §32.17(a)(7): consumption or service of alcohol on the premises during prohibited hours;
- (7) ~~(4)~~ §61.71(a)(5): sale to a minor by a licensee;
- (8) ~~(5)~~ §61.71(a)(6): sale to an intoxicated person by a licensee;
- (9) ~~(6)~~ §61.74(a)(14): sale to a minor by a licensee;
- (10) ~~(7)~~ §69.13: breach of the peace on the premises of an on-premise retail beer dealer;
- (11) ~~(8)~~ §71.09: breach of the peace on the premises of an off-premise retail beer dealer;
- (12) §101.04: refuse to allow inspection;
- (13) §104.01(a)(4): solicitation of drinks;
- (14) ~~(9)~~ §101.63: sale to an intoxicated person;
- (15) ~~(10)~~ §106.03: sale to a minor;
- (16) ~~(11)~~ §106.06: purchase of alcohol for a minor;
- (17) §106.15: engage in prohibited activity related to dancing by a person under 18;
- (18) Chapter 105: sale or offer of sale of an alcoholic beverage during prohibited hours, or consumption or permitting consumption of an alcoholic beverage during prohibited hours; or
- (19) ~~(12)~~ or any offense relating to gambling, or prostitution or trafficking of persons.

(c) ~~(b)~~ For the violations referenced in subsection (b), and after considering the circumstances required or allowed to be considered in this section, the administrator has discretion to determine ~~In determining~~ whether to allow deny a licensee or permittee the right to pay a civil penalty in lieu of a suspension but is not required to allow such payment in lieu of suspension.

(e) ~~Aggravating or ameliorating circumstances may include but are not limited to:~~

- ~~(1) whether the violation was caused by intentional or reckless conduct by the licensee or permittee;~~
- ~~(2) the number, kind and frequency of violations of the Alcoholic Beverage Code and rules of the commission committed by the licensee or permittee;~~
- ~~(3) whether the violation caused the serious bodily injury or death of another; and/or~~
- ~~(4) whether the character and nature of the licensee's or permittee's operation are reasonably calculated to avoid violations of the Alcoholic Beverage Code and rules of the commission.~~

(d) In determining whether to allow a licensee or permittee the right to pay a civil penalty in lieu of a suspension, the administrator shall consider any aggravating or mitigating factual circumstances related to the violation, including but not limited to:

- (1) the type of permit or license held by the violating licensee or permittee and whether the sale of alcoholic beverages constitutes the primary or partial source of the licensee or permittee's business;

- (2) the type of violation or violations charged;
- (3) the licensee's or permittee's record of past violations, including the number, type and frequency of violations of the Alcoholic Beverage Code and of the rules of the commission; and
- (4) the date the permit or license was issued ~~any aggravating or ameliorating circumstances.~~

(e) In addition to the circumstances listed in subsection (d) that must be considered in determining whether to allow a licensee or permittee the right to pay a civil penalty in lieu of a suspension, the administrator may also consider other circumstances, including but not limited to:

- (1) whether the sale of alcoholic beverages constitutes the primary or partial source of the licensee or permittee's business;
- (2) whether the violation was caused by intentional or reckless conduct by the licensee or permittee;
- (3) whether the violation caused the serious bodily injury or death of another;
- (4) whether the character and nature of the licensee's or permittee's operation were reasonably calculated to avoid violations of the Alcoholic Beverage Code and rules of the commission at the time of violation; and/or
- (5) whether the licensee or permittee has taken action to remediate the violation and to prevent future violations.

# **CERTIFICATION**

## **REGULAR COMMISSION MEETING**

**10:00 a.m. – September 22, 2015**

Shoal Crossing Event Center  
8611 North Mopac Expressway, Austin, Texas



# TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

*service ★ courtesy ★ integrity ★ accountability*

STATE OF TEXAS

COUNTY OF TRAVIS

This certifies that the attached is a true copy of the proceedings of the Texas Alcoholic Beverage Commission meeting held on September 22, 2015.

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

---

Sherry Cook  
Executive Director

Sworn and subscribed before me this the 18th day of November 2015.



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

---

Gloria Darden Reed  
Notary in and for Travis County