



Texas Alcoholic Beverage Commission



Self-Evaluation Report
submitted to the
Sunset Advisory Commission

September 2017

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I. Agency Contact Information

A. Please fill in the following chart.

Exhibit 1: Agency Contacts

	Name	Address	Telephone & Fax Numbers	Email Address
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II. Key Functions and Performance

A. Provide an overview of your agency's mission, objectives, and key functions.

The Three Tier System

In order to fully understand TABC's mission and role within the alcoholic beverage industry, an explanation of the industry's legal framework is needed.

Texas, like many states, regulates the alcoholic beverage industry under a three tier system. This system, passed by the Texas Legislature in 1935 following the repeal of Prohibition, separates the players within the industry based on their roles as manufacturers, distributors, and retailers. These three roles are grouped into "tiers" and are legally mandated to operate completely separate from one another.

Exhibit 2: Three Tier System

Tier	Role	Number of Texas Permits*
Upper	Manufacturers/Producers	824
Middle	Distributors/Wholesalers	314
Lower	Retailers (On/Off-Premise)	51,229

**As of 1 August 2017*

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The separation between the three tiers means that no one may hold a financial interest in more than one tier. For example, an employee of a distillery (which manufactures distilled spirits) may not hold a second job as a liquor store clerk (a retailer). Similarly, a person who holds a TABC license to manufacture beer may not hold a financial interest, including stock ownership, in a distribution company.

The mandated separation between the tiers was put in place by the Legislature to ensure that no single entity is able to vertically integrate itself into the alcoholic beverage industry. For example, a company which owns both a brewery and a distribution company could arrange to distribute only its own malt beverage products to retailers, denying those retailers the opportunity to purchase other companies' products through that distributor. Another example could involve a large-scale manufacturer owning several retail stores, using volume and pricing schemes for its own products to ensure non-affiliated retailers are unable to compete.

A large part of TABC's regulatory effort is spent ensuring that entities which apply for a license or permit to manufacture, distribute, or sell alcohol are not in violation of the three tier system. This includes a careful examination of business records, stock holdings, personal relationships, and more throughout the application process.

The three tier system has been the cornerstone of Texas' alcohol regulation since 1935. The agency's role in upholding this cornerstone is explained in greater detail throughout this Self-Evaluation Report.

Note

Hereafter, the Alcoholic Beverage Code shall be referred to as the "Code" and the Texas Administrative Code, Title 16, Part 3 shall be referred to as "Rules" while "license" and "permit" refer to any TABC-issued license or permit to manufacture, distribute or sell alcoholic beverages.

TABC Mission and Objectives

The agency's **mission**, as recommended by the Sunset Advisory Commission in 2007 and enacted by SB 904 (80th Legislature) in Section 5.31(b), Alcoholic Beverage Code, is the commission shall:

- (1) protect the public safety by deterring and detecting violations of this code;
- (2) promote legal and responsible alcohol consumption;
- (3) ensure fair competition within the alcoholic beverage industry;
- (4) ensure consistent, predictable, and timely enforcement of this code;
- (5) ensure a consistent, predictable, and timely licensing and permitting process;
- (6) promote and foster voluntary compliance with this code; and
- (7) communicate the requirements of this code clearly and consistently.

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TABC's **mission statement** was constructed by commissioners, employees and stakeholders after SB 904 was enacted: The agency's mission is to serve the people of Texas, and protect the public health and safety, through consistent, fair and timely administration of the Alcoholic Beverage Code.

TABC's **objectives** are to be

- Accountable to the communities it protects, the alcoholic beverage industry it regulates, and the government it serves
- Effective in putting people in business, encouraging compliant behavior, and detecting violations
- Fair and consistent in the application of all state laws
- Resourceful by using technology and analyzing processes to gain efficiencies and provide outstanding customer service
- Transparent to ensure and promote trust of constituencies and agency employees

TABC has many **functions** which support five core constituencies: the public, industry, other governmental entities, TABC employees, and law enforcement.

B. Do your key functions continue to serve a clear and ongoing objective? Explain why each of these functions is still needed. What harm would come from no longer performing these functions?

Public

Public 1 - Helps keep Texas communities safe by investigating public safety violations of the Alcoholic Beverage Code and pursuing criminal and administrative cases against violators

TABC's public safety mission is among its top priorities. Through its law enforcement activities, the agency is able to investigate reports of illegal activity. Violations include single incidents such as sales of alcohol to minors and intoxicated persons as well as deeper, ongoing criminal activity such as human trafficking, narcotics trafficking, or money laundering. Violations also include prohibited relationships between tiers resulting in price fixing and other schemes that can ultimately drive down prices and encourage over-consumption.

By granting TABC investigative and enforcement authority, the Legislature has made it known that public safety is a top-of-mind concern for all who are involved in regulating the alcoholic beverage industry. The agency's ongoing enforcement efforts make it clear that industry members are expected to put public safety and adherence to the law first, and that violators will be dealt with appropriately to encourage compliance. The agency is also given considerable leeway in order to ensure one-time or minor-scale offenders are able to resume business operations once they are brought back into compliance. This helps to ensure fair and consistent treatment and promote public safety while allowing law-abiding businesses to operate with minimal government intervention.

Without this function, bad actors within the alcoholic beverage industry would be free to place their business concerns above all else, leading to more situations where alcohol falls into the hands of those incapable of making responsible decisions on its use. This would, in turn, lead to an increase in the number of preventable alcohol-related tragedies such as loss of life or serious bodily injury as well as social ills, such as alcoholism. TABC relies on industry members to serve as the first line of defense on these concerns; the agency's enforcement authority allows its employees to effectively and efficiently hold industry members accountable according to the will of the people.

Public 2 - Protects public health by preventing illegal importations and disallowing illicit and dangerous beverages

As laid out in the Alcoholic Beverage Code, Texas has a right to protect the businesses which operate in this state as well as the residents who live here. By enforcing the statutory limits of personal importations of alcoholic beverages at ports of entry along the Texas-Mexico border, the agency limits the potential for unauthorized or illegally produced beverages to enter the retail market and helps to ensure the integrity of the three tier system.

Without this function, licensed businesses would face unfair competition by unscrupulous importers who bring beverages into the state without submitting them through the required approval processes. This would have the additional impact of denying the state tax funding on alcohol imports as laid out by statute.

Additionally, the agency works to stem the flow of hazardous beverages from entering the state, protecting the public from untested products. TABC's tax compliance officers are trained to identify suspicious-looking bottles of liquor carried into the country by travelers and are empowered to seize any bottles found to contain substances which could endanger the public health. Without this authority, TABC would be unable to interdict such substances before they enter the country, which could result in health risks to any person who knowingly or unknowingly consumes the substance.

Public 3 – Educates citizens and community, educational and temperance organizations to promote legal and responsible consumption of alcoholic beverages

Alcohol is a drug, and like any drug it has the potential to contribute to loss of life if misused. As such, TABC employs substantial programs designed to educate those in the industry and the public at large about the dangers of irresponsible service and consumption of alcohol. The agency works to educate retailers on ways to prevent the sale of alcohol to minors and intoxicated persons. Through on-the-spot or pre-arranged training classes, TABC staff meet face-to-face with retail employees and managers who serve as the first line of defense against public safety dangers such as intoxicated driving or assault.

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The agency also develops materials and curricula for public-facing awareness campaigns on the dangers of alcohol abuse. These materials target both legal-aged consumers and minor-aged students. The agency also provides professionally produced videos on a variety of topics ranging from alcohol abuse awareness to law enforcement training.

Another key effort is the Seller Server Training Program, which is a voluntary certification available to anyone who sells, serves, prepares, or otherwise handles alcohol. The training, which is provided by approved third-party vendors, provides best practices for employees to avoid situations such as sale of alcohol to minors. Businesses which require their employees to obtain certification are, in some cases, protected from legal action in the event an employee violates the Code.

Were these programs to be discontinued, the effect would be two-fold. First, businesses which do not require training for employees who sell or serve alcohol would likely suffer the adverse consequences of an increase in public safety violations. These consequences include both fines and the temporary suspension or cancellation of the alcoholic beverage license. Second, members of the public could themselves fall victim to an increase in public safety-related violations of the Code.

Unlike most commodities, alcohol holds real danger to anyone who misuses or abuses it. For that reason, TABC takes its role as an educator and preventer of public safety dangers seriously.

Public 4 – Ensures fair and impartial investigations in response to complaints of alleged employee misconduct

TABC's employees directly serve the people and business owners of Texas. As such, the agency places high standards of conduct and professionalism upon all its employees. However, when employee misconduct occurs, the agency has mechanisms in place to ensure appropriate measures are employed to correct the situation.

The Office of Professional Responsibility (OPR) is charged with investigating complaints regarding an employee's conduct in violation of TABC policy. OPR performs an internal affairs function by conducting a thorough, fair, and objective investigation of allegations of employee misconduct in order to protect the public, the employee, and the agency. Any departure from the internal affairs function will have a negative impact on this agency and to the citizens of Texas by failing to hold its employees accountable when accused of misconduct and protecting the innocent from unsubstantiated condemnations.

License Holders (Alcoholic Beverage Industry)

Industry 1 - Receives, reviews, and issues or denies applications for original, renewal, supplementary, and temporary licenses

TABC is responsible for accepting, reviewing, investigating, and issuing more than 70 types of alcoholic beverage licenses. Throughout this process, multiple agency divisions work in concert to review and investigate all applications for factors such as criminal history, business

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relationships within the alcoholic beverage industry, and previous business history. Through this, the agency is able to detect various 'tied house' relationships prohibited under Texas' three tier system.

As Texas' only alcohol regulatory authority, TABC plays a critical role in ensuring only those persons who are legally allowed to participate in the alcoholic beverage industry may do so. Were this function removed, it would be easier for actors with a previous criminal history – such as a conviction for money laundering or subterfuge – to go into business. TABC's review process is consumer-focused and prevents anyone who may endanger public safety from obtaining an alcoholic beverage license. Businesses may also apply for a renewal of their permit entirely online. As of Dec. 31, 2017, TABC hopes to accept the majority of renewal applications online. This is intended to increase ease-of-use for industry members while decreasing wait times.

Industry 2 – Negotiates settlement agreements, issues warnings, levies civil penalties, and suspends and/or cancels licenses and permits as a result of administrative violations and in accordance with due process

As outlined in the Code, TABC is empowered to pursue legal solutions to cases where administrative violations have occurred on a licensed premise. When violations occur, an establishment's license may be suspended or cancelled. Alternatively, the business can pay a civil penalty allowing them to remain in business. The agency's Legal Division takes the lead on prosecution of these administrative cases which includes negotiations of settlements and agency representation at hearings.

This function is still needed because TABC's mission is to protect the public's health, safety and welfare as well as ensure a fair and stable marketplace. This core function ensures enforcement of the provisions of the Code and Rules which furthers compliance and is part of the due process mechanism provided to license holders.

If the agency were no longer able to prosecute violations of the Code or TABC Rules, violations would likely increase and jeopardize the health and safety of the public.

Industry 3 - Approves labels for all alcoholic beverages sold in Texas

Under the Alcoholic Beverage Code, TABC is charged with approving labels for all alcoholic beverages sold in Texas. The label approval function establishes state standards for alcoholic beverages sold in Texas, reviewing products for quality, purity, and identity in order to protect public health. The label approval process also acts as deterrent to product counterfeiting and provides consumer protections with regard to product and labeling standards.

Industry 4 - Assesses and collects fees, surcharges and taxes

As the state's alcohol regulator, TABC is charged with collecting all fees related to the application process, as well as excise taxes paid by the upper tiers of the alcoholic beverage industry.

Through the Licensing Division TABC manages the collection of fees and surcharges for licenses. Most fees are set by statute and surcharges are set by Rule. With more than 70 different license types and more than 82,000 licenses issued in FY2016, more than \$72,453,630 was generated in revenue.

The agency's Excise Tax and Marketing Practices Division collects the state's excise taxes for alcoholic beverages, which totaled more than \$225 million in FY2016. In addition to providing a revenue source for the state, excise taxes also help to reduce alcohol consumption, especially among minors. Studies indicate that minors and young adults consume less when alcohol costs more. Any change in the excise tax, which is included with the price of a drink, would have a major impact. Lower excise taxes are associated with an increase in consumption for both minors and adults, whereas higher taxes correlate to fewer motor vehicle crashes and fatalities and fewer deaths from cirrhosis of the liver.

Other Governmental Entities (State and Local Government)

Gov 1 - Implements the Legislature's public policy decisions regarding alcoholic beverages as expressed in the Alcoholic Beverage Code

TABC serves the will of the people of Texas through the laws put in place by their elected representatives. The Texas Alcoholic Beverage Code is the agency's foundational document and provides the instructions, authority, and insight used by the agency in its day-to-day work. The policies enacted through the Code are the agency's prime directives. Without this guidance, TABC would be unable to function as both a law enforcement agency and as the regulator of the state's alcoholic beverage industry.

Gov 2 - Publishes and adopts administrative rules to assist the agency in implementing the Alcoholic Beverage Code

The Alcoholic Beverage Code grants the commission rulemaking authority to clarify provisions of the Code and provide specific instructions on how to abide by the Code's requirements.

TABC's rulemaking process exists to enable members of the public and the alcoholic beverage industry to provide feedback on Rules which concern them.

These Rules essentially give the agency the authority it needs to enforce the Code. Without the Rules, the agency would be unable to adequately interpret certain Code provisions and would likely encounter a greater number of legal challenges to the law itself.

Gov 3 - Acts responsibly in allocating and spending funds authorized and appropriated by the Legislature

TABC works to be a good steward of state funds. The agency's Business Services Division (BSD) is responsible for the allocation and tracking of all state funding as required by statute or oversight agency. Reports such as those required by the State Auditor's Office, the Legislative Budget Board, and the Comptroller of Public Accounts are completed by the division's employees and show where each dollar is spent. Additionally, the three-member commission employs an independent auditor to examine and report on ways agency resources could be used more efficiently. Each of these reports is made available to the public.

TABC Employees

Employees 1 – Recruits, develops, and retains valued staff to ensure a high level of engagement and commitment to the agency's vision

Employing the best people ensures a high level of customer service and public safety enforcement. TABC's Human Resources Division, working with division directors, crafts job descriptions and filters applications to ensure the best candidates are named to the various job openings within the agency. Once those employees are hired, the agency works with the employees and their leaders to ensure each has the resources they need to grow into an effective advocate for Texas taxpayers. The agency's dual roles as a regulator and a law enforcement agency require a steady commitment from its employees. This function enables TABC to build the highly motivated, qualified, and service-oriented workforce necessary to meet the challenges of government service.

Employees 2 - Empowers employees with ongoing training opportunities to respond effectively to challenges of a constantly evolving industry

Since its establishment in 1935, TABC has built a comprehensive training program to ensure its employees have the knowledge and resources needed for the day-to-day work of managing a complex and evolving industry. The continuing education and training provided outlines the parameters of the agency's expectations regarding professionalism, customer service, and public safety. Constituents deserve and expect fair, consistent, and timely application of the Alcoholic Beverage Code, exemplifying courteous, professional, and ethical behavior.

The Training Division, in consultation with other divisions, develops and promotes contemporary training opportunities relevant to job functions, especially focusing on the Alcoholic Beverage Code. The objective of all developed and implemented training programs is to assist employees in performing their duties to better serve Texas. Training provided to commissioned peace officers (CPOs) is in compliance with the Texas Commission on Law Enforcement training standards with an extensive focus on enforcement and the application of the Alcoholic Beverage Code. The absence of contemporary ongoing training and education would diminish the quality of work, the level of customer service, and the development of employees.

Employees 3 - Provides clear and consistent communication, vision, guidance, expectations and policies

TABC's leadership, both at the state and regional level, understands the importance of a cohesive voice when it comes to mission, vision, and expectations. The agency's leaders meet collectively to craft the agency's goals and Strategic Plan, which are both informed by communication with agency employees across the spectrum of responsibility.

All leaders, from the Executive Director to a single team lead, subscribe to an open-door policy. Feedback from subordinates is important, and it serves as the foundation for many employee-centered initiatives throughout the agency.

At the core of the agency's vision, however, is customer service. Regardless of whether the customer is a member of the industry, a legislator, a local law enforcement official, or a member of the public, TABC's leaders communicate a strong desire to serve the public good. Without this function, the agency's employees and regional leaders would not have a singular agency-wide vision to fall back on, leading to disparate goals and expectations across the state.

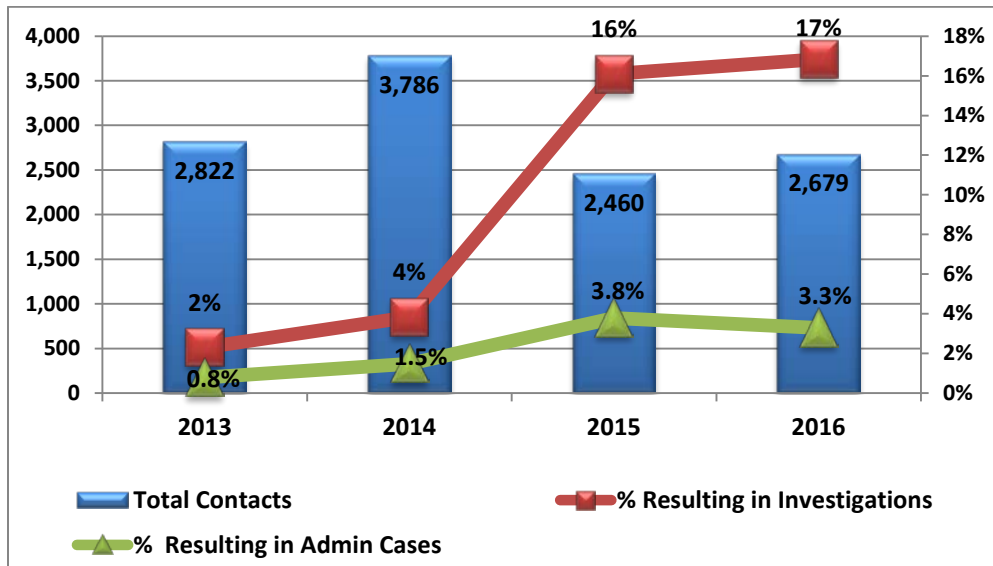
Law Enforcement

Law 1 - Works with local law enforcement agencies to identify and address at-risk locations in their communities

Keeping communities safe is paramount to TABC. TABC CPOs use a risk-based system to determine which licensed locations should be proactively or reactively worked due to a complaint or incident. The great majority of license holders uphold the law, do not pose a threat, and require minimal interaction with TABC CPOs. For others, Enforcement Division personnel continuously monitor the elements that must be met in order for a location to be considered an "At-Risk" location within a community/in the state as a whole. Over the years, the agency has adjusted the elements of what makes a location at-risk, and what level of risk they are considered to be based on a myriad of factors such as the type and quantity of public safety violations.

Working with local law enforcement agencies is a necessary component to identify at-risk locations. First responders may know of a problem location within their area or witness illicit behavior that is not otherwise reported to the TABC. CPOs conduct investigations based on information received from these contacts and Exhibit 3 shows many of these investigations result in administrative cases. Other law enforcement agencies' unique knowledge of their communities coupled with TABC CPOs' knowledge of the community and the Alcoholic Beverage Code allows for violations or potential violations to be identified and handled sooner than they likely would have been. The handling of issues in a timely and thorough manner through these contacts has a positive impact on public safety.

Exhibit 3: Government Partner Contacts, FY2013-FYTD2017 (as of 30 June)



These contacts are also necessary for the TABC’s CPOs to assist local law enforcement with administration of the Code. TABC’s education of other law enforcement agencies helps more Texas entities stay in business and operate in compliance with applicable laws.

In addition to discussing proactive steps to mitigate problem areas, CPOs work with other law enforcement agencies to conduct operations such as Operation Fake Outs and Cops In Shops. These operations have allowed TABC CPOs to gather fake identification cards and pass case information on to other Law Enforcement agencies that follow through on working to identify the person(s) making the fake IDs. These type of operations tie directly into public safety and locations can be identified through contacts TABC CPOs have with other law enforcement personnel (especially for locations selling without a permit and BYOB-type locations) or are even conducted at the request of a business owner.

If TABC and local law enforcement agencies do not work together to identify and address at-risk locations within their communities, both agencies could be working toward the same goal separately, which would be a waste of manpower, time and money. Should local law enforcement agencies no longer have the assistance of TABC Enforcement, their ability to address serious public safety issues involving TABC-licensed businesses would be severely hampered. Calls for service to licensed locations would likely increase due to decreased monitoring, and alcohol-related violations occurring in or emanating from those licensed premises would seldom be detected and addressed.

Law 2 - Trains local law enforcement agencies on the Alcoholic Beverage Code and TABC operations protocols

This key function continues to serve a clear and ongoing objective. It is imperative that the agency train other law enforcement agencies on the Alcoholic Beverage Code and TABC

operations protocols. This education is not only an opportunity to establish and build great working relationships, but it provides the platform for Enforcement to inform others what to look for as it pertains to laws specific to the Alcoholic Beverage Code and to convey TABC's operations protocols so they understand not only how they can assist the agency through reporting, but how TABC can assist theirs.

There are many rules and regulations specific to alcohol regulation in licensed locations. It is not likely most local and state law enforcement officers intimately know the laws that govern the alcoholic beverage industry. TABC CPOs actively provide an overview of what the agency does so other law enforcement agencies can understand how the TABC can assist them on investigations on everything from nuisance calls to source investigations and how they can assist TABC by reporting things such as breaches of peace and sources.

It is not enough for a law enforcement agency to have a copy of the Alcoholic Beverage Code and read it – it is imperative they have the direct contact with a subject-matter expert that can communicate what TABC does and the operational processes that are in place. Enforcement division has CPOs assigned to specific service areas and these CPOs are responsible for providing training to local law enforcement personnel within their service area. This allows local law enforcement to have a consistent point of contact for enforcement related matters and enriches working relationships between other law enforcement agencies and TABC.

Law 3 - Partners with law enforcement agencies at all levels of government on long term investigations involving organized criminal activities

This key function continues to serve a clear and ongoing objective. It is necessary for TABC to partner with other law enforcement agencies at all levels on long-term investigations involving organized criminal activities. These types of investigations are manpower-and resource-intensive but the outcomes greatly support the agency's focus on public safety.

In response to the most recent Sunset recommendations regarding the agency's mission to reflect more of a role in protecting the public and regulating the modern alcoholic beverage industry, TABC's Enforcement Division shifted focus to public safety violations. TABC quickly realized that the Enforcement Division did not have the manpower to work long-term investigations involving organized criminal activities while working the other public safety offenses. The agency made two major changes to operations: assigning non-public safety cases to auditors and creating a new unit to handle resource-intensive cases. The Special Investigations Unit (SIU) was created to handle long-term investigations--primarily in a joint effort with law enforcement agencies at all levels--involving organized criminal activities.

C. What evidence can your agency provide to show your overall effectiveness and efficiency in meeting your objectives?

Objective 1: Accountable to the communities it protects, the alcoholic beverage industry it regulates and the government it serves

Like any government agency, TABC answers first and foremost to the people it serves. The primary means for the agency to hold itself accountable is through its Office of Professional Responsibility (OPR) which investigates both internal and external complaints against agency employees.

Objective 2: Effective in putting people in business, encouraging compliant behavior and penalizing offenders

TABC regulates the alcoholic beverage industry, issuing licenses to businesses across all tiers of the industry and ensuring members are in compliance with the relevant state laws.

The agency's licensing function is the primary means by which businesses gain entry into the alcoholic beverage industry; each player in the manufacturing, distribution or retail tiers, regardless of location, must first obtain a state-issued permit before an alcohol product may be produced, shipped or sold within Texas. With the growth of Texas' population and economy has come the rapid growth of the alcoholic beverage industry. During FY2016, TABC's Licensing Division processed more than 97,000 individual applications (both original applications and renewals), issuing a total of 82,386 licenses.

The division consistently meets performance measures for issuing original applications. Licensing is able to handle the steady growth of applications and expectations by engaging the industry to understand how the licensing process could be improved. As a result the division modified the forms required of applicants, eliminating confusion and duplication of effort by applicants and reducing errors and incomplete forms for Licensing FTEs processing the applications.

After initiating a massive effort to scan all licensing-related forms, organizational changes were made within Licensing to allow FTEs to process applications regardless of location, thus allowing supervisors to shift resources when necessary to reach maximum productivity. The most recent major initiative is for all renewal applications to be processed online by end of 2017. Both the industry and agency welcome this opportunity in terms of ease of use, immediate notification of receipt, and a more expedient issuance of the license.

Licensing has maintained a high customer satisfaction rate (94.9% in FY2016) as recorded by survey distributed to each applicant. This shows TABC is able to efficiently and effectively put eligible people into business, thus allowing them to enrich themselves and the Texas economy.

TABC is also charged with ensuring industry players meet both their legal and public safety obligations throughout the life of the business.

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A large part of the agency's law enforcement function relates to encouraging compliant behavior among license holders. Conventional wisdom dictates that preventing violations of the law is the surest way to both uphold public safety and reduce loss of business revenue through enforced license suspensions or the payment of fines.

The agency's education function works to encourage compliance with the Alcoholic Beverage Code, particularly among members of the retail tier. The Audit and Investigations Division is responsible for providing retailer education, which includes face-to-face and remote training for license holders and their employees. This training includes familiarization with the various provisions of the Alcoholic Beverage Code, along with best practices, which help to avoid public safety-related violations. Oftentimes these training sessions are an opportunity for license holders and employees to ask auditors questions about business practices, particular scenarios, and various laws.

During FY2016, TABC auditors provided education for 62,454 individuals, which amounts to 112 percent of the projected goal. The average cost-per-person for the training was \$5.67, which was just 52.24 percent of the goal of \$10.85.

TABC also oversees the Seller Server Training Program, which provides voluntary certification of schools that provide retailers and their employees who sell or serve alcohol. In addition to giving guidance on ways to avoid public safety concerns such as sales of alcohol to minors or intoxicated persons, certification provides some legal protection for businesses whose employees violate the law.

During FY2016, TABC oversaw the issuance of 386,038 seller server certifications, an increase of more than 17,000 from the previous year's and more than double the amount issued in FY2005.

The marketing practices program oversees regulation of the provisions of the Alcoholic Beverage Code and Rules pertaining to the marketing and commerce of alcoholic beverage products and the intra-industry relationships between manufacturers, wholesalers and retailers. The program encourages voluntary compliance through training for industry members to maintain balanced competition and fair trade practices throughout the state. Training sessions can be large, one-time events (2017 Super Bowl) or local, recurring events such as South by Southwest, rodeos and large festivals.

The agency is also charged with collecting and investigating any complaints against TABC-licensed businesses submitted by citizens, law enforcement, industry members or others. These complaints are collected in a number of ways; the preferred method is TABC:Mobile, the agency's smartphone application. The app allows users to submit complaints directly to the agency using their smartphone, with additional functionality to assist in locating a business and viewing its prior history of violations. Complaints may also be submitted by phone, in writing, by email, or in person at a TABC office.

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Once the complaint is received, it is triaged by an Enforcement staff member, who then directs it to the appropriate office based on the geographic location and business type for the business in question. From there, the complaint is investigated using a variety of methods such as open inspection, undercover operation, a business audit, and more. Complaints are placed in order of priority based upon a risk-based analysis including nature of the alleged violation, prior history of the business named in the complaint, and other factors.

For the very few businesses where a violation has occurred, TABC is charged with assessing penalties or suspensions as necessary to bring that business back into compliance. Both the Audit Unit and Enforcement Division undertake this function. The agency's Enforcement agents provide a day-to-day presence within licensed locations across the state, conducting open and undercover inspections and investigating public safety concerns such as breaches of the peace. Meanwhile, TABC's auditors conduct regular activities on licensed premises, including financial audits and physical assessment of location. CPOs and auditors, while engaging the business in different ways to monitor for complaint behavior, both focus the majority of effort on businesses that pose the greatest risk for a violation. Although important to have a presence in all locations, continued analysis gives guidance on the locations to be visited most often by Enforcement or Audit, depending on the concerns and prior activities of the business.

Most TABC penalties are incurred as part of an administrative case, which are filed under the auspices of the Alcoholic Beverage Code. Both Enforcement and Audit employees file these cases, though most Enforcement cases are directly linked to public safety. These penalties are listed in the agency's Standard Penalty Chart, which provides a basis for the various fines and suspensions related to violations of the Code.

Objective 3: Fair and consistent in the application of all state laws

The provisions of the Texas Alcoholic Beverage Code and the TABC Rules have a direct, day-to-day impact on tens of thousands of businesses across Texas and the world. Ensuring these provisions are enforced fairly and consistently is a primary objective for the agency.

Agency employees are trained on new laws after each legislative session and on Rules adopted by the commission that affect their division. Similarly, regional supervisors and division directors, particularly those from Licensing, Audit, and Excise Tax and Marketing Practices, discuss activities of license holders and entities associated with license holders. This collaboration may lead to changes in policy, practice, or reporting. For significant changes, the industry should be consulted in order to understand the need for the change.

The Licensing Division investigates and processes applications for all phases of the alcoholic beverage industry, including the manufacture, sale, purchase, transportation, storage, and distribution of alcoholic beverages. The division must confirm each applicant qualifies to hold such license and meets all applicable regulatory requirements. Applicants need assurance that their application will receive the same level of review and attention as other similar applications.

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Policies, such as the protest of a licensing application, are well defined with timelines, decision-makers involved, and processes to be followed. Internal policies and processes are monitored to ensure that employees are adhering to the process standards which include timely documentation of receipt of the application, greeting letter sent to applicants, review and processing of application, communication to applicant, and issuance of the license within the performance measure target.

As a result of recommendations from the previous Sunset review process, the agency has a schedule of sanctions and penalties for health safety, and welfare violations and for major regulatory violations. Both can be found in Rules Section 34.2 and 34.3, respectively. These schedules offer a range of days for a suspension and a set fine amount for the first, second, and third violation of each offense listed. This lets license holders know what the potential impact could be on their business if they violate the law. It also guides the agency in assessing penalties to minimize arbitrary and inconsistent penalties. By applying these penalties to all applicable license holders, TABC is fair and consistent.

With more than 50,000 locations in Texas and only an approximate 169 CPOs and 46 auditors to inspect each, the agency adopted a risk-based approach to enforcement to best utilize limited resources. A licensed location may be deemed a *priority* licensed location if certain criteria are met. Those businesses with a higher risk of public safety violations are the focus of attention; therefore, those not on the priority list are visited much less often. This allows Enforcement to focus on those licensed locations where public safety violations are most likely to occur.

Meanwhile, the agency's Audit Unit is charged with inspecting TABC-licensed business in the state on a regular basis. Inspections are TABC's primary regulatory compliance function and involve the physical presence of an auditor in a licensed location. Auditors conduct routine and compliant-driven inspections of licensed businesses and inspect new locations based on license applications. During FY2016, more than 24,000 such inspections were conducted, with 1,699 of those inspections resulting in audits of the business. An audit is a systematic, in-depth review of a license holder's records and/or operations that may involve excise taxes, food or beverage certificates, tax ID stamps, marketing and trade practices, and subterfuge. Audits are conducted using a risk-based approach and other factors so that limited resources of the Audit Unit can be applied to those licensed businesses posing the most considerable threat to violating major regulatory provisions of the Code or Rules.

Objective 4: Resourceful by using technology and analyzing processes to gain efficiencies and provide outstanding customer service

TABC introduced a process mapping tool in 2015 and has applied it to TABC's new Enforcement agent hiring and training process, approval of alcoholic beverage labels, processing original licensing applications, the fulfillment of Public Information Act requests, and more significant processes. Charting workflows creates a graphical representation of end-to-end organizational processes in order to identify any inefficiencies or ineffective activities, redundancies, bottlenecks, etc. The effects of this practice on employees, the agency, and an industry are difficult to measure in numbers, but, thus far, the minimal impact is that people get into the

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alcoholic beverage industry faster, product gets to market quicker, and applicants appreciate having 24/7 access to technology as well as TABC's responsiveness to their needs. The agency continues to apply this tool to other processes to create efficiencies, align resources (i.e., FTEs across divisions), synchronize policies and procedures, and make process enhancements.

Online processes allow for greater efficiencies for both applicants and the agency. The renewal of a license is often directly connected with a business owner's primary source of income. These owners expect TABC to be responsive and timely in their regulatory review of applications. Online processing offers 24/7 access for the applicant to submit required information, reduces errors typically made on paper applications, and allows for submission of exact required fees and bonds—all of which leads to faster approvals and the opportunity to generate income. Time saved through automation allows TABC employees to increase focus on core functions of reviewing original applications for accuracy, regulatory compliance, and qualifying factors to issue licenses so businesses may enter the Texas alcoholic beverage marketplace expeditiously. By the end of 2017, the majority of all renewals for licenses should be conducted online.

Online label approval has been available since June 2015 with gradual increases in participation but not compared to the significant increase in the number of label applications submitted. With an average of 1,638 label applications received every month in FY2016 and FY2017, TABC developed a backlog of applications, particularly for malt beverages. TABC strives to be responsive to the alcoholic beverage industry it regulates, and the timely processing of label applications is a priority.

The agency addressed this daunting issue in early 2017 and now averages six days to approve error-free malt beverage applications. Online submission reduces the number of errors in the application, which can cause lengthy processing delays. Furthermore, label applicants can pay online and fill out paperwork at their convenience.

Objective 5: Transparent to promote trust of constituencies and agency employees

TABC has made great strides in opening up the agency's workings, both as part of the provisions of the Public Information Act and as part of its day-to-day duties.

The agency's Office of General Counsel processes an average of approximately 97 Public Information Act requests per month, employing three full-time employees to ensure that requests are processed and responded to within the timeline set by statute. Additionally two other attorneys work full-time to respond to Public Information Act requests submitted over the last two years by a single requestor, which have resulted in the release of more than 111,000 pages of agency documents.

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The agency also strives to provide up-to-date, accurate information about its activities to members of the public. The agency's Public Information Officer (PIO) handles an average of 25 press inquiries per month resulting in dozens of media articles involving the agency. In addition, the PIO, working with other agency divisions, responds to an average of 300 public inquiry questions submitted by e-mail or telephone per month, which does not include the requests for information submitted to other divisions and field offices across the state.

The public has the right to expect a fully transparent, accountable government. TABC supports this expectation and continues to take the necessary steps to ensure Texas citizens are served by an open and accommodating agency.

D. Does your agency's enabling law continue to correctly reflect your mission, objectives, and approach to performing your functions?

The Texas Alcoholic Beverage Commission's current enabling law does and continues to reflect the mission and objectives of the agency. Since its inception in 1935 as the Texas Liquor Control Board and its transition to the Texas Alcoholic Beverage Commission in 1977, the agency has been charged with ensuring the health, welfare and safety of Texas through the administrative enforcement of the Alcoholic Beverage Code.

E. Have you recommended changes to the Legislature in the past to improve your agency's operations? If so, explain. Were the changes adopted?

The alcoholic beverage industry is dynamic and evolving. Just like other industries, technology plays a significant role. TABC has multiple systems that - due to multiple factors - need an overhaul or new solution. In the FY2018-19 Legislative Appropriations Request (LAR), the agency requested funds for a new case management system, which was not adopted.

TABC currently maintains several systems used by Enforcement, Audit, Licensing and Legal Divisions to track criminal and administrative violations, append case files with activities and information, and monitor disposition of violations. These systems range from an in-house system to an adapted system to an off-the-shelf solution which, collectively, are outdated, no longer supported, and non-intuitive for end users. Additionally, because the systems cannot be altered to meet the more robust security protocols of certain federal agencies, TABC's Special Investigations Unit (SIU) and Financial Crimes Unit (FCU) cannot utilize the systems for case management when involved in task forces with federal partners for statewide operations or border security. Using three disparate systems is cumbersome and a great source of frustration, especially for peace officers who have to duplicate data entry because one system is for administrative cases and the other for criminal cases.

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If funding was available TABC would purchase a modernized, off-the-shelf case management system to help the agency better use, manage, consolidate, share, and protect information accessible through a centralized database. Significant time savings would be realized in terms of data entry and report writing. It is estimated TABC could conduct an additional 400 undercover operations and an additional 1,100 minor stings per year without additional staff solely from having the administrative burden relieved and the inherent efficiencies of a new case management system realized.

TABC collects an average of \$18 million per month in excise tax payments submitted on nearly 5,000 tax reports. These reports are entered manually every month by TABC employees. Automation would simplify a repetitive and arduous monthly process and allow employees to focus on reviewing reports for accuracy and compliance and be responsive to the needs of the industry. The Excise Tax Automation Project was approved by the 81st Legislature (2011); unfortunately, the project was a casualty of the mandatory budget cuts in the following legislative session. Similar requests were made as exceptional items in the FY2014-2015 LAR (2013) and FY2016-2017 LAR (2015), but were not adopted. An online process for license holders to submit tax reports and payments is being developed for implementation in FY2018. Online submission will also allow licensees to make tax payments online via a credit card or automated bank draft rather than mailing in a check. However, the system primarily uploads a file and does not require sufficient data entry by the license holder to interface directly into the agency's database. Although some efficiencies will be gained by this system, a more comprehensive automated system is needed to realize significant impact.

Because some grant funding received by the agency may exceed its capital budget authority, TABC must request approval from the Legislative Budget Board (LBB) and the Governor's office to spend the grant funds. On occasion, delays in the approval process have required the agency to return the grant funds unspent. In the FY2018-2019 LAR, TABC proposed a rider to exempt the agency from the capital budget rider provisions related to grants. Proposed language indicated a grant request would be considered 'approved' by LBB unless the LBB issues a written disapproval within 30 days of receipt of the request. The rider was not adopted.

In the FY2018-19 LAR TABC asked for additional FTEs for Enforcement and Licensing Divisions as well as continuation of funding for the CAPPs position appropriated by the 84th Legislature. Only the CAPPs position was funded.

Funding for information security improvements was requested in the FY2016-2017 LAR and FY2018-2019 LAR to initiate improvements to TABC's cybersecurity maturity to protect against cybersecurity threats. Funding was not approved for this initiative, so TABC's risk exposure to cybersecurity threats is increasingly vulnerable.

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As for changes to the AB Code that would affect agency operations, the greatest challenge is that the Code is not contemporary. Business models and services evolve, but the Code does not. With the introduction of Uber, Instacart and the like for individual transportation and grocery delivery, the same concepts are applied to alcohol delivery. The difference is that alcohol is a drug and is regulated to ensure the safety and health of the public. If a driver receives an order, purchases the liquor at a store, then delivers the alcohol to the customer, the Code either does not allow or is not clear on the resale of the product, transporting the alcohol, and other activities of the delivery. The greatest concern is if the driver delivers the alcohol to a minor, which has happened during undercover operations. There's no provision in the Code to hold the driver responsible (similar to a bartender who serves a minor) or the employer of the driver (similar to a bar owner) who may or may not hold a permit. The Code is not properly equipped to handle situations such as this. HB 4242 (85th Legislature, Regular Session) was filed to address third party transportation entities. The fact that these activities are taking place is irrelevant, but not having guidance as to what the Legislature perceives as acceptable practice and appropriate penalties for violations is what TABC hopes for in future sessions. Many license holders have asked the agency for guidance and welcome clarification as well.

Also, business structures are becoming more complex in terms of ownership and control of the business, subsidiaries and affiliated companies. The Code dictates no cross-tier ownership is allowed by businesses engaged in the alcoholic beverage industry. The agency has historically evaluated whether an applicant's related businesses are actually engaged in the alcoholic beverage industry or whether they just have a financial interest in companies that are engaged in the industry. The plaintiff in several legal proceedings with the agency disagrees with the process, although the plaintiff's application was withdrawn and therefore the plaintiff can only speculate that the application would be denied. Several bills have been filed that attempted to allow businesses in one tier to have a small ownership interest in businesses of another tier even if they are all engaged in the alcoholic beverage industry; none of the bills were drafted under consultation with the agency. A Rule to directly address the situation and bring some resolution was drafted and presented to the Governor's Office in December 2016 but TABC has not been given the opportunity to engage the industry and gain important feedback on the draft language or concept.

F. Do any of your agency's functions overlap or duplicate those of another state or federal agency? Explain if, and why, each of your key functions is most appropriately placed within your agency. How do you ensure against duplication with other related agencies?

The statutory authority and the responsibilities granted to TABC are narrow, unique and specific to the TABC. It is true that any peace officer of the state may pursue criminal charges when violations of the Alcoholic Beverage Code are discovered. It is also true that TABC Inspectors (Enforcement agents) are peace officers that can pursue criminal action for offenses outside the Alcoholic Beverage Code. However, only Inspectors (Enforcement agents) can pursue administrative action against violators of the Alcoholic Beverage Code. When the Liquor Control Board was initially created, the Texas legislature recognized that administrative sanctions would often be greater motivation to change behavior than criminal actions. While there are other agencies whose responsibilities and activities are similar or occur on the periphery of TABC functions, there is no organization that duplicates TABC activities.

Through partnerships and interagency communication, the TABC accomplishes its mission while assisting other agencies. These partnerships ensure that activities of all agencies are complimentary and not duplicative. Agencies beyond TABC face economic challenges as well and are motivated to coordinate activities and not squander resources on unnecessary endeavors.

G. In general, how do other states carry out similar functions?

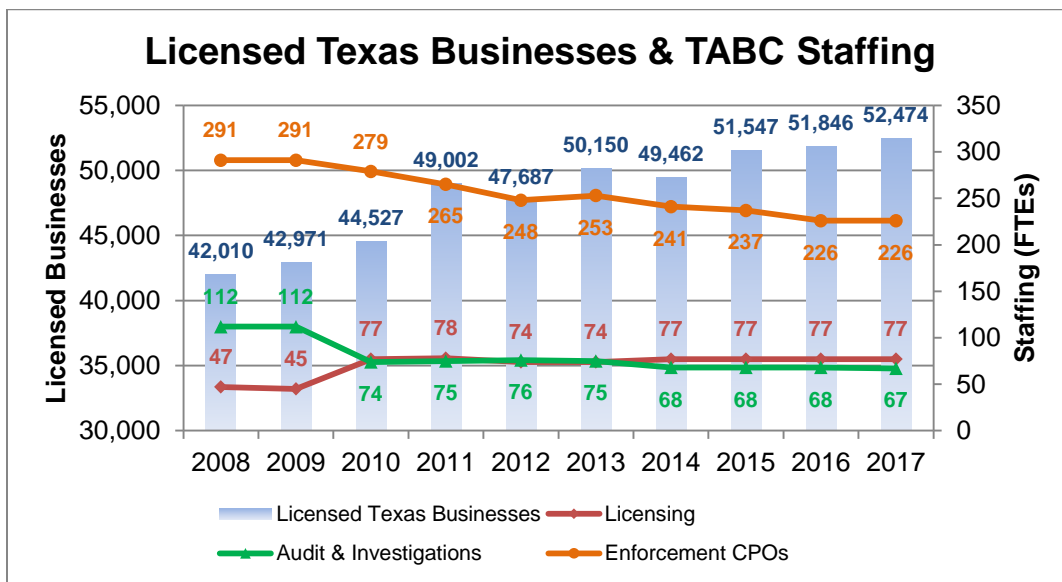
Methods of alcohol regulation among the other 49 states vary, with each government exerting control on the alcoholic beverage industry based on their own determinations, traditions and political considerations.

Like Texas, the majority of states have an agency responsible for licensing businesses wishing to manufacture, distribute, or sell alcoholic beverages. Some states, unlike Texas, divide law enforcement and regulation (licensing and taxation) of alcoholic beverages among multiple agencies. Some states rely on local law enforcement to address criminal issues with individuals and do not hold members of the industry accountable through administrative action. Seventeen states (referred to as "control states") control the sale of alcoholic beverages at the wholesale level; in some control states, the government controls off-premise retail sales through government-operated package stores.

H. What key obstacles impair your agency’s ability to achieve its objectives?

The two greatest obstacles to TABC’s ability successfully to regulate the alcohol industry and enforce the Alcohol Beverage Code are the dramatic growth of the Texas economy which translates to an increasing number of applicants and alcohol i.e., industry businesses. This growth combined with the explosion of innovation and increased use of technology among members of the alcoholic beverage industry creates a daunting challenge for the agency to adequately enforce the Code and Rules across 268,000 square miles of Texas.

Exhibit 4: Growth of Industry and Appropriated FTEs



As Exhibit 4 indicates, the ratio of businesses to enforcement, audit, and licensing personnel has continued to increase. Based on these numbers, a TABC agent in 2008 was responsible for inspecting, engaging and compliance for 144 TABC-licensed businesses; today that same agent is responsible for 232 licensed businesses. The story is similar, although more dire, for the number of licensed businesses for which auditors and licensing personnel are responsible. In the last ten years the number of licensed businesses has increased by 10,000. Texas' overall economy growth is expected to average between 3.5 to 5.2 percent depending on location. It is likely that growth in the alcoholic beverage industry will match or exceed this growth projection. This growth projection indicates, at best, an increasing caseload for TABC personnel, and at worst a crushing an unmanageable load per FTE in enforcement, audit and licensing.

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TABC, to mitigate the challenges to this increasing workload, has turned to increasing use of technology in order to take advantage of economies of scale. Using online licensing applications and moving digital packages for distribution across the workforce has assisted in leveling the load and more evenly matching licensing employee resources to the requirements of a growing alcohol industry. Enforcement agents and auditors have different challenges, because they must physically go to each licensed location to perform inspections. Enforcement has the compounded issue of trying to conduct undercover operations in at-risk (targeted) locations; these operations require a minimum team of four agents to conduct. As the number of licensed businesses continue to grow, so too are the likely bad actors in the industry, requiring more enforcement personnel to conduct undercover operations. The impact of shifting enforcement personnel to targeted operations means fewer agents to conduct routine inspections on a growing number of licenses. Regular and routine inspections of licensed premises are necessary to ensure continued compliance with the Code and Rules.

In more rural areas of the state, greater distances have to be travelled by employees to participate in such operations, especially when TABC offices are inadequately staffed. Policies adopted to increase officer safety require that numerous undercover and 'open' cover agents be present, along with a field supervisor in each operation. The number of agents involved and travel required by some to participate directly affect the number of operations that can be performed in a given work week.

These undercover operations find violations regarding sales to minors, sales to intoxicated persons, drugs, and more. TABC would like to conduct an additional 800 undercover operations and 2,200 additional minor stings per year.

Commissioned peace officers in the Enforcement Division, Special Investigations Unit and Financial Crimes Unit are inhibited by outdated systems. A modernized, off-the-shelf case management system (as discussed previously in Item E) would positively impact multiple systems currently used by multiple divisions. Enforcement agents alone would realize significant time savings in data entry and report writing. The force multiplier of additional agents and a new case management system would have a powerful effect on the safety of Texas communities.

With the passage of HB 2101 (85th Legislature, Regular Session) there is a greater responsibility on TABC to conduct audits of mixed beverage permit holders and food and beverage certificate holders. Such audits ensure a licensed business qualifies for a food and beverage certificate, which is particularly important in communities that have elected only to allow the sale of mixed beverages in restaurants by food and beverage certificate holders.

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The Licensing Division processes an average of nearly 87,000 alcoholic beverage applications annually based on FY2014-2016 volume. The number of applications has increased by 9.89% in the same period and the trend is expected to continue. Another trend in the last few years has been the growing complexity of business structures of the applicants. The agency receives applications for original licenses as well as renewal applications every two years from existing license holders. Because an existing license holder can conduct business during the renewal application process, the focus has been on original applications and getting people in business. In order to meet the performance measure of 39 days to process an original application, the agency has relied on overtime pay and interns, neither of which are sustainable in terms of funding or employee satisfaction.

The increase in productivity due to online processing of renewal applications has been appreciated and continues as more license holders take advantage of it. Nevertheless, the focus on original applications has caused a backlog in renewal and supplemental applications that is expected to worsen due to the continual increase of license applications as new businesses enter the Texas market. The goal is to process applications within a reasonable amount of time and assure applicants--at all levels of complexity--meet the qualifications to hold a license.

Another need is a modern regulatory licensing system to improve efficiency and functionality for both internal staff and external customers. The current system was implemented by Versa Systems and impacts licensing, excise tax, label approval, and seller server training programs. The current solution is highly customized and costly to upgrade. The next generation needs to be more flexible, contain more functionality, and be configurable to more closely match the agency's business processes.

In the last several legislative sessions, the privileges of in-state manufacturers have expanded to foster economic growth. As a result there has been a great increase in the number of producers of wine, spirits and malt beverages in Texas. The increase in manufacturers results in more excise tax reports filed and money collected as well as label approval applications processed. However, the number of excise tax FTEs has not increased to meet the demands of a growing sector. Because filers can only upload a form, staff focuses more on data entry rather than detailed reviews to detect underpayments and other discrepancies. With more staff, additional analysis would be conducted to ensure all license holders are meeting statutory requirements and tax obligations. By the end of FY2017, four FTEs are expected to have processed more than 57,000 reports and collect more than \$225.5 million in excise taxes. Equally compelling is that those 57,000 reports are manually entered on a monthly basis. If the collection of excise tax reports was automated and interfaced with the agency's regulatory systems, the permit holder would enter the data directly into Versa:Online, the agency's customer interface for Versa:Regulation. Implementation would reduce time spent on data entry to focus more on detailed report review.

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The final technology challenge is the agency's vulnerable security program. TABC maintains confidential data including personally identifiable information, criminal violation history, legal data, corporate data (including ownership and revenue), sales data, and more. Funding would aggressively address the increasing number of cybersecurity threats and strengthen infrastructure to minimize risk of loss or theft of private information of license holders.

I. Discuss any changes that could impact your agency's key functions in the near future (e.g., changes in federal law or outstanding court cases).

A number of outstanding court cases have been brought against the agency in recent years which threaten to undermine the state's three tier system for alcohol control. Some have been brought against the state by large corporations seeking changes in Texas' laws which prohibit, among other provisions publicly traded companies from possessing certain permits in this state. Other suits attempt to challenge TABC's authority to enforce provisions of the Alcoholic Beverage Code deemed as overregulation by the plaintiffs.

The resolution of these cases could, in effect, re-write the law in favor of the plaintiffs, circumventing the Legislature's constitutional role as writers of statute. The agency, working with the Office of the Attorney General, will continue to defend the Code and the three tier system while working with the Legislature to uphold any new statutes put in place by the state's elected leaders.

J. What are your agency's biggest opportunities for improvement in the future?

Changes in key leadership positions occurred in 2017, most notably a new chair of the commission and a new Executive Director. With new leadership comes a new perspective, approach, and philosophy. Initial areas of focus are to:

- speak with one voice; create a process to ensure there is consistent interpretation and application of the Alcoholic Beverage Code and Rules;
- effectively engage with the alcoholic beverage industry as partners, encouraging industry members to work with the agency on areas for improvement, identifying bad actors that create an unfair advantage by violating the law to make a profit; working with industry to ensure laws and rules are drafted, interpreted, and enforced based on plain language so both the agency and industry have the same understanding of requirements; and recognizing decisions made by the agency in terms of bulletins, Rules, policies and the like; and
- aggressively communicate the productivity, revenue, efficiencies, and activities of TABC to the public, legislators, law enforcement, alcoholic beverage industry and TABC employees.

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The agency will continue to monitor efforts toward the tactical actions, strategic goals and objectives established in the TABC FY2017-2021 Strategic Plan. The agency has also drafted a new warning system to be applied by the Audit Unit and Marketing Investigations Unit to license holders that violate marketing practice provisions. These are non-public safety violations of the Code and Rules. The idea is to combine education with an administrative warning in lieu of administrative penalties against a license with no prior history of the same or similar type of marketing violation. The agency's intent is to keep license holders in business and compliant and this plan is a solid union of the two concepts. Once industry and others have the opportunity to provide input, the agency hopes to begin implementing in FY2018.

Finally, TABC looks forward to working with the members of the Sunset Advisory Commission and Sunset staff throughout the evaluation and reporting process. The agency sees the timing of the Sunset review and new leadership as a perfect opportunity to evaluate the agency and make informed and deliberative changes.

- K. In the following chart, provide information regarding your agency's key performance measures included in your appropriations bill pattern, including outcome, input, efficiency, and explanatory measures. Please provide information regarding the methodology used to collect and report the data.**

Exhibit 5: Key Performance Measures — Fiscal Year 2016

Key Performance Measures	FY 2016 Target	FY 2016 Actual Performance	FY 2016 % of Annual Target
Percentage of Licensed Establishments Inspected Annually	82.00%	75.68%	92.30%
Number of Inspections Conducted by Enforcement Agents	81,144	77,465	95.47%
Average Cost Per Enforcement Inspection	\$331.30	\$330.81	99.85%
Average Cost of Multi-Agency/Joint Operations Targeting Organized Crime and Trafficking Statewide	\$2,400.73	\$2,427.30	101.11%
Average Number of Days to Approve an Original Primary License/Permit	39.00	35.14	90.10%
Number of Licenses/Permits Issued	74,782	82,386	110.17%
Average Cost Per License/Permit Processed	\$52.66	\$49.09	93.23%
Percent Audits Found to be in Full Compliance	80.00%	86.34%	107.93%
Number of Audits Conducted by Field Auditors	1,585	1,699	107.19%
Average Cost Per Audit	\$435.26	\$254.27	58.42%
Number of Alcoholic Beverage Containers Stamped	1,306,735	1,666,105	127.50%
Number of Packages of Cigarettes Stamped	418,169	413,075	98.78%

Definitions for all key performance measures are available in the TABC FY2015-2019 Strategic Plan at https://www.tabc.texas.gov/publications/agency_report_archives/strategicPlan15.pdf.

- L. Please discuss any “high-value data” your agency possesses, as defined by Section 2054.1265 of the Government Code. In addition, please note whether your agency has posted those data sets on publically available websites as required by statute.**

In support of function Public 5, TABC has posted “high-value data” on the Public Inquiry website since 2005. A great deal of information about TABC license holders can be found on the Public Inquiry System on the TABC website. Reports can be created in .xls, .pdf or .csv formats. The public and the industry can:

- check the status of pending, active or inactive licenses;
- search for and create lists of licenses with administrative violations (pending and final);
- create lists of active and inactive licenses by location, type, status, and original issue date;
- search for approved labels;
- find retailers on the agency’s credit law delinquent list; and,
- view public complaints lodged against license holders and related violations.

License status and pending original application information is updated daily. Credit law information is updated hourly.

TABC is exploring moving the data to the public data repository operated by Texas.gov.

III. History and Major Events

Following the repeal of Prohibition in 1935, the 44th Texas Legislature created the Texas Liquor Control Board (TLCB). The new agency's first board meeting was held Nov. 18, 1935. TLCB was given the responsibility of regulating the alcoholic beverage industry throughout the state. The Liquor Control Act gave the administrative arm of the TLCB the authority to regulate every phase of the alcoholic beverage industry: grant, refuse, suspend, and/or cancel alcoholic beverage licenses; supervise, inspect and regulate the business of manufacture, importation, exportation, storage, sale, distribution and possession of alcoholic beverages; assess and collect taxes and fees; investigate violations to the Texas Liquor Control Act; and license, regulate and control the use of alcohol for scientific, pharmaceutical, and industrial purposes.

In 1970, the Texas Liquor Control Board was renamed the Texas Alcoholic Beverage Commission (TABC). Seven years later, the Liquor Control Act was codified as the Alcoholic Beverage Code. For historical information prior to 2004, please refer to the [TABC Sunset Self-Evaluation Report](#) dated August 2003.

Significant Historical Events from 2004-2017

2004

- Enforcement restructured its headquarters (HQ) staff with the addition of two deputy assistant chiefs. The regions were reduced from eight to five. The change was intended to improve communications and create the same regions for Compliance and Enforcement. The agency still operated with 16 Enforcement Districts.
- At the recommendation of the Sunset Commission, TABC updated the agency's mission and vision establishing four cornerstones of business operations. This reexamination of the agency would result in numerous changes throughout the agency:
- Enforcement moved to an at-risk business model which was data-driven and focused attention on licensed entities that had violations. During inspections or other activities, if a violation was detected, the entities were given an opportunity to participate in educational training offered by the agency at no charge. If they participated, the entities would still be placed on a priority inspection list due to the violation, but would be given additional time to address the issues. This allowed TABC to focus regulation away from businesses with good practices, avoiding unnecessary cost and regulation on the industry and reducing resource demands on the agency.
- Licensing duties in the field for new applicants shifted from the Enforcement Division to the Compliance Division. In 2008, these duties were moved under the direction of the Licensing Division (at Headquarters).

2005

- Licensing underwent a complete data system change from M204 legacy system to LicenseEase, a web-based system. This web-based system was the foundation to enable online capabilities for license holders.

2007

- SB 904 (80th Legislature, Regular Session) continued the agency for 12 more years and redefined the agency's mission (Sec. 5.31(b)) by updating the existing statutory language to focus the agency on
 - protecting the public safety by deterring and detecting violations of the law;
 - promoting legal and responsible alcohol consumption;
 - ensuring fair competition within the alcoholic beverage industry;
 - ensuring consistent, predictable and timely enforcement of the law;
 - ensuring a consistent, predictable and timely licensing process;
 - promoting and fostering voluntary compliance with the law; and
 - communicating the requirements of the law clearly and consistently.
- TABC replaced the existing penalty chart in the Rules (§34.3) with one that reflected a fair and consistent application of the penalties statewide. The new chart included the agency's schedule of sanctions along with the number of days of suspension and/or penalty amounts for each particular violation.
- TABC Enforcement agents moved away from former policies related to citing minors found to be in possession of alcohol and other Class C Misdemeanor violations, focusing instead on more serious violations having a direct impact on public safety at the licensed location. The Priority List was fully implemented allowing the limited number of agents and auditors at the field offices to more closely monitor businesses with a history of complaints and violations.
- Efforts were made to develop benchmarks and goals that allowed management to track key enforcement activities and as a result of the data, better utilize field employees to promote public safety and voluntary compliance by the industry. The complaint process was also updated to allow for a priority order system allowing field employees to address more serious problems first and a system was put in place to analyze trends.
- The need for testing of distilled spirits and wine to receive label approval from the state was eliminated in SB 904 by the addition of Section 101.671 to the Code. As a result TABC Rules were updated to allow the agency to accept federal Certificates of Label Approval for distilled spirits and wine.

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- TABC implemented changes to the strategic planning process that allowed for the agency to meet with cross sections of industry members and other stakeholders at the community level to discuss issues and gather input into the operations of the agency. This process was later incorporated into the Rule review process by allowing stakeholders in the industry and community to participate in discussions related to the Rules prior to proposing changes to the commission's board members.
- TABC started to promote and create educational materials that encouraged community members, the industry and others to report licensed locations that were in violation of the law, or to file complaints or compliments against or praising agency employees based on their conduct. The materials informed the public and others on how to file a complaint and what steps must be taken for the agency to address this complaint.
- Criminal sanctions were established against licensees that violated after-hours laws. Statutes established that it was a Class A misdemeanor to sell or serve alcohol during prohibited hours; consume or permit consumption of alcohol on licensed premises during prohibited hours; and refuse to allow entry to agency representatives and law enforcement personnel. The term "location" was defined as a public place, allowing enforcement action to also be taken against individuals.
- TABC's public inquiry system was released, allowing the community and alcoholic beverage industry to check the status of a license online. The system allows 24/7 access to license information including violation history; proof of seller server certification; and a database of all alcoholic beverages labels approved for sale in Texas.
- SB 1217 (80th Legislature, Regular Session) amended Sections 11.09 and 61.03 of the Alcoholic Beverage Code to allow TABC to issue a license for a period of two years.

2008

- The agency workflow system became ARTS (Agency Reporting and Tracking System). This system could produce reports by person, district/region, type, etc. and contained application status, comments and summary, protests, complaints, PLAT, inspections, etc. that were a great tracking mechanism for workflow as well as resources for the Audit and Investigations, Enforcement, Legal Services and Licensing divisions.
- Licensing division began imaging more than 100,000 paper files located at HQ. Out of those files approximately 5.8 million images were created. As of July 2017 there are over 9 million images and counting.

2009

- Legislation in the 81st Legislature, Regular Session, resulted in changes to the three tier system:
 - HB 1084: Texas wineries and out-of-state wineries can ship up to three gallons of wine every 30 days to a consumer in Texas. This was a change from nine gallons within a calendar month or 36 gallons within a 12-month period.

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- HB 1974: Texas distilleries may serve free samples on their licensed premises of distilled spirits that they produce including other restrictions.
- TABC formed a Special Response Team (SRT) made up of Enforcement agents. The team assists local communities during disasters and provides public protection, search and rescue and any other duties that will provide stability to the overall health and safety of the general public.
- TABC launched a new website design to assist with transparency and ease of navigation.
- Handheld computer devices streamlined tax collection at border crossings and allowed TABC to start using credit/debit cards to collect taxes in 2013.
- The Licensing Division created district/regional teams and began placing supervisors across the state in the five district offices. Regional teams were comprised of field and HQ staff.

2010

- TABC requested members of the alcoholic beverage industry to voluntarily halt the sale of caffeinated malt beverages after the Food and Drug Administration concluded they were unsafe and posed a public health concern. By 2011, all production of the product had halted. In response, TABC started an alcohol by volume campaign to assist parents and consumers to better understand the dangers of high content alcoholic beverage products.
- TABC developed the Automated Cash and Credit Law System, allowing suppliers of alcoholic beverages to directly report non-payment by retailers and eliminating a manual paper and data entry process. A revised penalty process was also implemented for delinquent retailers. This greatly reduced the number of delinquent retailers appearing on the official “Delinquent List” each payment cycle.
- The Licensing Division was awarded the Best Practices Award from the National Association of Licensing and Compliance Professionals (NALCP) for their commitment to innovative and outstanding customer service for improvements to the licensing process.

2011

- An agency realignment put three regions in place with five district offices instead of five regional offices and 17 districts. Each Enforcement agent was responsible for 224 licensed locations and auditors were assigned 834 locations. The new alignment allowed for three regional audit supervisors, five district audit supervisors, and 55 auditors; three captains, 15 lieutenants, 28 sergeants and 204 agents. This change caused many Enforcement personnel positions to move from west Texas to the larger metropolitan areas of Houston, Dallas, and San Antonio.
- Significant legislation that was enacted in 82nd Legislature, Regular Session:

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- HB 1936 changed personal importation of alcohol from Mexico: increased the administrative fee on alcoholic beverages from 50 cents to \$3 per container; equalized the importation limits for Texas and non-Texas residents (increasing the Texans' limit from one quart to one gallon of distilled spirit every 30 days; and allowed the importation of a personal collection of beer and/or distilled spirits by persons moving to Texas.
- HB 2014 required TABC to refuse to issue a license for a location for 12 months after cancellation for prostitution or human trafficking.
- HB 2582 repealed the 25% excise tax exemption for beer manufacturers, brewers, and brewpubs whose annual production of beer in Texas does not exceed 75,000 barrels.
- SB 1331 provided immunity for possessing or consuming alcohol to a minor who calls 911 due to possible alcohol poisoning. The minor must be the first person to call for medical assistance, remain on the scene until medical assistance arrives and cooperate with EMS and law enforcement. The bill also enhanced the penalty for providing alcohol to minors at a gathering that involved binge drinking or coerced drinking to include community service, an alcohol awareness course and driver's license suspension.
- With an upgrade in data systems, the Licensing Division began a pilot program to accept renewal applications and pay associated fees through an online portal. The pilot was for the renewal of agent's licenses. Upon successful implementation, other license types would be offered through a phased approach until all license types can renew online.

2012

- Sherry Cook was appointed as the agency's first female administrator.
- TABC received the Excellence Award for the newly implemented Automated Cash and Credit Law System from the Texas Association of State Systems for Computing and Communications (TASSCC).

2013

- TABC Field Operations reorganized and Compliance (Audit) and Ports of Entry were moved under Field Operations along with Enforcement. Field Operations for Enforcement, Compliance and Licensing were divided into five regions: Austin, Arlington, Houston, San Antonio and Lubbock. Each office included an Enforcement Major, Regional Compliance Supervisor, and Licensing Supervisor. Ports of Entry added two regional supervisors along the border. The teams were supervised at headquarters by two assistant chiefs (one each in Enforcement and Compliance), the director of Ports of Entry and the Licensing director and assistant director. All of these employees, except Licensing staff, answered to the Chief of Field Operations.

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- Several pieces of major legislation in the 83rd Legislature, Regular Session, made changes to the three tier system and further defined TABC's role and practices:
 - HB 3307 defined an alternating brewery proprietorship and contract brewing arrangement and authorized brewers, nonresident brewers, manufacturers and nonresident manufacturers to engage in these activities. It also required brewers, nonresident brewers, manufacturers and nonresident manufacturers to verify to TABC on an annual basis that a brewing or manufacturing facility owned or controlled by the license holder is not used to produce malt beverages primarily for a specific retailer or the retailer's affiliates.
 - SB 131 allowed a winery to sell, offer for sale, and deliver wine, and a person may consume wine on the premises of a winery until 2 am on New Year's Day. This includes selling wine for on-premise and off-premises consumption.
 - SB 515 authorized a brewpub to manufacture up to 10,000 barrels a year instead of 5,000; sell its own malt beverages to wholesalers and distributors; and (for those who hold a Wine and Beer Retailer's Permit and only sell their own product) sell to retailers (up to 1,000 barrels) and any qualified person outside of Texas. The total amount of malt beverages sold to Texas retailers may not exceed 1,000 barrels annually for each licensed brewpub location or 2,500 barrels annually for all brewpubs operated by the same licensee. The product sold directly to retailers is included in the 10,000 barrels production limit.
 - SB 516 changed the limits on small brewers selling directly to retailers. A brewer who makes less than 125,000 barrels annually can obtain a self-distribution permit and sell up to 40,000 barrels to retailers annually.
 - SB 517 changed the limits on small manufacturers selling directly to retailers. A manufacturer who makes less than 125,000 barrels annually can sell up to 40,000 barrels to retailers annually.
 - SB 518 authorized manufacturers and brewers who produce less than 225,000 barrels of malt beverages annually to sell up to 5,000 barrels annually of malt beverages produced on the premises to visitors at the brewery for on-premises consumption. Manufacturers and brewers may sell, offer for sale, and deliver malt beverages, and a person may consume malt beverages on the licensed premises, between 8 am and midnight on any day except Sunday and between 10 am and midnight on Sunday.
 - SB 828 created a Distiller's Agent's Permit for employees of a distillery so they could represent the distiller, solicit and take orders from wholesalers and conduct free tastings for consumers at package stores.

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- SB 905 authorized a distillery located in a wet area to sell distilled spirits manufactured by the permit holder to the ultimate consumer for consumption on the licensed premises (up to 3,000 gallons annually) and for consumption off the premises, in unbroken packages containing no more than 750 ml, up to 3,500 gallons annually, and no more than two 750 ml bottles or the equivalent to the same consumer in a 30-day period.
- SB 1035 streamlined the licensing process by having applicants pay state fees directly to TABC instead of the county tax assessor-collector; eliminated the requirement of hearings before the county judge in non-contested cases but increased the hearing fee from \$5 to \$25; allowed TABC to give 5% of the license fee to the county; and required that notice of application be posted in a newspaper by the applicant instead of the county clerk.
- SB 1090 contained the following provisions:
 - Eliminated sections of the Code found to be unconstitutional restrictions on Free Speech in *Authentic Beverages Company, Inc. v. Texas Alcoholic Beverage Commission*, No. 1:10-CV-00710-SS (U.S. Dist. Ct. W.D.Tex., Dec.19, 2011).
 - Removed the prohibition against an advertisement of a brewery product referring to the alcohol content of the product.
 - Amended Section 5.32 to say that TABC “may require persons engaged in the alcoholic beverage business to provide information, records, or other documents” instead of saying that TABC “may require the filing of reports and other data.”
 - Clarified that Texas wineries are authorized to purchase from a non-resident seller wine intended for re-sale in addition to wine intended for blending purposes.
 - Clarified that wine and beer retailer off-premise permit holders can't have open containers of any alcohol on the premises unless it is during an authorized sampling event. Products must be sold in unbroken original containers.
 - Clarified a “first sale” under the Code when excise taxes are to be paid includes sales by a brewpub to a consumer or to a retailer and does not include sales by a Texas distillery to a Texas wholesaler.

2014

- TABC added three new units to the Audit and Investigations division: Special Investigations Unit, Financial Crimes Unit, and Marketing Investigations Unit.

2015

- TABC began offering option to apply for label approval online.
- The National Liquor Law Enforcement Association awarded the Enforcement Division the NLEEA Enforcement Agency of the Year for the creation of the Special Investigations Unit to combat organized crime in licensed establishments throughout the state.
- Education and Prevention Division won a Platinum Remi award at the 48th Annual Worldfest Houston International Film Festival for the underage drinking video, “What Really Happened.”
- Replicon, the first digital timesheet for the agency, was released.
- The 84th Legislature, Regular Session, passed several new provisions affecting the Code:
 - SB 700 allowed TABC to accept electronic signatures in lieu of notarized manual signatures. This allowed TABC to continue to move forward with online applications for licensing and label approval.
 - SB 367 required TABC to cancel a license if the holder is convicted of subterfuge and the person cannot be issued a license for five years if convicted of subterfuge.
 - SB 2019 added a representative from TABC to the Texas Gang Task Force.
- The Licensing division implemented team leads in the five regional offices and one at headquarters and put a supervisor in place over the license and permit specialist team located at HQ.

2016

- Out of the 254 Texas counties, just seven are completely “dry,” meaning no alcohol sales are permitted.
- Since the inception of the agency to Aug. 31, 2016, \$12,036,910,476 in revenue has been collected by the agency for the general revenue fund.
- The TABC:Mobile application is available for the public to find a restaurant/bar in their neighborhood and report TABC-licensed businesses violating the Code. Patrons can submit complaints for sell after hours, sell to minors, and sell to intoxicated persons; report gambling, drug use, prostitution and human trafficking; and report on TABC certification schools and provide feedback on TABC employees. License holders can quickly report a breach of peace report as required by the Code.

KEY LITIGATION (NOT INCLUDED IN TIMELINE)

Cadena Commercial USA Corp. d/b/a/ OXXO applied for beer licenses in Texas. The applications were protested due to a cross-tier violation. The case was heard before the county judge, who has jurisdiction over beer licenses. He issued a decision to deny the licenses. The Executive Director adopted that decision and issued an order denying the licenses. The Plaintiffs appealed the decision to the district court (which sustained the Commission's order), and then to the 3rd Court of Appeals. The Protestant contended that the statutory construction by the Commission of the "tied house" provisions of Alcoholic Beverage Code §102.07(a) (1), which prohibits a person with "an interest in the business of a brewer" from also having a "direct or indirect interest in the business of a retailer" was incorrect. The 3rd Court of Appeals sustained the Commission's order. Cadena filed a Petition for Review to the Texas Supreme Court.

In April 2017 the Texas Supreme Court issued a decision in TABC's favor and agreed with all the lower courts' decisions NOT to grant the application for a license. The Texas Supreme Court interpreted the term "interest in the business of a brewer" broadly to include both direct and indirect interests, and agreed that defining "interest" to include "commercial or financial" interest supports the Texas Legislature's public policy of maintaining strict three tier separation. The Texas Supreme Court also found that in a regulatory context versus a tort or tax liability context, a statute may authorize regulatory agencies to *pierce the corporate veil*. The Texas Legislature "intended that the TABC and courts look beyond corporate separateness status in enforcing the tied house provisions." The Legislature through the Texas Alcohol Beverage Code gave the TABC the authority to deny Cadena's retail permit application when granting the application would have led to a tied house violation based on its parent company's cross-tier ownership interest. Cadena also alleged it was denied its right to equal protection with the denial of a retail permit. The Texas Supreme Court concluded that Cadena's examples of several Texas pension funds with cross-tier ownership interests failed to show that those entities were *similarly situated* to Cadena's situation (whose parent company had a "multi-million share interest" in Heineken). The Texas Supreme Court's final mandate was issued June 9, 2017, concluding this matter in favor of the TABC.

D. Houston, Inc. d/b/a Treasures – In 2013, TABC was sued on four separate occasions dealing with similar issues. Two of the four suits were non-suited; one of the suits was dismissed by the court. The remaining lawsuit asserts that the Commission in its application is really “interpreting” §11.641(c) of the Code and as such failed to publish a Rule setting out its interpretation of Code §11.641(c) pursuant to the Administrative Procedures Act (APA) with benefit of public notice and comment rule making. The trial court dismissed most of plaintiff's other causes of action but sustained plaintiff's position that the Commission needed to adopt a rule under APA.

The case was appealed by TABC to the 3rd Court of Appeals. On May 25, 2017, the Court reversed the trial court's Order and found for TABC on all matters. In the opinion, the Court analyzed Code §11.641(c) using well established principles of statutory construction. Giving effect to the Legislature's intent as found in the statute's plain language, the Court found that §11.641(c) does not prohibit TABC from imposing penalties based on facts that could also support a criminal prosecution, but cannot impose administrative penalties based solely on the fact that such a criminal prosecution existed. The Court wrote that they could not find in favor of Treasures without judicially *amending* §11.641(c), and that it could not do that.

Based on this analysis, the Court reversed the trial court's judgment for Treasures and rendered judgment dismissing that claim for want of subject-matter jurisdiction. It also decided that the judge was correct to dismiss Treasures' other claims. TABC must wait for the *mandate* to be entered by the Court before following this opinion and resume filing criminal and administrative charges simultaneously. Treasures has filed a petition asking the Supreme Court of Texas to review the Court of Appeals' judgment.

Mark Anthony Brewing, an out-of-state manufacturer of alcoholic beverages applied for approval of labels for 4 of its malt beverage products so it could sell them in Texas. It was already selling the products in 46 other states. TABC refused to approve the labels because they bear the trade name and trademarks of T.G.I. Friday's, a retailer of alcoholic beverages. This use of a retailer's name on a manufacturer's product violated Commission Rules 45.73(d), 45.82(a)(7) and 45.110(c)(3), as well as Alcoholic Beverage Code §102.15. Mark Anthony chose to forego its opportunity for a due process hearing at the State Office of Administrative Hearings, at which it would have had an opportunity to present evidence that the labels did not violate the Rules or statute. Instead, Mark Anthony filed suit in district court, asking that the Court declare: (1) either that Rules 45.73(d) and (e), and 45.82(a)(7) are inapplicable to its labels, or that the Rules are invalid because the Commission lacked the authority to promulgate them or, in the alternative, because they unconstitutionally restrict Mark Anthony's free speech rights; and (2) that, if Code sections 102.07(a)(2) or 102.15(a)(1) prohibit Mark Anthony's use of the T.G.I. Friday's name on its labels, they are also unconstitutional restrictions on Mark Anthony's free speech rights. The case was tried in October 2015, and the district court ruled in favor of Mark Anthony. TABC appealed the decision to the 3rd Court of Appeals. The parties have briefed the case for the court and orally argued it on April 26, 2017. Since the argument, various post-submission briefs have been filed. The Court of Appeals has not yet ruled, and TABC does not know when they will.

Live Oak Brewing Company LLC, Revolver Brewing LLC, and Peticolas Brewing Company LLC sued TABC on January 28, 2015, in Travis County District Court, seeking a permanent injunction barring enforcement of Code §102.75(a)(7). This statute, which was added to the Code in 2013, prevents brewers from accepting payments in exchange for agreements setting out territorial rights. The brewers alleged that the statute effects a “taking” of their property without compensation and that it violates their right to engage in the occupation of their choice free of unreasonable governmental interference. TABC’s Summary Judgment Motions/Plea to the Jurisdiction was heard on August 15, 2016, before the 210th District Court, the Honorable Karen Crump. The order was issued on August 25, with TABC prevailing on two of the three issues – the “takings” issue and assessment of attorneys’ fees. TABC did not prevail on the third issue, in which Plaintiffs argued they were entitled to a summary judgment finding that Code §102.75 (a) (7) is an unconstitutional restriction on the brewers’ economic liberty as provided for in the Texas Constitution.

A Motion to Modify Judgment was filed in September 2016 by TABC but was denied. The Office of Solicitor General filed TABC’s appeal brief on March 20, 2017. TABC appealed the due process portion of the judgment; the brewers did not appeal the part of the judgment that was adverse to them. The case is waiting for submission to the court of appeals.

Wal-Mart Stores, Inc., Wal-Mart Stores Texas, LLC, Sam’s East, Inc., Quality Licensing Corp. filed lawsuits in February 2015 in both state and federal court. Plaintiff asserts that Code §22.16 is unconstitutional because it denies Wal-Mart the right to hold a package store permit (P) simply because it is a publically held corporation. The lawsuit also asserts that §§22.04 and 22.05 of the Code deny them the ability to obtain more than five package store permits. Wal-Mart asks for an injunction against enforcement of §§22.04, 22.05, 22.06(a)(2), and 22.16 of the Code. There is no activity on the state case. A week-long bench trial in the federal case was held in June 2017. TABC, Wal-Mart, and Texas Package Stores Association respectively filed their initial Post-Trial Briefs and Proposed Findings of Fact and Conclusions of Law on July 10, 2017, and their Post-Trial Response Briefs on July 20, 2017. A decision is pending at this time.

Deep Ellum Brewing Company & Grapevine Brewing Company filed a federal lawsuit against TABC, alleging that the Code, which does not allow beer manufacturers or ale brewers to sell their products directly to consumers on their premises for off-premise consumption, violates their constitutional rights of Equal Protection and Due Process. They contend they are being treated differently than any other manufacturer of alcoholic beverages, because distilleries and wineries can sell (different) limited quantities of their products to consumers on their premises for off-premises consumption. They also complain that they are being treated differently from brewpubs, which make limited quantities of their own beer and sell it on-premises for off-premises consumption. The case is pending in Judge Pitman’s court, the same court in which the Wal-Mart case was tried. The parties argued their cross-motions for summary judgment on November 2, 2016. TABC is still waiting for Judge Pitman to make a decision on those motions, and there is currently no trial date in the case.

McLane and the Texas Association of Business (TAB) filed a civil action in federal court in June 2016 claiming:

- 1) Violation of the Equal Protection Clause of the U.S. Constitution which forbids government official from treating similarly situated persons differently for no rational reason. Plaintiffs claim Defendants intentionally refused to grant a permit, while granting and renewing permits for similarly situated companies, without providing basis for the differential treatment and further that no reasonable or rational basis exists for discriminatory treatment of said Plaintiffs.
- 2) Violation of the Due Process Clause, which forbids government officials from engaging in arbitrary and unreasonable government actions that bear no rational relationship to a legitimate government interest. Plaintiffs claim the “One Share Rule” is arbitrary, unreasonable, and has no rational relationship to a legitimate governmental interest.
- 3) Violation of the dormant Commerce Clause, because the “One Share Rule” imposes a burden on interstate commerce that is clearly excessive in relation to the putative local benefits.

Plaintiffs seek an order forbidding Defendants from selective licensing in violation of the Equal Protection Clause, an order declaring the “One Share Rule” unconstitutional under the Due Process and dormant Commerce Clauses, an order that the Plaintiffs recover attorney’s fees, expenses and court costs from the Defendants, and such other and further relief to which Plaintiffs are justly entitled. In December 2016 Judge Sparks issued a new scheduling order for 2017 and 2018 and set trial for November 2018.

IV. Policymaking Structure

A. Complete the following chart providing information on your policymaking body members.

Exhibit 6: Policymaking Body

Member Name	Term / Appointment Dates / Appointed by	Qualification	City
Kevin J. Lilly	April 20, 2017 through Nov. 15, 2021 Governor Greg Abbott	Public Member	Houston
Ida Clement Steen	June 13, 2014 through Nov. 15, 2019 Governor Rick Perry	Public Member	San Antonio
Vacant		Public Member	

B. Describe the primary role and responsibilities of your policymaking body.

Alcoholic Beverage Code §5.12 requires the commission to specify the duties and powers of the executive director and to implement policies clearly separating the policymaking responsibilities of the commission and the management responsibilities of the executive director and staff. It also specifies that where the Code imposes concurrent power on the commission and the administrator, the commission shall designate those powers and duties that it delegates to the executive director.

Code §5.34(b) also requires the commission to develop and implement policies that clearly define the respective responsibilities of the commission and the staff.

In Rule 31.1 the commission implements these statutory mandates. Subsection (b) of that Rule specifies the duties and authority retained by the commission, while subsection (c) lists the duties and authority delegated to the executive director.

C. How is the chair selected?

Alcoholic Beverage Code §5.04 provides that the governor shall designate a member of the commission as presiding officer, to serve at the pleasure of the governor.

D. List any special circumstances or unique features about your policymaking body or its responsibilities.

Code §5.05 contains specific conflict of interest provisions concerning relationships with the alcoholic beverage business. Most of these restrictions are applicable to members of the commission as well as employees and officers of the commission. Attorney General Opinion DM-310 states that §5.05(a) prohibits a member of the commission from investing money in any corporation that engages in the sale of alcoholic beverages, even if the member makes the

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investment through an investment advisory arm. Additionally, section 5.05(a) prohibits a member of the commission from investing in a corporation whose sole contact with the alcoholic beverage business is through a subsidiary or for which the sale of alcoholic beverages is purely incidental to the corporation's primary business.

E. In general, how often does your policymaking body meet? How many times did it meet in FY 2016? In FY 2017?

Generally, the commission meets every other month. In FY2016 it met six times: 9/22/15, 11/17/15, 1/26/16, 3/22/16, 5/24/16, and 7/26/16. In FY2017 it met seven times: 9/20/16/11/17/16, 1/24/17, 3/28/17, 5/23/17, 7/11/17, and 7/25/17. At the July 11, 2017 meeting the commission appointed a new executive director and appointed an interim executive director and an interim general counsel to fill vacancies in those offices on a temporary basis.

F. What type of training do members of your agency's policymaking body receive?

Alcoholic Beverage Code §5.022 specifies the training that is required before a person appointed as a member of the commission may vote, deliberate, or be counted toward a quorum.

G. Does your agency have policies that describe the respective roles of the policymaking body and agency staff in running the agency? If so, describe these policies.

Alcoholic Beverage Code §5.12 requires the commission to specify the duties and powers of the executive director and to implement policies clearly separating the policymaking responsibilities of the commission and the management responsibilities of the executive director and staff. It also specifies that where the Code imposes concurrent power on the commission and the administrator, the commission shall designate those powers and duties that it delegates to the executive director.

Code §5.34(b) also requires the commission to develop and implement policies that clearly define the respective responsibilities of the commission and the staff.

In Rule 31.1 the commission implements these statutory mandates. Subsection (b) of that Rule specifies the duties and authority retained by the commission, while subsection (c) lists the duties and authority delegated to the executive director.

H. What information is regularly presented to your policymaking body to keep them informed of your agency's performance?

Executive Director Monthly Report - TABC divisions and offices provide a monthly briefing to commissioners concerning accomplishments, significant activities, and updates on performance measures (LBB- and agency-based). The report includes quarterly statistics on LBB performance measures and frequent reports on trends noticed by a program or within the alcoholic beverage industry.

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Other Reports – TABC staff provide reports to the commission on a regular basis. Most of these documents do not require the commission to approve or take action.

- Legislative Appropriations Request
- Operating Budget for the fiscal year
- 2017-2021 Strategic Plan
- During legislative sessions, reports on status of pending legislation impacting the agency
- Performance Measure Quarterly Reports
- Non-Financial Annual Report

Committee-specific reports -- The commissioner on the Finance Committee and Audit Committee may receive a periodic budget report from TABC CFO as well as reports on all types of audits (internal, State Auditor's Office). The commissioner participates in internal audit discussions.

Litigation updates – When lawsuits are filed against the agency or there is a significant ruling or timeline established, the General Counsel (or Executive Director) notifies the commissioners.

Pre-commission meeting conference calls -- The week before the commission meeting, each commissioner participates in a conference call, historically with the Executive Director, General Counsel, and Assistant General Counsel, to review agenda items, discuss proposed rules or rules under consideration, and talk about any concerns or issues.

I. How does your policymaking body obtain input from the public regarding issues under the jurisdiction of the agency? How is this input incorporated into the operations of your agency?

Generally, in rulemaking proceedings the staff conducts stakeholder meetings before presenting a recommendation to the commission regarding the text of rules or amendments to be published in the Texas Register for comments. The staff also regularly convenes a public hearing to receive oral comments on proposed rules that have been published in the Texas Register, in addition to receiving written comments. Comments are made available to the commissioners, and staff summarizes them and recommends the response to them in the preamble to and the text of the adopted Rules. The recommendations are presented to the commissioners for their consideration in deciding whether to adopt the Rules or amendments as proposed or as modified in response to the comments. The agenda of each open meeting of the commissioners provides notice that public comments are invited.

J. If your policymaking body uses subcommittees or advisory committees to carry out its duties, fill in the following chart. In addition, please attach a copy of any reports filed by your agency under Government Code Chapter 2110 regarding an assessment of your advisory committees.

Not applicable.

V. Funding

A. Provide a brief description of your agency's funding.

The TABC 2016-2017 biennial appropriations funding sources are comprised of General Revenue Fund, Federal Funds and Appropriated Receipts. The funding sources are reviewed and modified through the Legislative Appropriations Request (LAR) process every two years to align the agency funding sources accordingly.

B. List all riders that significantly impact your agency's budget.

HB 1 (84th Legislature):

Article V, 7 – Appropriations Limited to Revenue Collections

Article V, 11 – Texas Wine Marketing Program

Article IX Sec. 14.03 – Limitation on Expenditures – Capital Budget

Article IX Sec. 16.01 – Court Representation and Outside Legal Counsel

Article IX Sec. 16.04 – Judgements and Settlements

Article IX Sec. 17.09 – Border Security

Article IX Sec. 18.03 - Centralized Accounting and Payroll/Personnel System Deployments

SB 1 (85th Legislature, Regular Session):

Article V, 13 – Limit on Travel and Activities

Article IV, Sec. 17.07 – Border Security Funding – Informational Listing

Article IV, Sec. 17.10 – Contract Cost Containment

C. Show your agency’s expenditures by strategy.

Exhibit 7: Expenditures by Strategy — FY2016 (Actual)

Goal / Strategy	Amount Spent	Percent of Total	Contract Expenditures Included in Total Amount
A.1.1. Enforcement	\$28,374,285.20	56	\$4,543,915
B.1.1. Licensing and Investigations	\$4,387,969.63	9	\$409,006
C.1.1. Compliance Monitoring	\$6,323,232.37	13	\$736,683
C.2.1. Ports of Entry	\$5,297,686.69	10	\$434,253
D.1.1. Central Administration	\$2,801,827.89	6	\$535,913
D.1.2. Information Resources	\$2,538,885.16	5	\$1,094,423
D.1.3. Other Support Services	\$545,914.43	1	\$122,676
GRAND TOTAL	\$50,269,801.37	100	\$7,876,869

D. Show your agency’s sources of revenue. Include all local, state, and federal appropriations, all professional and operating fees, and all other sources of revenue collected by the agency, including taxes and fines.

Exhibit 8: Sources of Revenue — FY2016 (Actual)

Source	Amount
Fees	\$42,883,921
Surcharges	\$30,713,453
Ports of Entry Administrative Fees	\$4,718,813
Fines	\$2,888,560
Seller Server Training Fees	\$809,913
Label Approval Fees	\$576,830
Bond Forfeitures & Misc.	\$489,374
Credit, Charge, Debit Card Fees	\$123,000
Licensing Administrative Fees	\$21,950
Revenue Toward Appropriation	\$83,225,814
Excise Taxes	\$223,162,705
Total	\$306,388,519

E. If you receive funds from multiple federal programs, show the types of federal funding sources.

Exhibit 9: Federal Funds — FY2016 (Actual)

Type of Fund	State / Federal Match Ratio	State Share	Federal Share	Total Funding
Public Safety Project (PSP) – Grants for Prevention	0/100	0	100	\$482,336.24
TOTAL		0	100	\$482,336.24

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F. If applicable, provide detailed information on fees collected by your agency.

*All statutory references are to the Alcoholic Beverage Code (Code). All fees are defined in the Code as referenced in Exhibit 10. A fee is generally set in the chapter of the Code creating the license or permit; however, Code Section 5.50(b) gives TABC the authority to set the fee if it is not set in the Code. The fee described in the Code is annual but licenses and permits are renewed every two years. The fee reflected in Exhibit 10 represents the fee for the two-year term of the license or permit.

**TABC is given authority for surcharges in Code Section 5.50(b). All references to surcharges are in Section 33.23 of the Rules.

***Revenue from fees and surcharges are deposited in general revenue per Code Section 5.50(d).

Exhibit 10: Fee Revenue — Fiscal Year 2016

Fee Description	Statutory Citation*	Fee*	Surcharge**	Number of Persons or Entities Paying Fee	Fee Revenue***
Program: LICENSING					
Change of Expiration Date	Ch. 6	\$25	\$0	2	\$50
Brewer's Permit	Ch. 12	\$3,000	\$576	72	\$257,472
Brewer's Self-Distribution Permit	Ch. 12A	\$500	\$250	47	\$35,250
Nonresident Brewer's Permit	Ch. 13	\$3,000	\$376	242	\$816,992
Distiller's and Rectifier's Permit	Ch. 14	\$3,000	\$350	60	\$201,000
Distiller's Agent's Permit	Ch. 15	\$20	\$94	29	\$3,306
Winery Permit	Ch. 16	\$150	\$701	194	\$165,094
Winery Festival Permit	Ch. 17	\$100	\$278	133	\$50,274
Wine Bottler's Permit	Ch. 18	\$450	\$602	0	\$0
Wholesaler's Permit	Ch. 19	\$3,750	\$701	167	\$743,317
General Class B Wholesaler's Permit	Ch. 20	\$600	\$651	67	\$83,817
Local Class B Wholesaler's Permit	Ch. 21	\$150	\$651	1	\$801
Package Store Permit	Ch. 22	\$1,000	\$501	1,933	\$2,901,433
Local Distributor's Permit	Ch. 23	\$200	\$452	543	\$354,036
Wine Only Package Store Permit	Ch. 24	\$150	\$553	2,192	\$1,540,976
Wine and Beer Retailer's Permit (Bexar, Dallas, Harris, Tarrant counties) - Original	Ch. 25	\$2,000	\$553	629	\$1,605,837
Wine and Beer Retailer's Permit (Bexar, Dallas, Harris, Tarrant counties) - Renewal	Ch. 25	\$1,500	\$553	2,005	\$4,116,265
Wine and Beer Retailer's Permit (excluding Bexar, Dallas, Harris, Tarrant counties)	Ch. 25	\$350	\$553	4,534	\$4,094,202
Wine and Beer Retailer's Permit -- Excursion Boat	Sec. 25.03	\$260	\$553	9	\$7,317

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Fee Description	Statutory Citation*	Fee*	Surcharge**	Number of Persons or Entities Paying Fee	Fee Revenue***
Wine and Beer Retailer's Permit -- Railway Car	Sec. 25.03	\$60 per car	\$553	0	\$0
Wine and Beer Retailer's Off-Premise Permit	Ch. 26	\$120	\$553	12,731	\$8,567,963
Temporary Wine and Beer Retailer's Permit	Ch. 27, Subch. A	\$30	\$201	2,820	\$651,420
Temporary Wine and Beer Retailer's Permit (Non-Profit)	Ch. 27, Subch. A	\$30	\$201	15	\$3,465
Special Three-Day Wine and Beer Permit	Ch. 27, Subch. B	\$30	\$201	1,973	\$455,763
Mixed Beverage Permit - Original	Ch. 28	\$6,000	\$602	1,448	\$9,559,696
Mixed Beverage Permit - 1st renewal	Ch. 28	\$4,500	\$602	884	\$4,510,168
Mixed Beverage Permit - 2nd renewal	Ch. 28	\$3,000	\$602	661	\$2,380,922
Mixed Beverage Permit - 3rd+ renewals	Ch. 28	\$1,500	\$602	2,170	\$4,561,340
Mixed Beverage Permit with Food and Beverage Certificate - Original	Ch. 28	\$6,000	\$602	386	\$2,548,372
Mixed Beverage Permit with Food and Beverage Certificate - 1st Renewal	Ch. 28	\$4,500	\$602	254	\$1,295,908
Mixed Beverage Permit with Food and Beverage Certificate - 2nd Renewal	Ch. 28	\$3,000	\$602	193	\$695,186
Mixed Beverage Permit with Food and Beverage Certificate - 3rd+ Renewal	Ch. 28	\$1,500	\$602	447	\$939,594
Merger/Consolidation Fee	Sec. 28.14	\$100	\$0	23	\$2,300
Mixed Beverage Late Hours Permit	Ch. 29	\$300	\$327	3,542	\$2,220,834
Daily Temporary Mixed Beverage Permit	Ch. 30	\$50 per day	\$201	901	\$226,151
Caterer's Permit	Ch. 31	\$1,000	\$278	765	\$977,670
Private Club Registration Permit -- 0 to 250 members	Sec. 32.02(b)(1)	\$1,500	\$901	170	\$408,170
Private Club Registration Permit -- 251 to 450 members	Sec. 32.02(b)(1)	\$2,700	\$901	12	\$43,212
Private Club Registration Permit -- 451 to 650 members	Sec. 32.02(b)(1)	\$3,900	\$901	2	\$9,602
Private Club Registration Permit -- 651 to 850 members	Sec. 32.02(b)(1)	\$5,100	\$901	2	\$12,002
Private Club Registration Permit -- 851 to 1,000 members	Sec. 32.02(b)(1)	\$6,000	\$901	0	\$0
Private Club Registration Permit -- Over 1,000 members	Sec. 32.02(b)(1)	\$6 per member	\$901	0	\$0
Private Club Registration Permit -- Original	Sec. 32.02(b)(2)	\$7,000	\$901	28	\$221,228

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Fee Description	Statutory Citation*	Fee*	Surcharge**	Number of Persons or Entities Paying Fee	Fee Revenue***
Private Club Registration Permit -- 1st renewal	Sec. 32.02(b)(2)	\$5,500	\$901	21	\$134,421
Private Club Registration Permit -- 2nd+ renewal	Sec. 32.02(b)(2)	\$4,000	\$901	141	\$691,041
Private Club Beer and Wine Permit	Sec. 32.02(d)	\$3,000	\$901	23	\$89,723
Private Club Exemption Certificate Permit	Sec. 32.11	\$0	\$0	0	\$0
Private Club Late Hours Permit	Ch. 33, Subch. A	\$1,500	\$350	142	\$262,700
Daily Temporary Private Club Permit	Ch. 33, Subch. A	\$50 per day	\$226	84	\$23,184
Airline Beverage Permit	Ch. 34	\$4,400	\$327	16	\$75,632
Agent's Permit	Ch. 35	\$20	\$94	6,446	\$734,844
Manufacturer's Agent's Permit	Ch. 36	\$20	\$94	791	\$90,174
Nonresident Seller's Permit	Ch. 37	\$300	\$376	1,931	\$1,305,356
Industrial Permit	Ch. 38	\$120	\$261	59	\$22,479
Carrier Permit	Ch. 41	\$60	\$252	219	\$68,328
Private Carrier Permit	Ch. 42	\$60	\$252	476	\$148,512
Local Cartage Permit	Ch. 43	\$60	\$202	863	\$226,106
Local Cartage Transfer Permit	Ch. 43	\$60	\$202	2	\$524
Beverage Cartage Permit	Ch. 44	\$40	\$151	3,563	\$680,533
Public Storage Permit	Ch. 45	\$200	\$202	13	\$5,226
Private Storage Permit	Ch. 45	\$200	\$202	20	\$8,040
Winery Storage Permit	Sec. 45.04	\$200	\$202	2	\$804
Bonded Warehouse Permit	Ch. 46	\$300	\$136	3	\$1,308
Bonded Warehouse Permit (Dry Area)	Sec. 46.03(b)	\$300	\$136	0	\$0
Local Industrial Alcohol Manufacturer's Permit	Ch. 47	\$200	\$327	4	\$2,108
Passenger Train Beverage Permit	Ch. 48	\$1,000	\$602	2	\$3,204
Market Research Packager's Permit	Ch. 49	\$200	\$127	0	\$0
Promotional Permit	Ch. 50	\$600	\$376	31	\$30,256
Minibar Permit - Original	Ch. 51	\$4,000	\$350	5	\$21,750
Minibar Permit - 1st renewal	Ch. 51	\$3,000	\$350	5	\$16,750
Minibar Permit - 2nd renewal	Ch. 51	\$2,000	\$350	6	\$14,100
Minibar Permit - 3rd+ renewals	Ch. 51	\$1,500	\$350	10	\$18,500
Package Store Tasting Permit	Ch. 52	\$50	\$176	1,425	\$322,050
Temporary Charitable Auction Permit	Ch. 53	\$25	\$201	235	\$53,110
Out-of-State Winery Direct Shipper's Permit	Ch. 54	\$150	\$376	631	\$331,906
Manufacturer's Agent's Warehousing Permit	Ch. 55	\$1,500	\$651	5	\$10,755
Manufacturer's License - 1st establishment	Ch. 62	\$1,500	\$651	33	\$70,983
Manufacturer's License - 2nd establishment	Ch. 62	\$3,000	\$651	4	\$14,604

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Fee Description	Statutory Citation*	Fee*	Surcharge**	Number of Persons or Entities Paying Fee	Fee Revenue***
Manufacturer's License - 3rd - 5th establishments	Ch. 62	\$8,550	\$651	0	\$0
Manufacturer's License - 6th+ establishment	Ch. 62	\$16,800	\$651	0	\$0
Manufacturer's Self-Distribution License	Ch. 62A	\$500	\$250	21	\$15,750
Nonresident Manufacturer's License	Ch. 63	\$1,500	\$576	197	\$408,972
General Distributor's License	Ch. 64	\$600	\$701	66	\$85,866
Local Distributor's License	Ch. 65	\$150	\$701	0	\$0
Branch Distributor's License	Ch. 66	\$150	\$701	63	\$53,613
Importer's License	Ch. 67	\$40	\$278	117	\$37,206
Importer's Carrier's License	Ch. 68	\$40	\$202	10	\$2,420
Retail [Beer] Dealer's On-Premise License (Bexar, Dallas, Harris, Tarrant counties) - Original	Ch. 69	\$2,000	\$553	16	\$40,848
Retail [Beer] Dealer's On-Premise License (Bexar, Dallas, Harris, Tarrant counties) - Renewal	Ch. 69	\$1,500	\$553	165	\$338,745
Retail [Beer] Dealer's On-Premise License (excluding Bexar, Dallas, Harris, Tarrant counties)	Ch. 69	\$300	\$553	582	\$496,446
Retail [Beer] Dealer's On-Premise Late Hours License	Ch. 70	\$500	\$327	1,250	\$1,033,750
Retail [Beer] Dealer's Off-Premise License	Ch. 71	\$120	\$553	4,413	\$2,969,949
Agent's Beer License	Ch. 73	\$20	\$94	6,590	\$751,260
Brewpub License	Ch. 74	\$1,000	\$426	75	\$106,950
Storage License	Ch. 75	\$400	\$202	0	\$0
Alternating Form of Business Entity Fee	Sections 11.12, 61.14	\$100	\$0	225	\$22,500
Food and Beverage Certificate	Sections 25.13, 28.18, 32.23, 69.16	\$200	\$576	5,391	\$4,183,416
License/Permit Late Fee	Rule 33.6	\$100	\$0	2,295	\$229,500
Forwarding Center Authority	Rule 35.6	\$2,000	\$278	20	\$45,560
Program: LABEL APPROVAL (as part of Marketing Practices Program)					
Initial Malt Beverage Label	§101.67	\$25	\$0	6,998	\$174,950
Initial Spirits Label	§101.671	\$25	\$0	3,073	\$76,825
Initial Wine Label	§101.671	\$25	\$0	13,324	\$333,100
Program: SELLER SERVER TRAINING					
Certificate Numbers (Trainee)	Rule §50.9	\$2 each	\$0	390,660	\$781,320
Primary School – Original	Rule §50.22(a)(2)	\$1,000	\$0	9	\$9,000
Primary School – Renewal	Rule §50.22(a)(3)	\$500	\$0	27	\$13,000

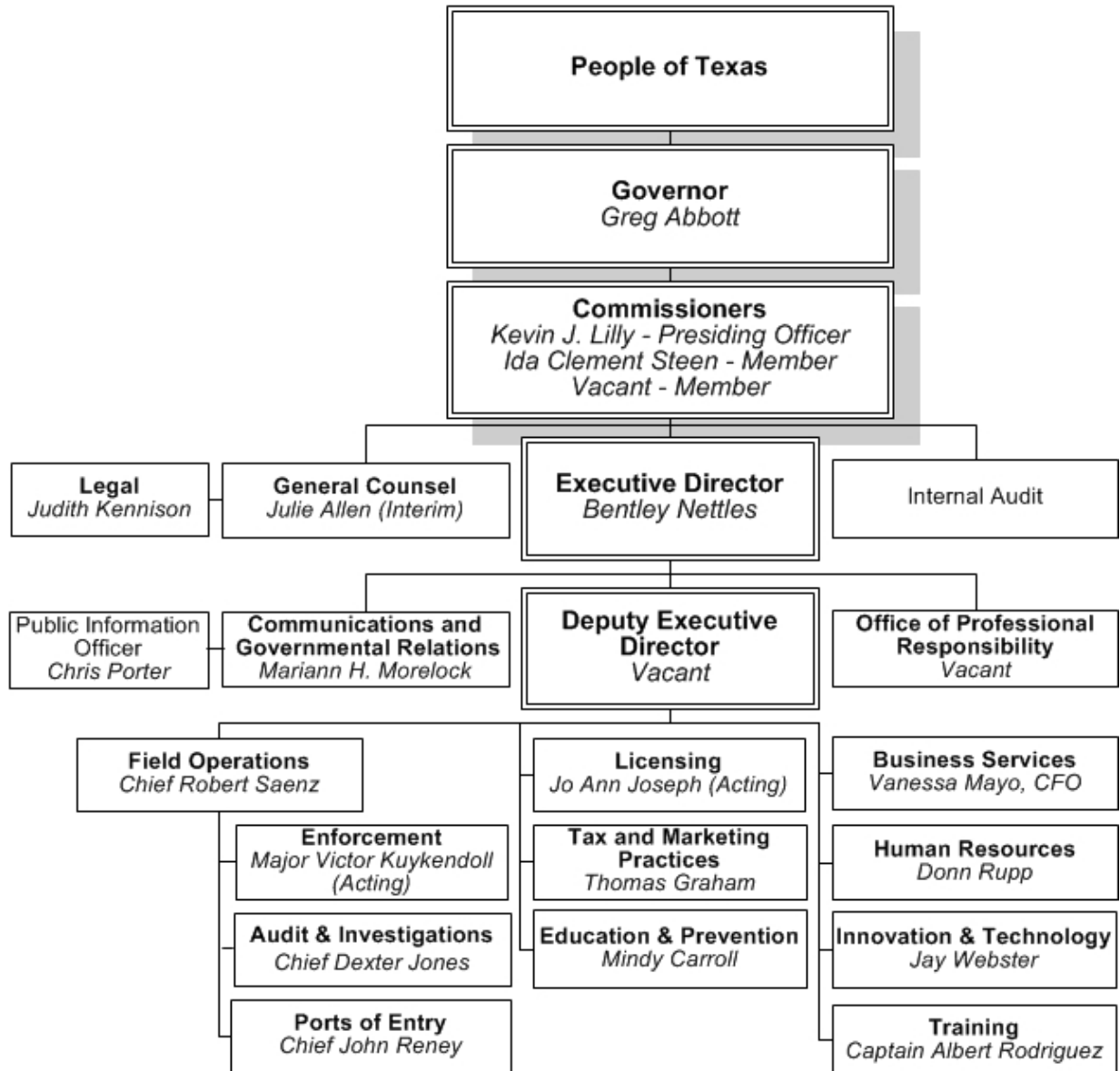
Self-Evaluation Report

Fee Description	Statutory Citation*	Fee*	Surcharge**	Number of Persons or Entities Paying Fee	Fee Revenue***
Primary School – Late Fee	Rule §50.22(a)(4)	\$100	\$0	4	\$400
Branch School: In-house or Classroom-Based Training School - Original	Rule §50.22(b)(2)	\$200	\$0	0	0
Branch School: In-house or Classroom-Based Training School - Renewal	Rule §50.22(b)(2)	\$100	\$0	2	\$200
Branch School: Internet-Based Training School - Original	Rule §50.22(b)(2)	\$50	\$0	1	\$50
Branch School: Internet-Based Training School - Renewal	Rule §50.22(b)(3)	\$25	\$0	1	\$25
Change of School Ownership	Rule §50.22(d)	\$100	\$0	1	\$100
Trainer Certificate - Original	Rules §50.25	\$100	\$0	64	\$6,400
Trainer Certificate - Renewal	Rules §50.25	\$50	\$0	51	\$2,550
Trainer Certificate – Late Fee	Rules §50.25	\$50	\$0	6	\$300
Program: PORTS OF ENTRY					
Ports of Entry Administrative Fee	§107.07	\$3	\$0	1,666,167	\$4,998,501

VI. Organization

- A. Provide an organizational chart that includes major programs and divisions, and shows the number of FTEs in each program or division. Detail should include, if possible, Department Heads with subordinates, and actual FTEs with budgeted FTEs in parenthesis.

Exhibit 11. Agency Organizational Chart as of August 2, 2017

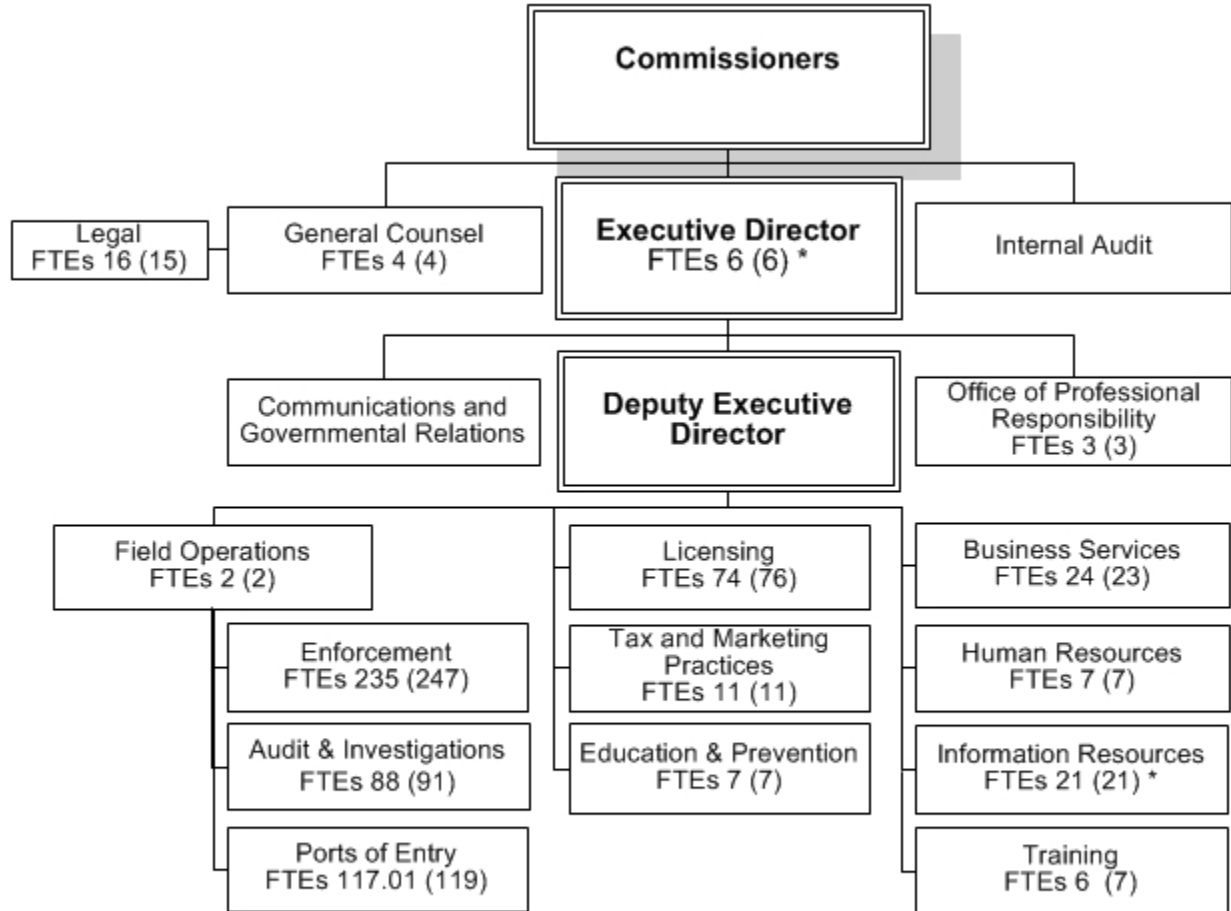


As of 8/2/2017

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To coincide with info requested, all subsequent organizational charts are representative of the agency as of August 31, 2016.

Exhibit 12: Agency Organizational Chart as of August 31, 2016

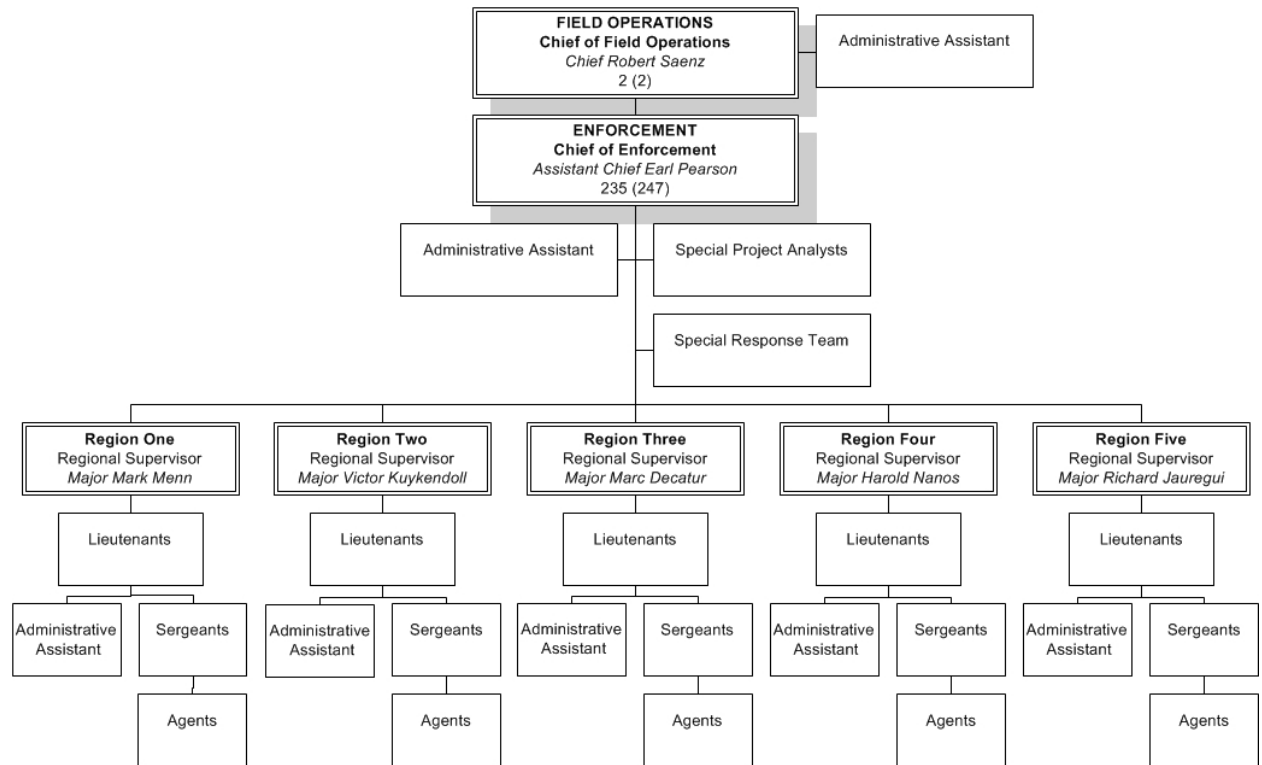


Actual FTEs (Budgeted FTEs)

* FTE(s) funded outside of program

As of 8/31/2016

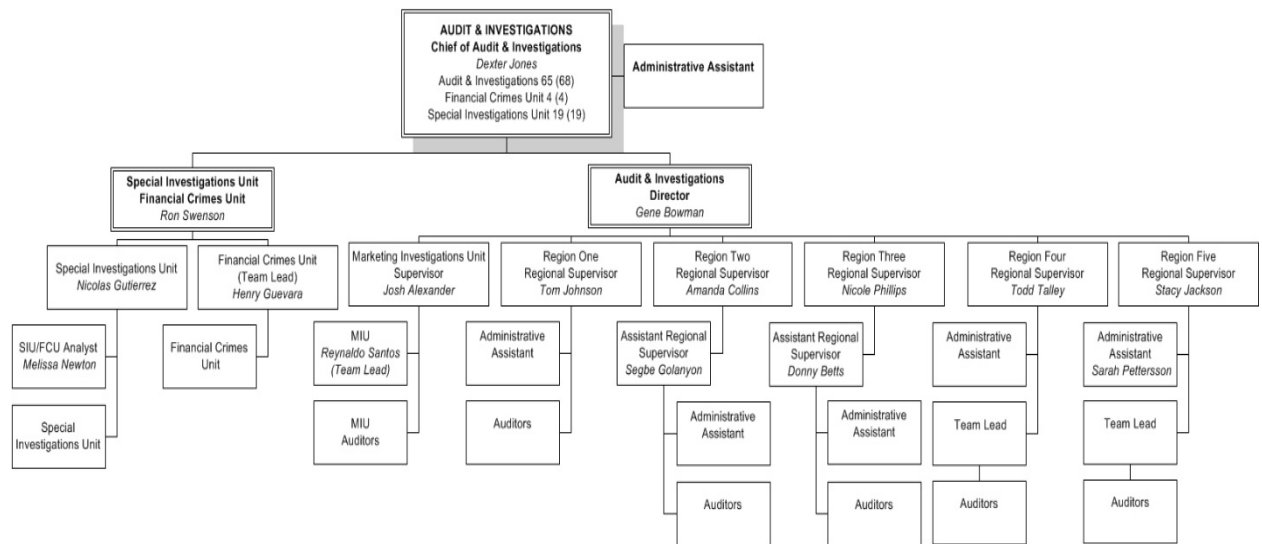
Exhibit 13: Field Operations Organizational Chart as of August 31, 2016



Actual FTEs (Budgeted FTEs)

As of 8/31/2016

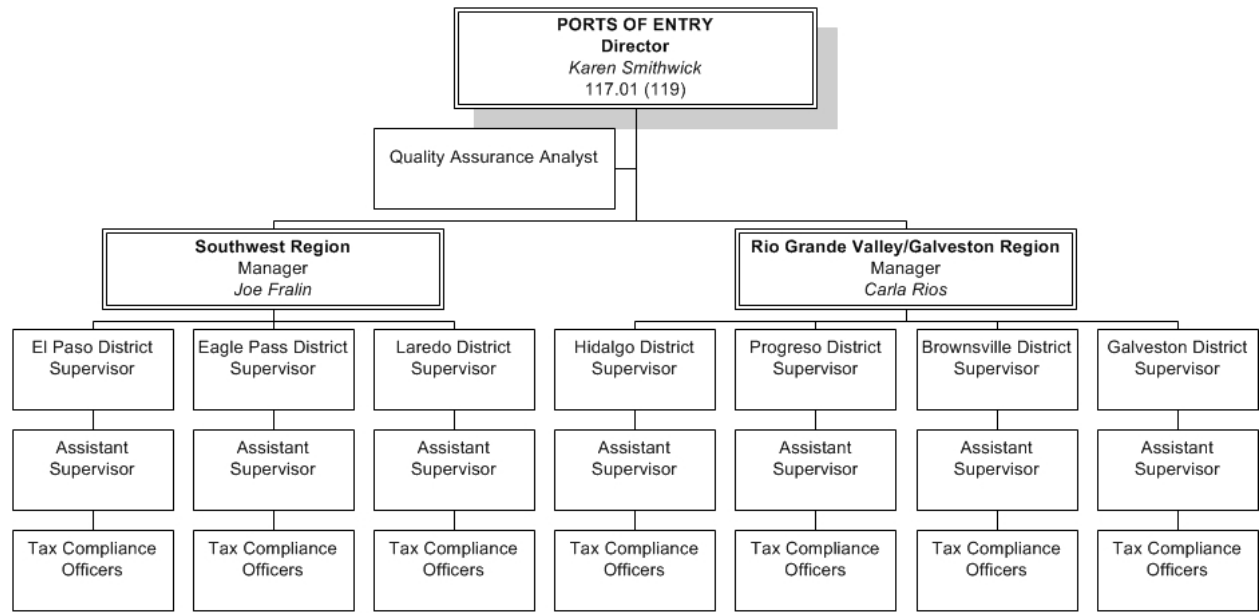
Exhibit 14: Audit & Investigations Division Organizational Chart as of August 31, 2016



Actual FTEs (Budgeted FTEs)

As of 8/31/2016

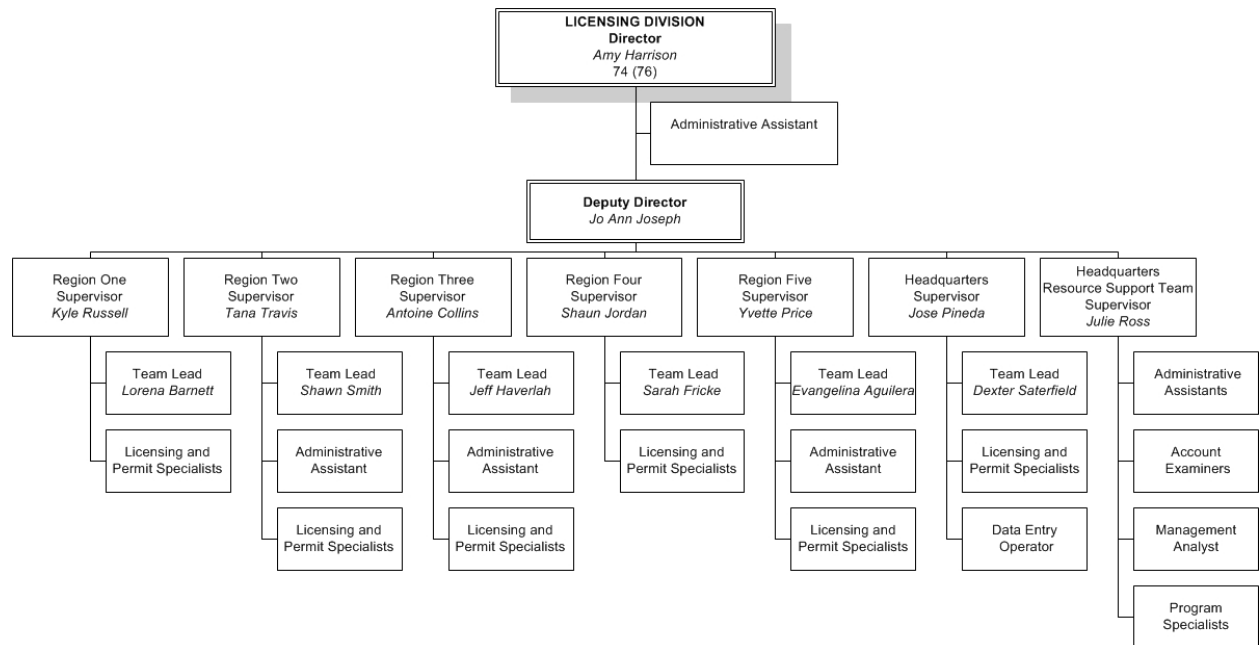
Exhibit 15: Ports of Entry Organizational Chart as of August 31, 2016



Actual FTEs (Budgeted FTEs)

As of 8/31/2016

Exhibit 16: Licensing Division Organizational Chart as of August 31, 2016



Actual FTEs (Budgeted FTEs)

As of 8/31/2016

Exhibit 17: Excise Tax and Marketing Practices Division Organizational Chart as of August 31, 2016

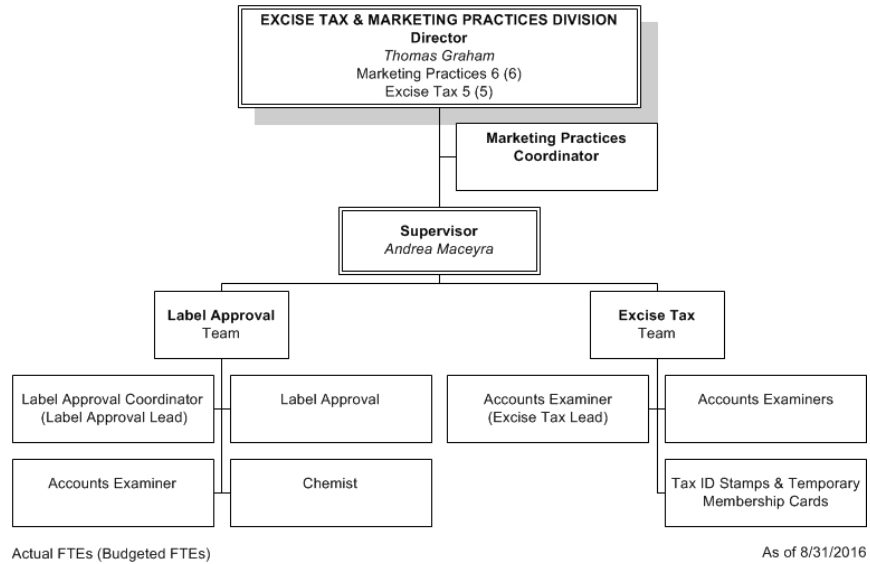


Exhibit 18: Education and Prevention Division Organizational Chart as of August 31, 2016

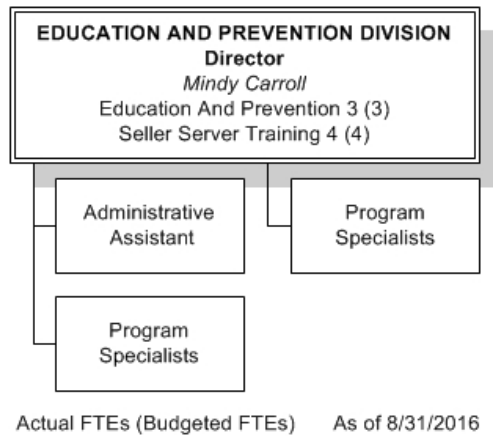
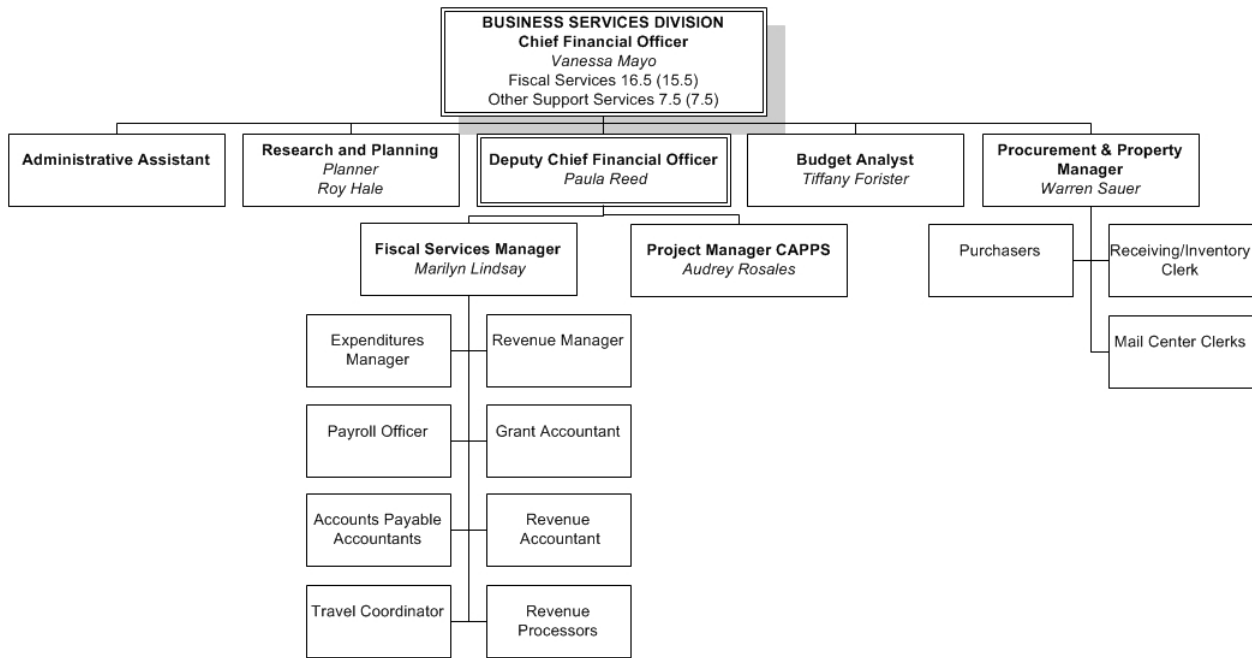


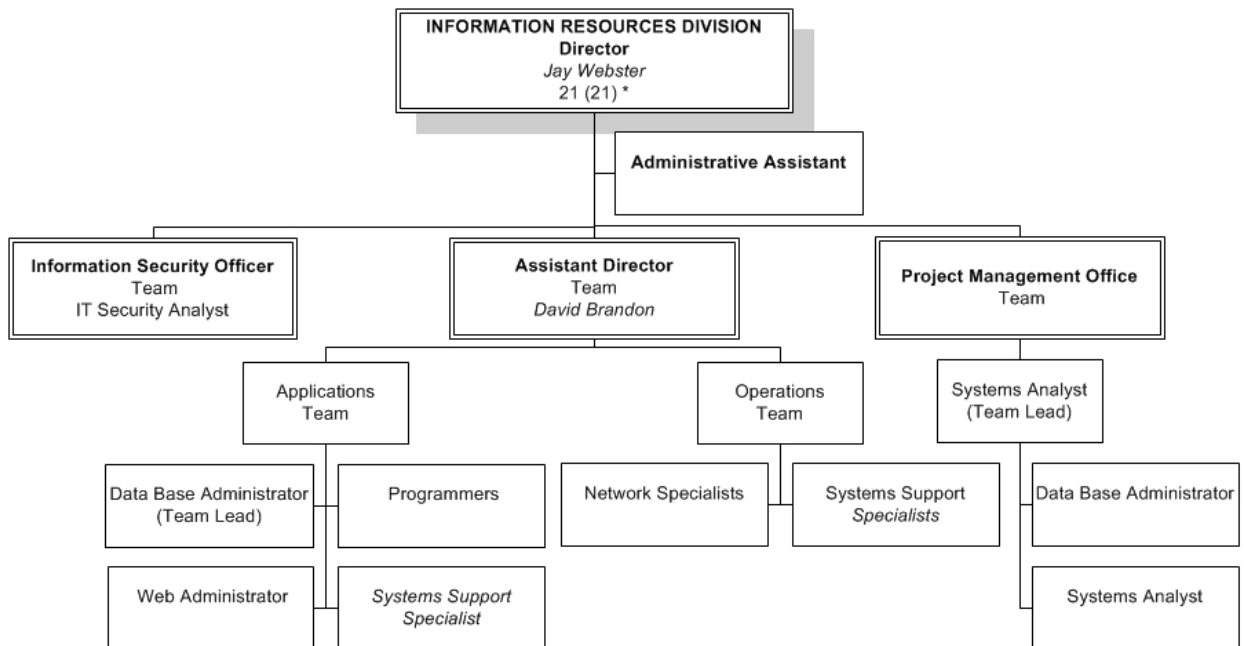
Exhibit 19: Business Services Division Organizational Chart as of August 31, 2016



Actual FTEs (Budgeted FTEs)

As of 8/31/2016

Exhibit 20: Information Resources Division Organizational Chart as of August 31, 2016



Actual FTEs (Budgeted FTEs)

* FTE(s) funded outside of program

As of 8/31/2016

Exhibit 21: Office of General Counsel Organizational Chart as of August 31, 2016

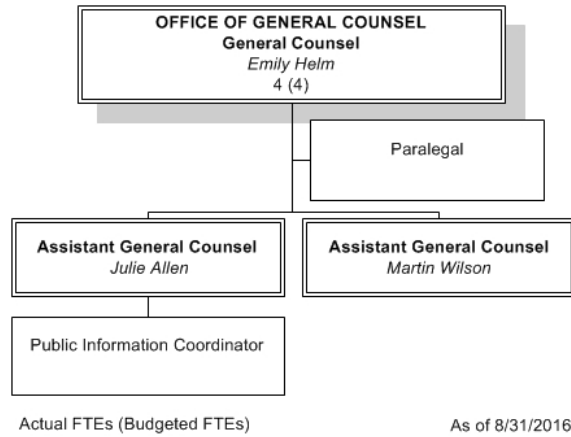


Exhibit 22: Legal Services Division Organizational Chart as of August 31, 2016

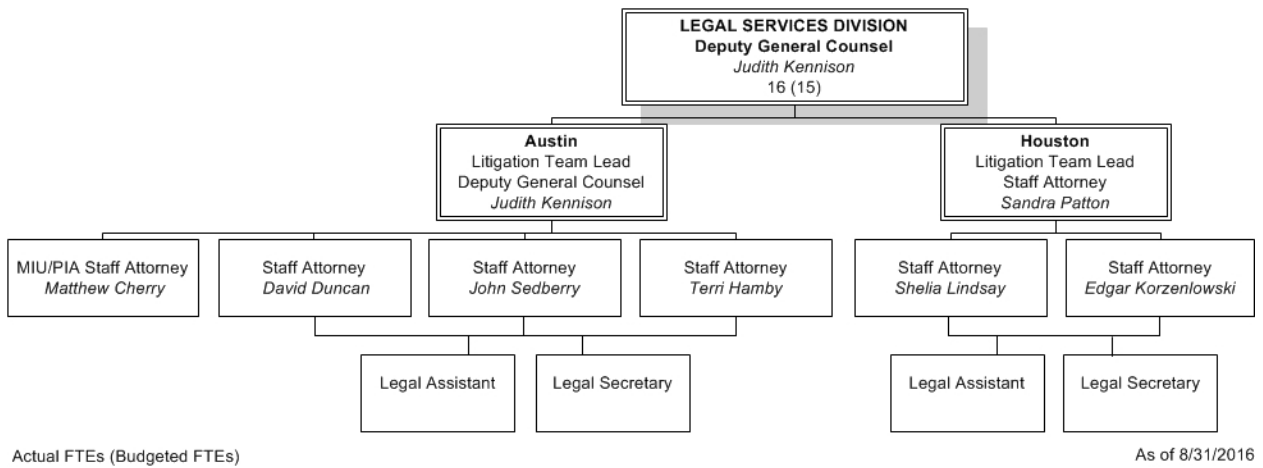


Exhibit 23: Training Division Organizational Chart as of August 31, 2016

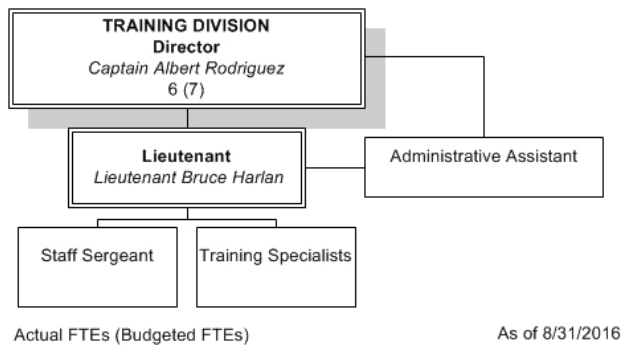


Exhibit 24: Human Resources Division Organizational Chart as of August 31, 2016

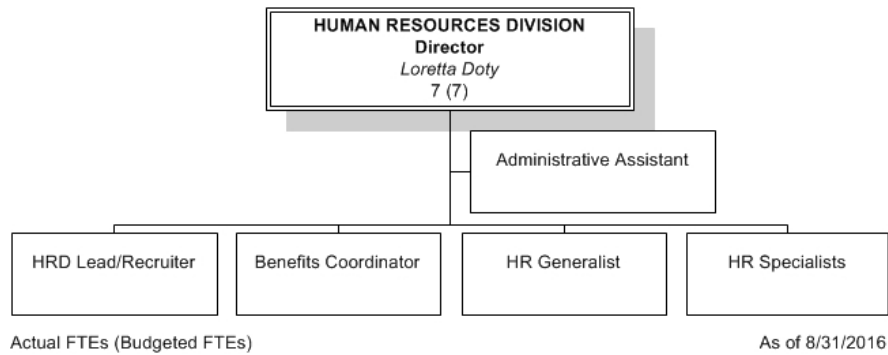
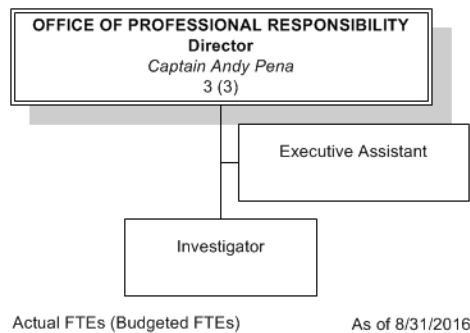


Exhibit 25: Office of Professional Responsibility Organizational Chart as of August 31, 2016



B. If applicable, fill in the chart below listing field or regional offices.

Exhibit 26: FTEs by Location — Fiscal Year 2016

Headquarters, Region, or Field Office	Location	Number of Budgeted FTEs FY2016	Number of Actual FTEs as of June 1, 2016
Headquarters	Austin, TX	145	155
Warehouse	Austin, TX	3	3
Regional Office	Arlington, TX	65	63
Regional Office	Austin, TX	28	27.5
Regional Office	Houston, TX	62	60
Regional Office	Lubbock, TX	12	11
Regional Office	San Antonio, TX	34	33
Field Office	Abilene, TX	6	6
Field Office	Amarillo, TX	5	5
Field Office	Beaumont, TX	5	5
Field Office	Bryan, TX	6	6
Field Office	Conroe, TX	10	9
Field Office	El Paso, TX	5	5
Field Office	Longview, TX	0	0
Field Office	McAllen, TX	22	21
Field Office	Odessa, TX	6	6
Field Office	Richmond, TX	9	9
Field Office	San Angelo, TX	3	3

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Headquarters, Region, or Field Office	Location	Number of Budgeted FTEs FY2016	Number of Actual FTEs as of June 1, 2016
Field Office	Tyler, TX	11	11
Field Office	Victoria, TX	3.5	3.5
Field Office	Waco, TX	10	10
Field Office	Wichita Falls, TX	3	3
Field Office	Corpus Christi, TX	9	9
Field Office (Free Space)	Belton, TX	4	4
Field Office (Free Space)	Brazoria, TX	1	1
Field Office (Free Space)	Brownwood, TX	0	0
Field Office (Free Space)	Cleburne, TX	1	1
Field Office (Free Space)	Del Rio, TX	2	2
Field Office (Free Space)	Denton, TX	3	3
Field Office (Free Space)	Dickinson, TX	1	1
Field Office (Free Space)	El Paso, TX	12	11
Field Office (Free Space)	Floresville, TX	1	1
Field Office (Free Space)	Ft. Davis, TX	1	1
Field Office (Free Space)	Georgetown, TX	3	3
Field Office (Free Space)	Greenville, TX	1	1
Field Office (Free Space)	Hondo, TX	1	1
Field Office (Free Space)	Huntsville, TX	1	1
Field Office (Free Space)	La Grange, TX	0	0
Field Office (Free Space)	Laredo, TX	4.5	4.5
Field Office (Free Space)	Llano, TX	1	1
Field Office (Free Space)	Lufkin, TX	6	6
Field Office (Free Space)	McKinney, TX	4	4
Field Office (Free Space)	Mineral Wells, TX	0	0
Field Office (Free Space)	New Braunfels, TX	3	3
Field Office (Free Space)	San Benito, TX	4	4
Field Office (Free Space)	San Marcos, TX	8	8
Field Office (Free Space)	Sealy, TX	0	0
Field Office (Free Space)	Sherman, TX	0	0
Field Office (Free Space)	Uvalde, TX	0.5	0.5
Field Office (Free Space)	Wharton, TX	1	1
Ports of Entry—Brownsville District			
Gateway Bridge	Brownsville, TX	6	6
B&M RR	Brownsville, TX	4	4
Veteran's International Bridge	Brownsville, TX	4	4
Ports of Entry—Progreso District			
Donna	Donna, TX	1	1
Progreso International Bridge	Progreso, TX	11	11
Los Indios	Los Indios, TX	3	3
Ports of Entry—Eagle Pass District			
Amistad Dam	Del Rio, TX	0	Spot checked/No FTE assigned
Del Rio International Bridge	Del Rio, TX	5	5
Eagle Pass International Bridge I	Eagle Pass, TX	5	5
Eagle Pass International Bridge II	Eagle Pass, TX	3	3
Ports of Entry—El Paso District			
Paso Del Norte	El Paso, TX	7.5	8
Bridge of the Americas	El Paso, TX	7	7
Ysleta/ Zaragoza	Ysleta, TX	6	7
Stanton Street Bridge (Good Neighbor Bridge)	El Paso, TX	0	Spot checked/No FTE assigned

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Headquarters, Region, or Field Office	Location	Number of Budgeted FTEs FY2016	Number of Actual FTEs as of June 1, 2016
Fabens/Tornillo	Tornillo, TX	2.5	1.5
Fort Hancock Bridge	Fort Hancock, TX	0	Spot checked/No FTE assigned
Presidio Bridge	Presidio, TX	2	2
Ports of Entry—Hidalgo District			
Falcon Dam	Falcon Heights, TX	0	Spot checked/No FTE assigned
Roma International Bridge	Roma, TX	4	4
Rio Grande City	Rio Grande City, TX	0	0
Los Ebanos Ferry	Los Ebanos, TX	0	Spot checked/No FTE assigned
Anzalduas Bridge	McAllen, TX	5	5
Hidalgo International Bridge	Hidalgo, TX	6	5
Pharr	Pharr, TX	4	4
Ports of Entry—Seaport District			
Galveston Seaport Terminal 1	Galveston, TX	3	5.06
Galveston Seaport Terminal 2	Galveston, TX	0	0
Bayport Terminal 1	Galveston, TX	0	Closed/No cruise line servicing port
Ports of Entry—Laredo District			
Laredo IV (World Trade Bridge)	Laredo, TX	0	Commercial bridge only/Not manned
Columbia	Laredo, TX	3	3
Gateway (Bridge I)	Laredo, TX	4	4
Lincoln/Juarez (Bridge II)	Laredo, TX	16	16
TOTALS		639	637.56

C. What are your agency’s FTE caps for fiscal years 2016–2019?

FY2016 and FY2017 – 639

FY2018 and FY2019 – 635

D. How many temporary or contract employees did your agency have as of August 31, 2016? Please provide a short summary of the purpose of each position, the amount of expenditures per contract employee, and the procurement method of each position.

TABC had eight temp employees and 13 contract employees as of 8/31/17 to serve as additional staff resources. Contract employee expenditures totaled \$177,741.99 for fiscal year 2016.

- Ten contract employees for the Galveston Ports of Entry operations were procured through the Open Market Solicitation procedure as authorized by Texas Government Code Sections 2155.062 (a)(3) and 2156.061. Total expenditures for these employees for fiscal year 2016 were \$87,009.84.

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- Two contract employees for the Office of General Counsel and Austin Field Office operations were procured through State Term Contracts administered by the Comptroller of Texas and Texas Government Code, Section 2155.132, 34 Texas Administrative Code, Sections 20.40-20.41 and the State of Texas Procurement Manual. Total expenditures for fiscal year were \$22,874.68.
- One contract employee for Innovation & Technology Division operations was procured through the Texas Government Code Section 2155.062(a)(3) Delegated Purchases process. Total expenditures totaled \$10,854.97.

E. List each of your agency’s key programs or functions, along with expenditures and FTEs by program.

Exhibit 27: List of Program FTEs and Expenditures — Fiscal Year 2016

Program	Number of Budgeted FTEs FY 2016	Actual FTEs as of August 31, 2016	Actual Expenditures
Enforcement	250	238	\$24,190,064.47
Office of Professional Responsibility	3	3	\$305,107.06
Training	7	6	\$576,485.98
Special Investigations Unit	19	19	\$1,702,839.02
Legal Services Division	15	16	\$1,599,788.67
Licensing Division	77	75	\$4,387,969.63
Audit and Investigations	68	65	\$4,609,746.16
Financial Crimes Unit	4	4	\$293,668.50
Seller Server Training	4	4	\$182,951.53
Education and Prevention	3	3	\$281,258.49
Marketing Practices	6	6	\$393,481.85
Excise Tax	5	5	\$562,125.84
Ports of Entry	119	117.01	\$5,297,686.69
Executive	5	5	\$920,065.65
General Counsel	4	4	\$438,262.69
Business Services Division	15.5	16.5	\$957,148.63
Human Resources	7	7	\$486,350.92
Information Resources	20	20	\$2,538,885.16
Other Support Services	7.5	7.5	\$545,914.43
TOTAL	639	621.01	\$50,269,801.37

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VII. Guide to Agency Programs

Agency Administration

The following information describes the statewide administrative structure of TABC, as well as details on statewide issues or programs queried by individual items in Section VII. Detailed reports for each agency program, such as Enforcement or Licensing, follow this overview.

Oversight of the Texas Alcoholic Beverage Commission's day-to-day statewide operations are centered at its Austin headquarters. Employees stationed at headquarters include the Executive Management Team, which is defined in Section 1.04 (25) of the Alcoholic Beverage Code as the Executive Director, Deputy Executive Director, and each agency division director, as well as a number of other administrative employees with statewide authority and oversight who report to the Executive Director.

The agency's Executive Director reports directly to the three-member commission and is responsible for the day-to-day administration of the agency's mission. The Executive Director, who is appointed by the commission, provides leadership for all levels of the agency across the state and is the approval authority for a number of issues including any legal orders or directives issued by the agency. The Executive Director also acts as the primary agency liaison and serves as a resource for the Legislature and the executive branch. The Executive Director works with the Executive Management Team to develop comprehensive, agency-wide internal policies as required to carry out each of the agency's essential functions and duties. Reporting directly to the Executive Director are the Deputy Executive Director, the Director of the Office of Professional Responsibility and the Director of Communications and Governmental Relations.

As required by Sec. 5.13 of the Alcoholic Beverage Code, the Deputy Executive Director fulfills any functions delegated by the Executive Director and serves in the Executive Director's role when that person is unavailable or when the position is vacant. The deputy's roles may include, but are not limited to, leadership of the agency's policy committee, (Administrative) Rule review committee, and project governance. The heads of the agency's Field Operations, support and line-of-business divisions report directly to the Deputy Executive Director. The roles and responsibilities of the deputy may change depending on the preferences of the Executive Director. Past administrations have included more than one Deputy Executive Director as well as a Chief of Staff who can fulfill some of the functions traditionally assigned to the deputy.

The Office of Communications and Governmental Relations includes two employees who interact with the media, the Texas Legislature, Governor's Office, and numerous other state, local, and federal agencies. The office fields information requests from reporters, legislators, and industry stakeholders including but not limited to, reports on agency activities, license application status, and fiscal notes.

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During a Legislative session, the Governmental Relations Director tracks any and all proposed legislation with a direct or indirect impact on the Alcoholic Beverage Code and agency operations. The director ensures agency personnel are made available to testify or meet with legislators; responds to questions on legislation throughout the process, and oversees the development of analyses for legislation. During the interim, the office produces and edits a revised version of the Alcoholic Beverage Code, coordinates the production of the agency's Strategic Plan, and is involved in the development of numerous other statewide reports and activities such as the Sunset Self-Evaluation Report.

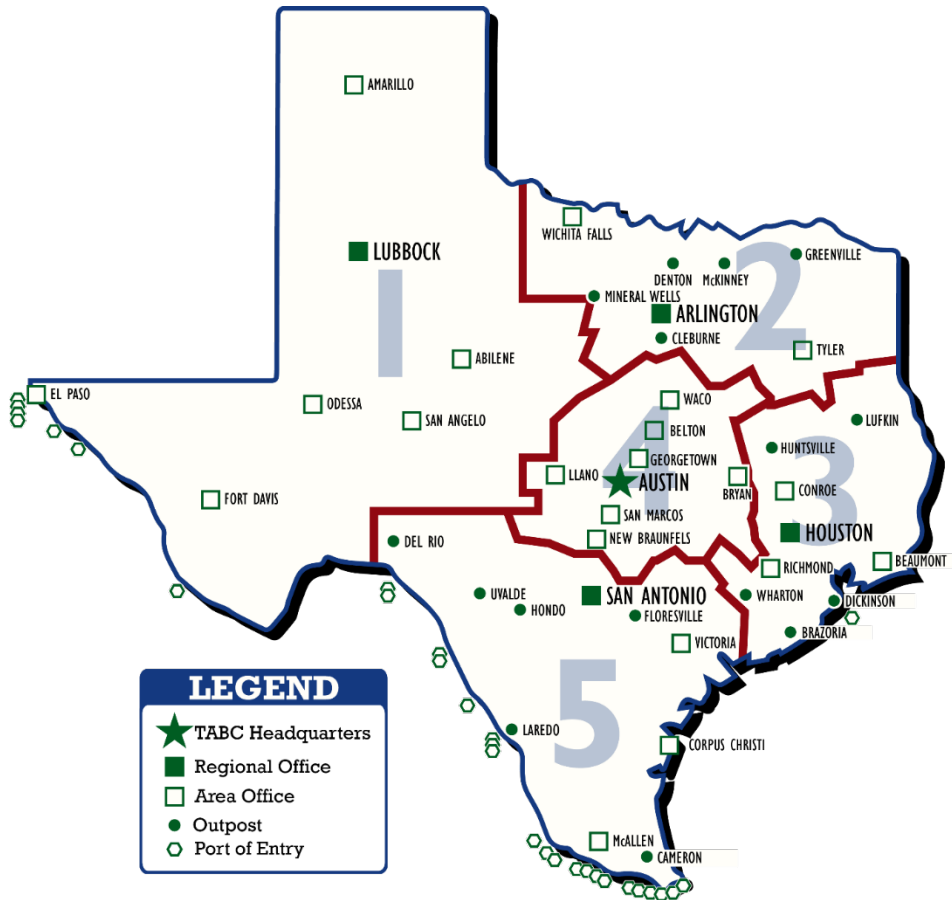
The office includes a Public Information Officer (PIO) who serves as the public face of the agency and is responsible for all interactions between TABC and members of the public, particularly the news media. The PIO writes, edits and publishes all agency press releases and media materials and is made available for interviews with the press across a variety of platforms such as print, broadcast and online. The PIO also oversees the agency's external communications policy and provides training on media interactions for public-facing employees.

Field Offices

The Texas Alcoholic Beverage Commission is comprised of an allocated 639 full-time employees (FTEs), including more than 250 commissioned peace officers (CPOs) serving across Texas. The agency's field offices are divided among five regions: Region 1 – West Texas/Panhandle, based in Lubbock; Region 2 – North Texas, based in Arlington; Region 3 – Southeast, based in Houston; Region 4 – Central Texas, based in Austin; and Region 5 – South Texas/Border, based in San Antonio.

Each regional office oversees several area offices hosting a full-time staff as well as a number of smaller outposts which are staffed by one to two TABC personnel. In all, TABC operates 41 offices and outposts across the state in addition to its Austin headquarters. The agency's Ports of Entry division also operates 28 tax collection and inspection kiosks at locations throughout the Texas-Mexico border. More than 80 percent of the agency's personnel are stationed permanently at one of the field offices or outposts.

Exhibit 28: TABC Offices and Ports of Entry



Each of TABC’s regional offices are supervised by a regional management team (RMT) consisting of the top-ranking Enforcement, Licensing, and Audit employees in each region. The RMT fulfills a number of roles, including management of each region’s functions, as well as handling license protests, office leases, and administration of labor, technology and material resources across the entire region.

Statewide Contracts

There are 36 contracts that are used and paid for by multiple divisions/programs in multiple offices around the state. These services include lease spaces, copier services, mailing services, telecom services, mobile data services, and numerous others for a total of \$3,136,771.00. Expenditures are attributed to each division and location utilizing a contract. Regional supervisors and division directors monitor expenses to ensure fiduciary responsibility. Divisional leadership communicates performance issues to contract managers for resolution as necessary.

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The agency follows rules and guidelines as outlined by the Texas Administrative Code (TAC); Texas Government Code, Title 10, Subtitle D; and the State of Texas Procurement Manual to procure these contracts. In addition, the agency procures goods and services utilizing statewide contracts administered by the Comptroller of Public Accounts and the Texas Department of Information Resources. The top five contracts procured for the agency overall include four office leases which are located in Austin, Arlington, and Houston and the agency-wide PC lease. Contractors include Asem Properties for Austin Headquarters rent, J & F Investments DBA Arlington Downs Tower for Arlington Regional Office rent, Austin Ribbon & Computer Supplies/GTS Technology Solutions Inc. for PC lease, Heights Medical Tower LTD for Houston rent, and Omninet Chase Park LLC for Austin Regional Office rent.

Complaints Against License or Permit Holders

Following the recommendations of the Sunset Advisory Commission in 2006, TABC restructured the method by which complaints against a TABC-licensed business are received, investigated, and disposed of. The agency's complaint procedures are outlined in Chapters 31.10 and 31.11 of the Rules.

The agency has implemented numerous ways for members of the public to submit complaints involving a TABC-licensed business. The preferred method, the TABC:Mobile smartphone application, enables users to submit complaints in minutes via their cell phone and uses the phone's GPS sensor to provide information about licensed businesses located near the user's position. Complaints may also be submitted by the agency's 1-888-THE-TABC telephone hotline, the agency website, or via email or in person at a TABC office. For complaints submitted via the website or in-person, the agency has developed a standard one-page complaint form which can be easily filled out and submitted.

Once submitted, each complaint is evaluated by an Enforcement professional, who categorizes each complaint by geographic location and the seriousness of the alleged offense. Complaints are prioritized based on the seriousness of the allegations. While each complaint is fully investigated within 60 days of receipt, the order by which it is investigated and the resources devoted to resolving the complaint are based on the risk to public health alleged in the complaint.

The agency keeps detailed records regarding the resolution of each complaint, whether there is a finding of no violations or a finding which leads to an administrative case. [Complaint records](#) – as well as the resolution of each investigation for a particular business – can be viewed by the public on the agency's website. Complaint records are also used by the agency, in part, to direct the efficient use of enforcement and auditing resources. Locations which have received multiple complaints resulting in findings of violation are prioritized for follow-up inspections and enforcement operations, allowing the agency to better use its equipment and resources in support of public safety.

Self-Evaluation Report

The data in Exhibit 29 summarizes the complaints against license holders received by TABC over the last two full fiscal years. The information fulfills the request for information in Section VII, Item P, for each applicable agency program.

Exhibit 29: Information on Complaints Against License Holders – FY2015 and FY2016

	FY2015	FY2016
Total number of regulated persons	769,600	825,025
Total number of regulated entities	56,471	56,692
Total number of entities inspected	42,076	43,902
Total number of complaints received from the public	5,282	6,053
Total number of complaints initiated by TABC	2,208	2,510
Number of complaints pending from prior years	905	924
Number of complaints found to be non-jurisdictional	121	208
Number of jurisdictional complaints found to be without merit	4,228	4,846
Number of complaints resolved	7,471	8,412
Average number of days for complaint resolution	40	41
Complaints resulting in disciplinary action	3,122	3,358
Administrative penalty	2	1
Reprimand	1,114	1,264
Suspension	1,524	1,326
Revocation	104	103
Other	378	664

Methodology

Regulated persons: Sum of individuals holding active agent's licenses and/or permits (Classes A, BK, DK, T) or active Seller Server Trainer or Trainee certificates on August 31st in each fiscal year.

Regulated entities: Sum of all active licensed or permitted business establishments both in Texas and out-of-state and active Seller Training Schools on August 31st in each fiscal year.

Entities inspected: Individual licensed business establishments and seller training schools inspected by TABC agents or auditors during the course of each fiscal year.

Complaints received from public: Complaints regarding possible violations of the Alcoholic Beverage Code received from persons not employed by TABC during the course of the fiscal year.

Complaints initiated by TABC: Complaints concerning possible violations of the Alcoholic Beverage Code received from agency employees during the course of the fiscal year.

Self-Evaluation Report

Complaints pending from prior years: Complaints received before the start of the fiscal year that were still open on the first day of that fiscal year.

Complaints found to be non-jurisdictional: Complaint investigations closed with a status of "Referred to other agency" during the fiscal year.

Jurisdictional complaints found to be without merit: Complaint investigations closed with a status other than "Referred to other agency" or with no related criminal or administrative charges.

Complaints resolved: Complaint investigations closed during the course of the fiscal year.

Average number of days for complaint resolution: The number of days, on average, from receipt of the complaint until it is fully investigated and closed. Agency policy requires that all complaints be investigated within 60 days of receipt, though exceptions exist for long-term investigations.

Complaints resulting in disciplinary action: Complaint investigations closed with related criminal and/or administrative charges.

Administrative penalty: Complaint investigations resulting in an administrative case with a discipline of "Civil Penalty Only."

Reprimand: Complaint investigations resulting in only the issuance of a written administrative warning.

Suspension: Sum of complaint-related summary suspensions and/or administrative cases in which the assessed penalty is "suspension or civil penalty" or "suspension."

Revocation: Sum of the complaint-related administrative cases resulting in the cancellation of an existing license or permit and application protests resulting in the denial/refusal of an application for an original or renewal license or permit.

Other: The total for complaints resulting in disciplinary action (administrative/criminal charges) less the sum of those that resulted in an administrative penalty, reprimand, suspension, or revocation. This total would include complaints closed with administrative cases or protests that are still pending without final disposition; those that were closed with an administrative case that was later merged and settled with a preexisting case; complaints closed with administrative cases that were dismissed before hearing, restrained by operation of Alcoholic Beverage Code Sec. 106.14, or dismissed after hearing; those with protests that were closed with the contested applications being granted or voluntarily withdrawn; complaints closed with administrative cases that were later rendered moot by the voluntary suspension or cancellation of the licenses or permits held; and those that were closed with only criminal charges being cited.

Enforcement

A. *Name of Program or Function:* Enforcement

Location/Division: Enforcement Division; statewide

Contact Name: Victor Kuykendoll, Acting Director

Actual Expenditures, FY 2016: \$24,190,064.47

Number of Actual FTEs as of June 1, 2017: 221

Statutory Citation for Program: Alcoholic Beverage Code, Sections 5.14, 5.31, 5.33, 5.36, and 5.361

B. *What is the objective of this program or function? Describe the major activities performed under this program.*

The Enforcement Division is the agency's largest and most visible division. The Chief of Enforcement oversees enforcement activities across the state in five regions. Commissioned peace officers (CPOs), known as TABC agents, inspect premises licensed by the agency and investigate alleged violations of the Alcoholic Beverage Code and other state laws. TABC agents provide a day-to-day public safety presence at more than 51,000 licensed businesses across the state.

The Enforcement Division's objective is to address public safety issues in Texas communities related to illicit or irresponsible sales of alcoholic beverages in TABC-licensed businesses and promote a responsible and compliant alcoholic beverage industry. Investigations, compliance monitoring and education are utilized to detect violations and promote voluntary compliance primarily at the retail level. The agency has a risk-based approach for conducting its enforcement activities, focusing on detection of serious violations which impact public safety and monitoring entities which have a history of complaints and violations of the Alcoholic Beverage Code.

The agency has identified six primary categories of violations which directly affect public safety involving licensed businesses. Those categories include age-related violations, intoxication issues such as over service to patrons and intoxication of employees, prohibited hour violations, acts of violence on licensed premises, narcotic trafficking by licensees, and human trafficking.

The Enforcement Division focuses its efforts on locations considered "priority locations" based on the likelihood of public safety violations taking place. A licensed location may be deemed a priority location if (1) there is a recent (within six months) history of public safety violations occurring on the premises; (2) there is an open complaint investigation involving the location and allegations of public safety violations; or (3) the business has been licensed for less than two years, has not yet been the target of either a minor sting or undercover operation, and is

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either licensed to sell alcoholic beverages for off-premise consumption or is the holder of a late hours permit and is licensed to sell alcoholic beverages for on-premises consumption.

The intent of the creation of the priority list is to direct and require agent attention to those licensed locations where public safety violations are most likely to occur. For licensed locations which appear on the priority list, agents are required to conduct additional overt and undercover inspections to ensure continued compliance. If additional violations are found, the location remains on the priority list for an additional six months from the last public safety violation.

Through this continued monitoring, the business is compelled toward voluntary compliance or faces cancellation of their license through a progression of sanctions. Once voluntary compliance is gained and the location is removed from the priority list, a final follow-up undercover inspection is performed after 12 months to ensure continued compliance.

Agents conduct open inspection visits to licensed locations for the purpose of determining compliance with the Alcoholic Beverage Code with an emphasis on violations relating to public safety and other state laws. Open inspections are important because of the deterrent effect of the expectation of inspection and because inspections give license holders the opportunity to ask questions and receive answers which might prevent future violations.

While open inspections of licensed businesses are necessary to provide regular contact with industry members and maintain a presence to deter violations, historically these open inspections result in extremely low violation detection rates relating to public safety. As a result, the agency has significantly increased the number of undercover inspections which increases the likelihood of detecting violations at licensed locations. These inspections come in the form of either minor stings or undercover operations. Operations are conducted by agents but TABC has occasionally used law enforcement officers from other agencies who act as a force multiplier and/or meet specific logistical needs of the operations. This practice also promotes interagency cooperation, training and intelligence sharing.

Another key objective of the Enforcement Division is regular substantive communication between TABC and other governmental partners. Enforcement agents regularly provide both formal and informal education to other law enforcement officers at the local, state and federal levels. This promotes better understanding of the Alcoholic Beverage Code and roles and responsibilities of the agency. During these communications TABC agents gather information to identify problematic licensed businesses in a community and offer assistance to address public safety issues, such as high volume of calls for service or alcohol-related fatalities, which may be attributed to those licensed businesses.

Self-Evaluation Report

Source investigations are a type of complaint investigation. TABC began formal procedures for source investigations in June of 1994, although source investigations were performed on a district level in prior years. A source investigation attempts to identify the source of the alcoholic beverages consumed by parties who are involved in a serious accident or a DWI violation. Agents review accident reports received from the Department of Public Safety and other law enforcement agencies on a weekly basis and also rely on news reports to learn of alcohol related accidents, car crashes and homicides in their area. If a source investigation is warranted for certain incidents, the supervisor will assign an investigator. The source investigation also attempts to determine if that source was acting within the law when the beverages were provided to the parties in question. If the alcoholic beverages were sold illegally, TABC agents will prepare and file appropriate criminal and administrative charges against the provider of the alcoholic beverages. Through these investigations, the agency plays a vital role in public safety by identifying and addressing those businesses contributing directly to the significant DWI problem in Texas.

Breaches of the peace, specifically acts of violence occurring at TABC-licensed businesses, represent a direct threat to the safety of patrons, employees, responding law enforcement officers, and the public. TABC agents conduct 'Breach Investigations' to determine the factors leading up to a violent incident occurring on a licensed premise, specifically whether it may have been prevented through better oversight by employees or was instigated by their improper conduct.

Though permit holders and their employees are not expected to act as law enforcement officers nor place themselves in harm's way, it is incumbent upon them to monitor patrons, attempt to diffuse confrontations if possible, and call police if a situation appears to be escalating. When a breach investigation determines that these basic measures were not taken, administrative action is warranted. Though the administrative action is punitive, it also represents an opportunity to educate the business owner and staff about how to maintain better order in the establishment, thereby reducing calls for service by local law enforcement and providing a safer environment for patrons.

The Code provides opportunities for citizens and government officials to object to the issuance of a license during the application or renewal process of a license to sell alcoholic beverages. The agency calls this process a protest. TABC agents are regularly assigned to perform protest investigations, especially when the allegations of the protest involve issues concerning public safety or possible criminal violations. TABC agents' responsibilities are to gather as much factual information as possible and provide a report to TABC's Legal Services Division to determine any subsequent actions.

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As a vital part of the licensing process for new applicants, TABC agents perform a pre-licensing assessment (PLAT) of risk. Agents use TABC databases to investigate the applicant and the proposed location to be licensed. They check for prior violations of the Alcoholic Beverage Code in order to assess whether the issuance of a permit to that applicant or for that location could pose a risk to public safety. If either the applicant or location, based upon the history, is not approved by the agent, the agent reports those findings to the regional management team (Regional Directors for Enforcement, Licensing and Audit and Investigations Divisions) and an investigation is initiated in the form of an internal protest to examine those concerns in more detail. As with the protest investigations mentioned previously, those findings are reported to the Legal Division who determines if grounds exist to move the protest forward to a hearing or dismiss the protest. PLATs help to ensure that bad operators do not simply reappear in the industry by relocating to another area of the state; these assessments also prevent locations that have a history of serious public safety concerns from being licensed and creating more problems in an area which brings down the quality of life in those communities.

- C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program. Also please provide a short description of the methodology behind each statistic or performance measure.**

Minor Stings

Over the past few fiscal years, the agency has placed a strong focus on analyzing the effects of minor stings, how and where they are run, and how to increase retailer compliance. In the first quarter of FY2017, the focus continued to be on increasing retailer compliance; however, minor stings conducted at on- and off-premise locations will be tracked separately, as their compliance rates have been trending directly opposite of each other. Exhibit 30 and Exhibit 31 show the quantity of on- and off-premise minor stings with projected numbers (as denoted by an asterisk) through the end of FY2017. The projection is conservative and is simply double the number of what has been accomplished the first half of the fiscal year.

Exhibit 30: Off-Premise Minor Stings

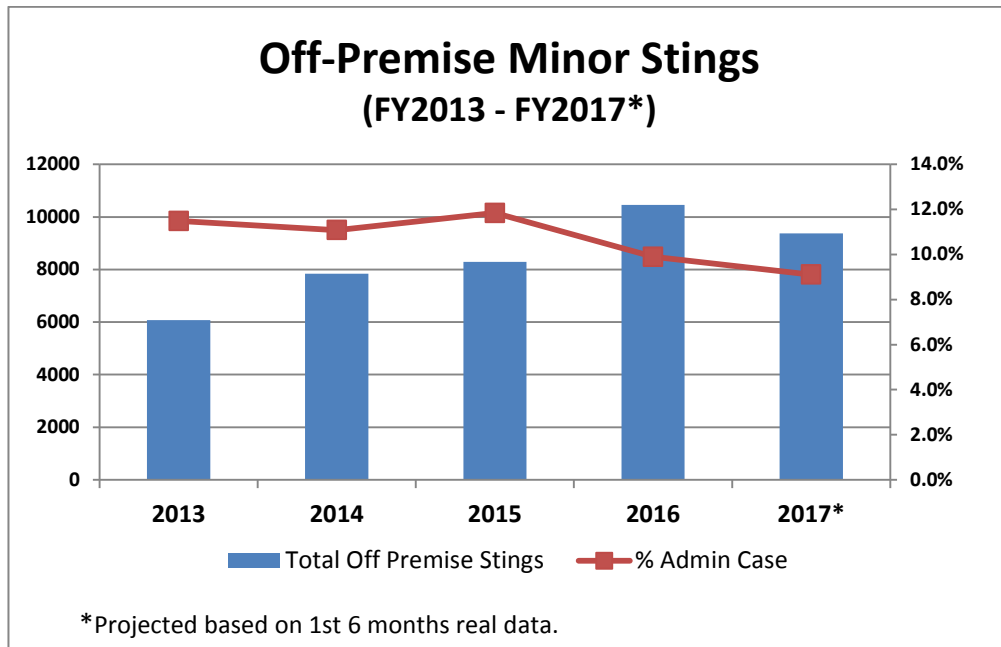
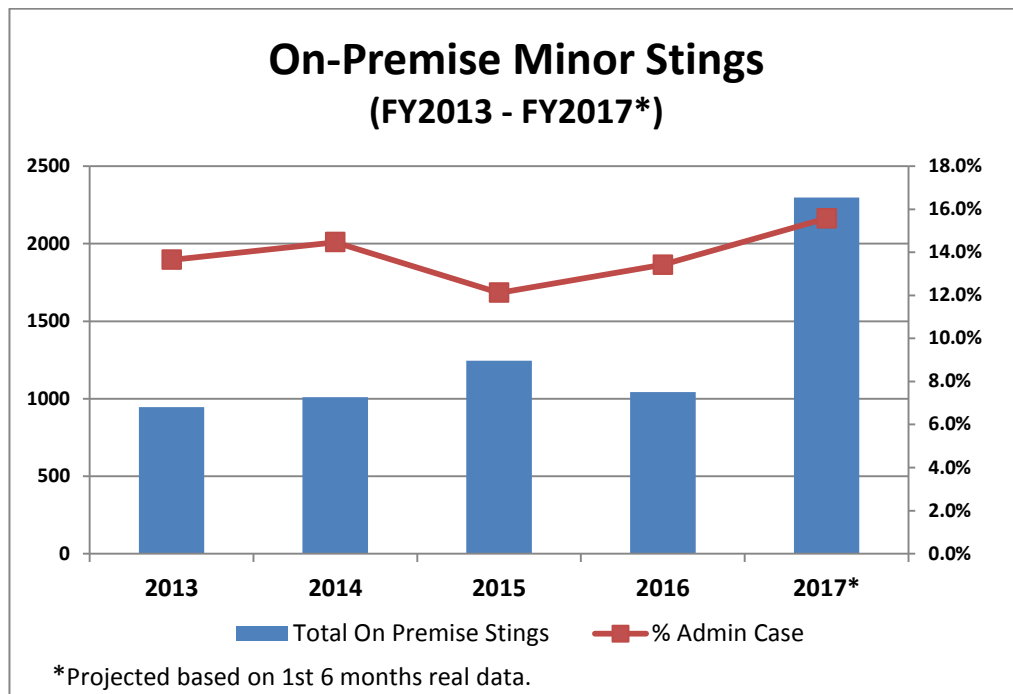


Exhibit 31: On-Premise Minor Stings



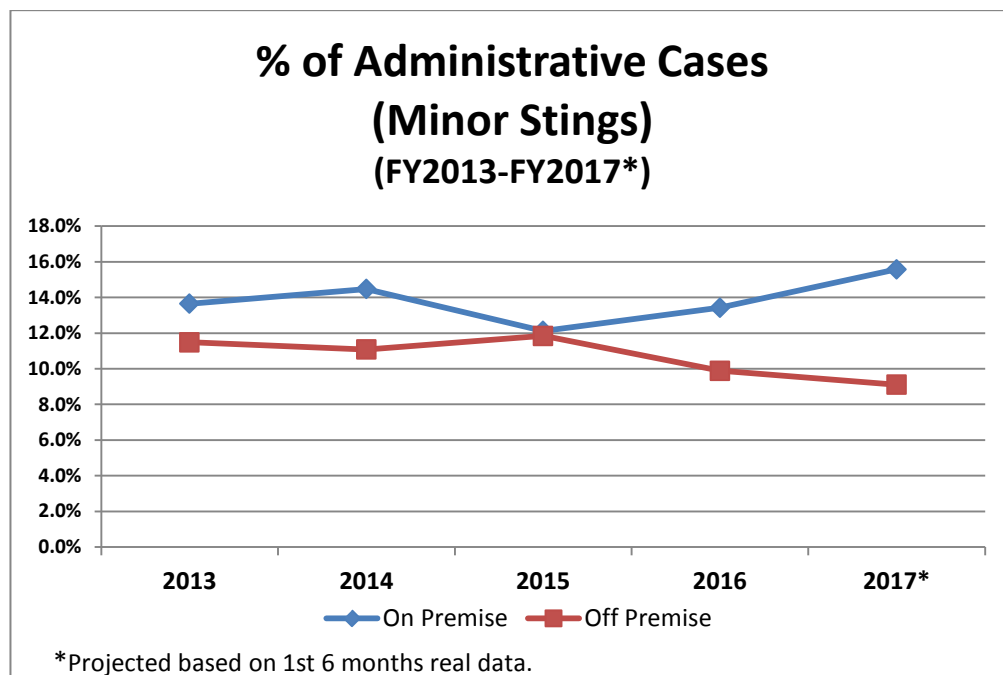
Self-Evaluation Report

If FY2017 performance maintains the quantity of minor stings conducted the first half of the fiscal year, it will yield a 10.3% decrease in off-premise stings compared to FY2016. On-premise stings, however, will yield an increase of 120.3%. The decrease in off-premise stings can be accounted for by looking at the large increase in on-premise stings. The on-premise stings require intensive resources and time; they are comparable to undercover operations whereas off-premise minor stings can be worked faster and with less intensive resources. The agency has recognized the need to address the decreasing compliance rate for on-premise locations.

The compliance rate at off-premise licensed locations has increased over the past few fiscal years. The agency has placed a great emphasis on educating retailers to decrease the amount of sales of alcohol made to minors. This education, coupled with the presence of Enforcement agents in licensed locations, has aided in the decreased number of violations. Prior to conducting a statewide “sweep” of minor stings, such as during spring break or back to school, the agency issues a press release that TABC will be conducting these types of operations. Additionally, the agents go to the locations prior to the minor stings to educate the retailers specifically on not selling alcohol to minors.

In FY2016, the agency updated and re-emphasized the importance of conducting minor stings at locations that had not been subject to a sting in two year. Agents placed an emphasis on conducting stings at these locations which assisted the agency in being present in all areas of the state. This initially led to a decreased compliance rate; however, that decrease was temporary and did not impact the annual compliance rate. This exercise indicated that although compliance was down because the agency was conducting minor stings at locations that had not seen stung in a while, word quickly got around and compliance increased.

Exhibit 32: Historical Changes in Administrative Cases Filed as a Result of Minor Stings



Self-Evaluation Report

The percent of administrative violations found at on- and off- premise locations is exactly what was expected based on the compliance rate. Exhibit 32 supports the non-compliance rate and that the number of administrative violations at on-premise locations is increasing while the number at off-premise locations is decreasing.

As a note, in FY2016, the Enforcement Division identified an issue where not all regional Enforcement personnel were entering data for on-premise stings as minor stings because in reality they are as intensive as undercover operations. Instead, the activities were being recorded as undercover operations. The instruction was disseminated in early FY2017 to identify all on-premise minor stings as minor stings and not undercover operations. Therefore, data for on-premise minor stings is skewed; however, it is not believed that a substantial deviation exists as a result of this discrepancy.

TABC plans to conduct more on-premise minor stings at locations which have been identified as the most likely locations for violations, such as those around college campuses, those that have not been subject to this type of minor sting, and where a special event targeted to a minor audience will be taking place. The compliance rate is expected to continue to decrease until, much like off-premise minor stings, a paradigm shift in thinking takes place and retailers become aware their business could be subject to a TABC sting at any time. The effectiveness of this program can be seen by the fact that an increased presence of TABC agents is directly linked to increased compliance on the part of license holders.

During the FY2015-2016, 11,495 retailers were visited during minor sting operations resulting in an 89.91% compliance rate (the rate at which the businesses refuse the sale of alcohol to the undercover minor). In FY2017, over 9,900 locations have been visited, with a compliance rate of 90.19%.

Compliance rates have risen to an average of 90% over the last two fiscal years. The fluctuation is attributable to a variety of factors, such as time of day, attentiveness of alcohol retailer employees due to customer traffic, public awareness campaigns undertaken by the agency, or measures taken by business owners to encourage employees to observe best practices.

Prior to recent years, compliance rates varied more widely and were often significantly lower. The increased compliance rate is due in part to increased education and awareness efforts on behalf of the agency among industry members. Education programs are available online and Enforcement agents provide education in the field when meeting with managers and employees during inspections and offer education at the time of case settlement for violation(s).

Undercover Operations

Through development of risk-based monitoring strategies, increased number of undercover operations, and more thorough investigations focused on TABC-licensed locations, the agency's Enforcement Division has increased its violation detection rate drastically in recent years. Additionally, the procedures involved in Enforcement's operations and investigations are much less intrusive and disruptive to normal business practices.

Previously, TABC agents devoted much of their time to random overt compliance inspections of licensed premises to address underage and intoxication issues, generally focusing on the intoxicated or underage patrons rather than the employees facilitating or allowing these violations to occur. This did little to address the root cause of the problems and often proved disruptive to normal business practices. By drastically increasing undercover monitoring of businesses that have been identified through a risk-based monitoring system, TABC agents are 10 times more effective in detecting violations in high-risk businesses (those with violation or complaint histories), while reducing disruption to those businesses where violations are not observed or historically present. An average violation detection rate of 1% was increased to an average greater than 10% during the last several years.

Undercover operations come in many different types and serve different objectives. COPS in Shops, also known as 'Cooperative On-Premise' or COPS in Shops operations are designed to assist retailers, such as convenience stores and package (liquor) stores, in curbing attempts by underage or intoxicated customers to purchase alcohol, or adults who might try to illegally purchase alcohol for minors. With the business owner's consent, undercover TABC agents pose as customers or employees and position themselves inside or outside the store to look for potential violators and stop them in the act. These operations assist TABC stakeholders in preventing illicit sales of alcohol and creating a deterrent to those who would try make such purchases.

Interior Surveillances are utilized in long term investigations. Typically this type of undercover operation is utilized by the TABC Special Investigative Unit (SIU) who often require undercover surveillance inside bars and nightclubs that might be suspected of engaging in illegal activity. Interior surveillance inspections allow agents to observe for suspected illegal activity, gather intelligence for future operations, and monitor or identify individuals who might be under investigation, without alerting the business to the activity.

False IDs used by underage people to purchase alcohol have always been a serious problem. The TABC developed 'Operation Fake-Out' to assist business owners in curbing this activity in their establishments. With the knowledge and consent of the business owner, TABC agents assist employees, usually door/security personnel, in examining IDs presented by customers and detecting false identification cards and driver licenses. This directly assists TABC licensed businesses in preventing sales to minors, and serves as a deterrent when word spreads among would-be violators.

Self-Evaluation Report

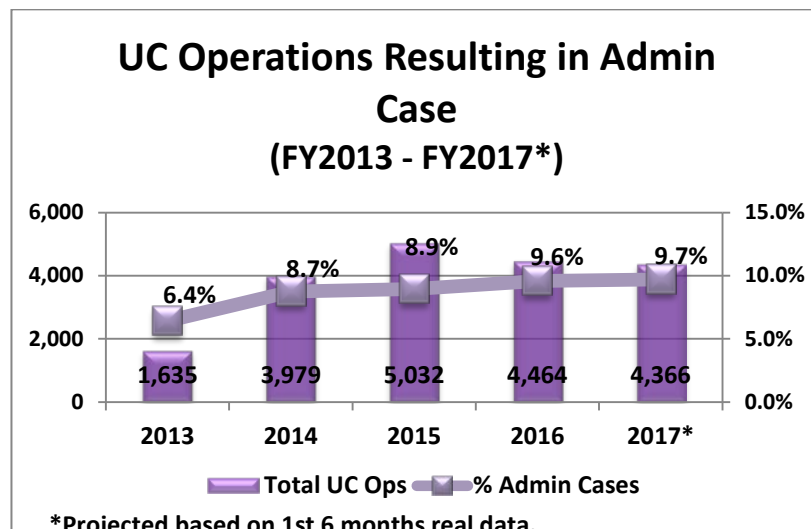
Basic undercover operations, referred to internally as 'Other UC Ops' have become a staple of street level investigations and enforcement. By sending undercover agents into bars and nightclubs, serious public safety violations such as sales to intoxicated persons are detected at a rate approximately ten times higher than during open compliance checks. When a 'UC Team' observes service of alcohol to a customer exhibiting signs of intoxication, 'Open Team' agents, readily identified as law enforcement officers, make contact with the suspected intoxicated patron and the employee who served the alcohol. UC Ops are extremely effective in detecting over-service of alcohol, directly preventing drunk driving, and avoiding disruption of business when no violations are observed.

Sometimes undercover operations are conducted at hours not typical to legal sales of alcoholic beverages in the State of Texas. These undercover operations, referred to internally as 'Prohibited Hours - UC', are designed to detect illicit sales of alcohol at times prohibited by law. Undercover agents pose as customers in TABC licensed retail businesses and observe for sales of alcohol and allowing consumption of alcohol after or before legal hours of sale. After hours sales of alcohol contribute directly to intoxicated drivers and other criminal activity, and these undercover inspections are effective in detecting and preventing such violations.

Alcoholic beverages are sometimes stolen from wholesalers and retailers and sold illegally to other retailers or individuals. When alerted to such activity and occasionally to monitor compliance, TABC agents perform undercover or 'sting' operations to intercept or detect illicit sales, catching violators in the act and removing illicit beverages from the market.

Of all of the undercover operations being worked by enforcement agents, the 'Other UC Op' and 'Prohibited Hours - UC' operations account for 99-100% of all administrative cases. Interior surveillance accounted for less than 1% of the administrative cases in FY2014, FY2015 and FY2016 because there were 1 or 2 cases made while CPOs were conducting interior surveillance activity.

Exhibit 33: Undercover Operations Resulting in an Administrative Case



Self-Evaluation Report

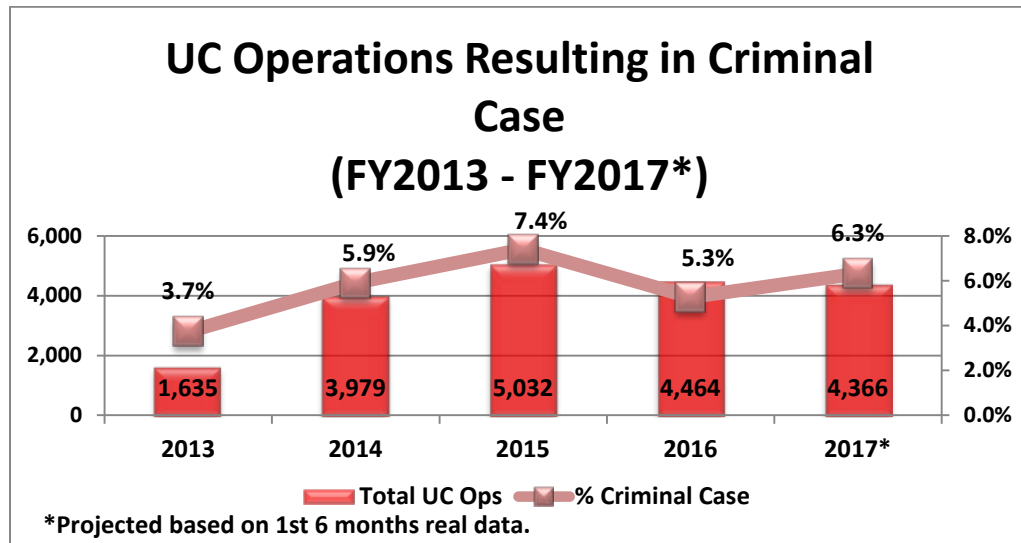
Exhibit 33 reflects administrative cases made in FY2013 through FY2017*. In FY2013, the Enforcement Division began increasing the quantity of undercover operations based on the violations that were detected when an agent worked in an undercover capacity. Over the next few fiscal years, all agents attended training which taught them how to be more effective in an undercover capacity. The training, coupled with an emphasis on quality versus quantity, has led to the trend seen represented in the previous chart. While the quantity of undercover operations has slightly decreased, the percentage of administrative cases being made has increased. This may be attributed to the agents' ability to work in an undercover capacity and identify substantive violations leading to sound administrative cases.

The trend for criminal cases is similar to that of administrative cases. Although Cops in Shops and Operation Fake Outs yield criminal cases nearly every time an operation is conducted, the activity type of Other UC Op is continuously the main source of criminal cases. The majority of violations involve charges for sale to intoxicated persons; sale/service/delivery to a minor and minor possess/consume; public intoxication; and sale/delivery of drugs. A majority of the criminal cases have a nexus to administrative cases with violations resulting from Cops in Shops and Operation Fake Outs being the exceptions.

One challenge that arose surrounding the application of Code §11.641(c) led to a decrease in criminal cases filed by TABC while the agency awaited the resolution of a lawsuit involving Code §11.641(c). Section 11.641(c) of the Alcoholic Beverage Code, indicates a civil penalty, including cancellation of a TABC license, may not be imposed on the basis of a criminal prosecution in which the defendant was found not guilty, the criminal charges were dismissed, or there has not been final adjudication.

A district court case has prevented TABC from pursuing administrative penalties against a license holder if criminal charges are filed first, even if they are filed against an individual who is not the license holder or is an employee (e.g., bartender) of the license holder. In effect license holders avoid a civil penalty or cancellation if a criminal charge is still pending at the time TABC wants to pursue the administrative charge or if the charge is dismissed or if the defendant receives deferred adjudication. Waiting for pending criminal charges to be resolved causes long delays before administrative due process can be initiated, if it all. The current interpretation negates TABC's ability to move forward with administrative charges simultaneously with criminal charges arising from the same event. This impotence prevents TABC from taking appropriate administrative action to ensure public safety.

Exhibit 34: Undercover Operations Resulting in a Criminal Case

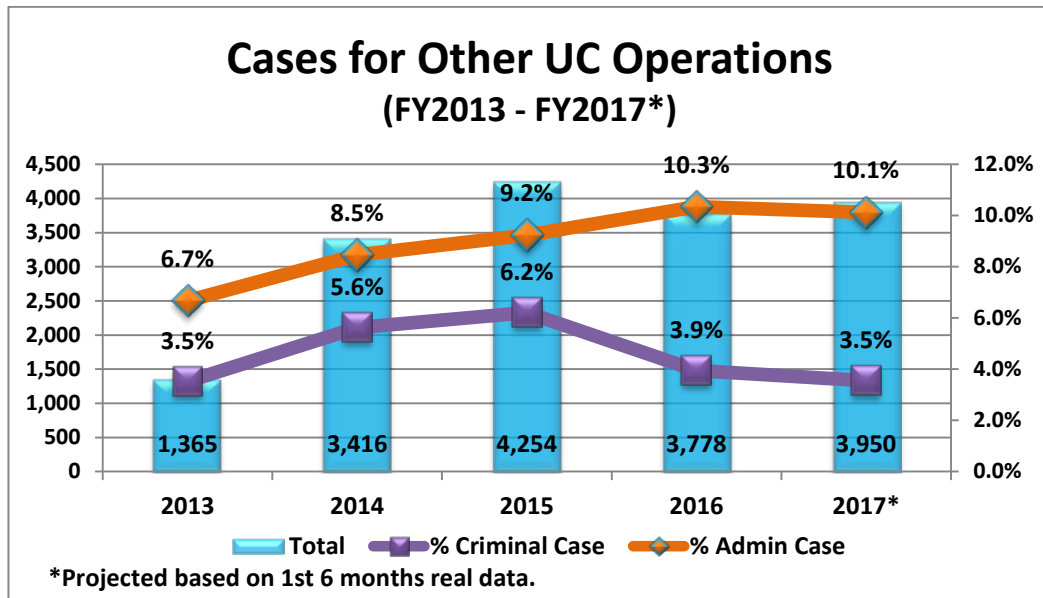


The majority of all administrative and criminal cases are the result of the Other UC Ops and Prohibited Hours – UC activity types. The breakdowns of cases resulting from these activities are shown in the following charts. It is important to note that these types of operations are manpower intensive as they often require a minimum of four agents and a supervisor to conduct an undercover operation. Due to logistical demands of resources to conduct these operations, multiple locations are generally targeted during the same day/night to capitalize off the resources being dedicated to perform these operations.

The administrative cases resulting from Other UC Operations has been trending in the last few years; however, the projected number of administrative cases (charges against the business) shows a slight decrease for FY2017 based on the real and projected data. The criminal cases (charges filed against the employees committing the violations) continue to trend downward since FY2015 due, again, to the challenges associated to Code §11.641(c).

Historically the top administrative violations have been sale to intoxicated persons (which accounts for nearly half of all administrative violations in first half of in FY2017), sale to minor, intoxicated licensee on the licensed premises, and place and manner-on premise promotions, which are business promotions that encourage bar patrons to drink in excess (i.e., “any coin any drink”, buy ins for “all you can drink”, etc.) and sales of alcoholic beverages to non-members of a private club (dry area laws). Historically the top criminal violations found are minor misrepresentation of age by a minor, minor in possession of alcoholic beverage, minor consumption of alcoholic beverages, sale of alcoholic beverages to an intoxicated person, and sale/delivery of drugs by a licensee.

Exhibit 35: Cases for Other Undercover Operations



As indicated in Exhibit 36, the administrative and criminal cases for *sale during prohibited hours* detected during Prohibited Hours – UC operations both show an increase in FY2017 after both decreasing last year. The 146 is a low number and is calculated using the same projection as all other FY2017 projections.

Exhibit 36: Cases for Prohibited Hours – Undercover Operations

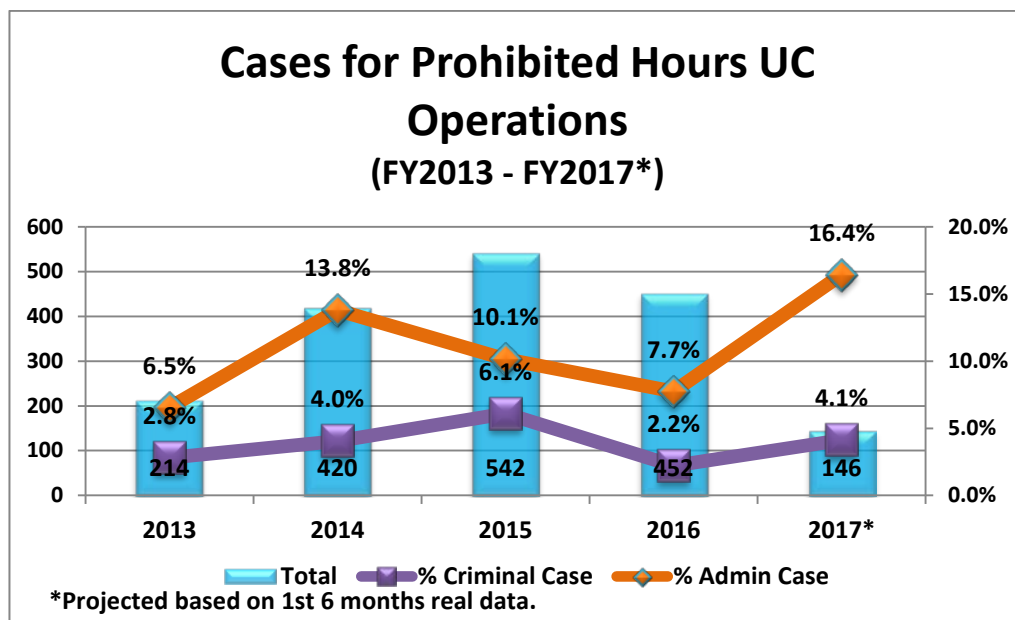


Exhibit 37: Disposition of Administrative Cases for Undercover Operations

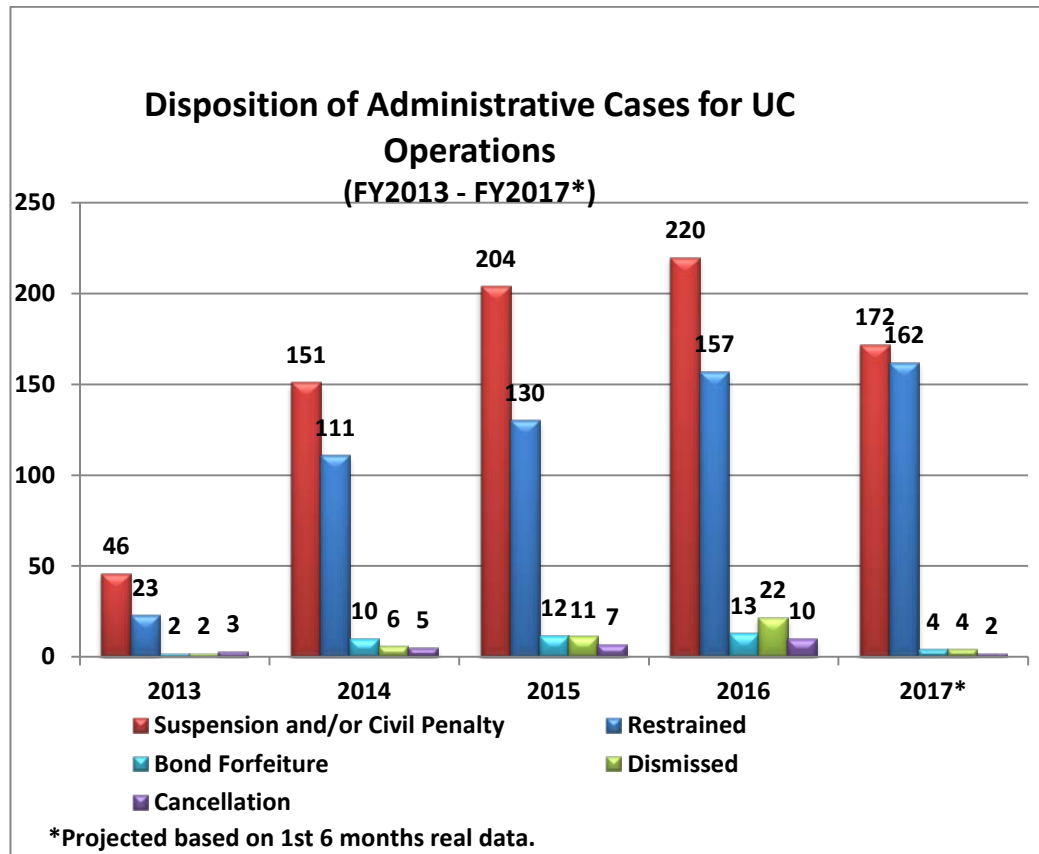


Exhibit 37 depicts the disposition of administrative cases for all undercover operation activity types. The percentage of suspensions/civil penalties has generally been in the low- to mid-50 percentile while the percent of restrained cases has been in the mid- to high-30 percentile. If the cases for the second half of FY2017 have the same exact outcome as those for the first half, the number of suspensions and/or civil penalties will be at its lowest in the past five fiscal years, 50%, and the number of restrained cases will be at its highest in the past five fiscal years, 47%.

Note: “Restrained case” or “restrained administrative case” is as an administrative case where businesses, who meet a certain criteria as to steps they implemented to prevent their employees from selling/serving alcoholic beverages to minors, intoxicated persons, or non-members of a private club, are protected from administrative action by the TABC. This is also known as the “Safe Harbor Act.”

The focus the agency has placed on public safety associated with licensed locations has led to an increase in overall quality of operations. The effectiveness of this shift in focus cannot be truly seen, as it is impossible to count the number of actions that did not occur, such as the number of alcohol-related accidents that did not occur because TABC agents stopped a sale of alcohol to an intoxicated person or a child’s life that was saved because an agent prevented a location from continuing to sell to a minor.

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In the course of the last five years, an intentional effort was made for agents to reduce contact with responsible business owners regarding regulatory issues; non-commissioned auditors address such issues with permittees, which has been appreciated in the business community. This change ensured law enforcement resources are properly allocated to focus on public safety violations at licensed premises exclusively. Agents have more time and resources to devote to thorough investigations of alcohol-related fatalities and acts of violence related to TABC-licensed premises. Currently, an average of more than 80% of violations detected by Enforcement agents are directly related to public safety, compared to a much lower percentage in previous years.

The agency utilizes reporting systems that help track at-risk locations, complaints, violations found and performance goals. Through these reports and regular communication sessions, the agency analyzes trends to get a clearer picture of the problems facing the state, especially on matters affecting public safety. This allows the agency to focus its limited Enforcement resources where they are needed the most.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

The services provided by the agency's Enforcement Division have evolved somewhat over time, but the purpose of those services and the intent behind them has never changed. The agency has always used its enforcement program as a means of promoting voluntary compliance and deterring alcohol violations. However, over the past decade the Enforcement Division has shifted its focus significantly from addressing violations involving citizens, such as minor in possession citations or public intoxication arrests, to its more appropriate role of regulating industry members at the retail level. In order to have a more environmental impact on issues such as underage drinking and intoxication issues related to violence and drunk driving, better monitoring of sales to underage or intoxicated patrons by licensed businesses was in order. To advance this new approach, Enforcement adopted a risk-based approach to target those licensed businesses most likely to incur public safety violations. Concurrently, the division began to concentrate on public safety concerns (rather than regulatory) and emphasizing more undercover operations. These changes were profound. Enforcement agents had to learn and employ new tactics and procedures to be effective. Retailers with a good track record were rewarded with fewer visits from agents, whereas retailers with a history of or potential for violations were frequented more often and with new tactics. The ultimate benefactor are the citizens of Texas, whether it's the lives saved by fewer minors sold alcohol or more retail employees responsibly not serving intoxicated persons or drinking to excess, Texas is safer because of TABC Enforcement agents.

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As a first step toward that effort, the agency developed and implemented an undercover operations course that helped train agents and supervisors in various methods of working undercover, standardizing operational procedures, more effectively detecting violations, and maintaining officer safety. All Enforcement agents complete this training, which is several days on-site at a training facility. Thanks to excellent relations with the Texas Army National Guard and United States Army, much of the training has taken place at Fort Hood, where a simulated urban environment allows instructors to engage students in real-world scenarios that may be encountered in undercover operations.

The agency created or modified policies on how enforcement activities are performed, requiring proper intelligence and planning be conducted to ensure the safety of the agents and effective and safe implementation of an operation; created a post operation evaluation report to assess the effectiveness of operations conducted and gather intelligence for future operations; and used agency reports and intelligence sharing to monitor trends and patterns to determine future operations needed.

As a result, agents have moved significantly toward primarily focusing on public safety violations in their investigations and enforcement actions, increased the number of administrative cases dealing specifically with public safety, and maximized the impact the agency has on local communities throughout the state.

In 2009, TABC formed a Special Response Team (SRT) made up of Enforcement agents. After the commission's response to the Hurricane Ike disaster in 2008, TABC recognized a need for a pre-organized strategy designed to assist local professional responders during natural disasters or other calamities. The SRT was created, in part, to help fill the gap between service demands and resources available in times of community crisis. In addition to other duties, the SRT is available to assist local communities by supplementing public safety services. This includes, but is not limited to, security and traffic control for evacuated areas; protection for evacuees at shelters; and security for supply distribution points. By providing support and stability, the SRT frees local professional responders to address immediate public safety needs of their communities.

Since its inception, SRT deployments have included the Bastrop County Complex Fire in 2011 and in 2015 to the Bastrop Hidden Pines Fire. In 2013, the SRT provided a security detail for the 422nd District Judge Michael Chitty after a Kaufman County Assistant District Attorney and the Kaufman County District Attorney and his wife were murdered. Also in 2013, the SRT provided security patrols in West, Texas after the West Fertilizer Company plant exploded. The SRT participated in a TABC Special Investigation Unit joint operation in 2014 involving other law enforcement agencies for Operation Three Thorns in El Paso. The operation included identifying and serving arrest warrants for suspected narcotics dealers who had been operating in TABC licensed premises. Beginning in 2015, the SRT has provided support for the TABC Ports of Entry Division during peak travel times each year to assist with traffic movement into the United States from Mexico. International travelers are moved into the TABC Ports of Entry for tax collection on imported alcohol and cigarettes. This activity attempts to ensure appropriate

tax collection and to alleviate traffic congestion on the bridges. The SRT responded in 2016 to flooded areas in Brazoria and Fort Bend Counties and have been used as a force multiplier in large special events such as South by Southwest (SXSW).

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The Enforcement Division affects all of Texas through its effort in enforcement actions and education that promote public safety. Through Minor Sting operations, the agency helps to reduce the access youth have to obtaining alcohol directly from licensed locations which in turns reduces underage drinking. In FY2016, agents conducted 11,495 Minor Stings at licensed locations across the state.

Through undercover operations, retailers are encouraged to prevent sale to intoxicated customers and held accountable for overserving customers who then pose a danger to themselves or others as they attempt to drive while intoxicated. 4,464 undercover operations were conducted in FY2016 where 9.6% of those operations yielded public safety related violations; much of which were Sales to Intoxicated Persons.

F. Describe how your program or function is administered, including a description of the processes involved in the program or function. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.

All enforcement services are provided in the field. Enforcement agents operate from 5 regional offices, 20 area offices and 19 smaller offices (called "outposts") across the state. Outposts are strategically placed to maximize the efficiency of service delivery. Area offices are much like outpost offices but are generally located in Outposts and area offices are branches of the regional office but all the offices within each region work collectively and are under the same command as the regional office.

The area offices and regional offices are organized into five enforcement regions, each supervised by a Major. Each Major oversees the activity of 4 to 6 regional and area offices and is responsible for ensuring that agency standard operating procedures are followed within the region and that performance targets are met. Within each region, there are lieutenants, sergeants and agents. The agents report to sergeants, sergeants report to lieutenants, lieutenants report to captains and or majors. While agents and sergeants perform the inspections and operations in the field, they are supervised and managed by lieutenants, etc. up the chain. Majors report to the Chief of Enforcement at headquarters in Austin, TX.

The Enforcement Division's headquarters staff consists of the Chief of Enforcement and 1 administrative support personnel. The Chief manages field operations, the activities of the headquarters staff, and is responsible for the overall success of division operations.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

The Enforcement Division's funding source was 85% of the general revenue appropriated to the Enforcement Strategy in FY2016. In addition, a portion of funding was designated as appropriated receipts which was from vehicle insurance proceeds, vehicle sales, and asset forfeiture. The division was supplemented with \$519,583.00 in grant funding which includes a Public Safety Grant awarded in FY2016 and the remaining funds from the PRIDE Grant awarded in FY2015.

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.

While other federal, state and local agencies may conduct open checks and undercover operations at licensed locations, their focus is often not the same as TABC. Those agencies tend to focus solely on criminal behavior of parties on the licensed premises or engaged in unlawful business with the employees and/or owners of those businesses. TABC agents are considered state police officers and have the same authority under the Texas Code of Criminal Procedures as peace officers employed by Texas Parks and Wildlife, Texas Department of Public Safety, and others. However, what makes TABC agents unique is their ability to address public safety violations through their extensive training and regulatory authority of the Code and Rules as it relates to the operations of TABC-licensed businesses and the activities of their employees. As a result, TABC agents have a significant impact on the communities where those businesses are located that other agencies would not be able to achieve.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

When planning undercover operations, Enforcement agents coordinate activities through a process known as 'deconfliction' of those operations from others being conducted by another agency in the same area. This is to ensure those operations do not create the risk of an officer-on-officer encounter or expose either party's operations to their targets. Agents also coordinate requesting and providing assistance to other law enforcement agencies as the need arises.

In the course of dealing with alcohol-related issues within communities, Enforcement agents and supervisors work closely with municipal and county executive staff, elected officials, and the appointed members of certain local boards and commissions.

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TABC agents and supervisors have daily contact with local law enforcement agencies and other governmental partners in the communities they serve. Enforcement agents provide training in alcoholic beverage law and alcohol enforcement methods to local police officers, prosecutors, and judges. Enforcement relies on their intelligence to help identify 'at risk' licensed locations. Agents and supervisors also help organize and often lead inter-agency working groups that target local alcohol-related problems.

J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.

The Enforcement Division maintains excellent relationships with local, state, and federal law enforcement agencies. Investigations and operations often require communication with outside agencies to arrange direct assistance or share information regarding individuals or business entities. TABC is often able to provide internally generated information regarding licensed entities to law enforcement agencies relevant to their criminal investigations. This information can include identifiers of license holders or employees, violation histories, or intelligence gathered through TABC investigations.

Joint operations are periodically carried out involving TABC Enforcement agents and officers from local or state agencies. Such operations are excellent opportunities to enhance officer safety through increased uniformed or undercover assets from local agencies or provide expertise in the Code and Rules to outside agencies during their operations.

TABC also provides training to local, state and federal law enforcement agencies in an effort to educate them on the provisions of the Alcoholic Beverage Code and the many resources available to them and their agencies when conducting investigations involving licensed locations.

K. If contracted expenditures are made through this program please provide:

- a short summary of the general purpose of those contracts overall;
- the amount of those expenditures in fiscal year 2016;
- the number of contracts accounting for those expenditures;
- the method used to procure contracts
- top five contracts by dollar amount, including contractor and purpose;
- the methods used to ensure accountability for funding and performance; and
- a short description of any current contracting problems.

Due to the unique nature of the resources needed for law enforcement officers to carry out their duties as peace officers and the mission of the agency, certain resources require the agency to contract for those items. In FY2016, The Enforcement Division paid a total of \$2,741,156.90 in contract expenditures.

Motorola Solutions Inc. received \$1,373,955.30 through a proprietary purchase which was used to procure mobile and handheld public safety radios for CPOs that meet Project 25 (P25) format set by the Association of Public Safety Communications Officials International and address

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concerns of interoperability between different federal, state, and local agencies. This helped replace the existing antiquated agency radio communication equipment that did not meet P25 requirements and were no longer being supported by parts and service.

The Enforcement Division also spent \$1,110,316.00 on contracted fleet vehicles through Silsbee Ford, Inc. via CPA Automated Term Contracts on TXSmartBuy. These vehicles are used for law enforcement purposes as agents conduct inspections and law enforcement operations throughout the State.

As part of upgrades to the security of field offices throughout the state, the agency utilized \$101,901.60 in funds to contract with Convergent Technologies in providing security cameras and security equipment. This equipment was needed to increase the physical security of agency offices to protect agency civilian staff and to protect sensitive information from access by unauthorized persons.

The Enforcement and Education and Prevention Divisions partnered with Castleview Productions to produce educational videos for the training of other law enforcement agencies, retailers, and other community partners expending \$99,984.00 in grant funds. These training aides help educate key stakeholders as to what TABC can do to help address concerns within their communities and provide them information to help identify and reduce public safety violations at licensed locations.

As part of the hiring and training process for new agents, TABC contracted with the Texas Military Department in the amount of \$55,000.00 for use of training facilities and housing for the TABC New Agent Academy at Camp Mabry in Austin. TABC does not own or lease facilities capable of adequately providing training for newly hired agents. Camp Mabry has proven to be very useful in its close proximity to TABC Headquarters, reducing time lost when training staff and supervisors have to commute between locations as needed and when those in training transition between activities (i.e., physical exercises to classroom training).

When procuring these contracts, the agency follows rules and guidelines as outlined by the Texas Administrative Code (TAC), Texas Government Code, Title 10, Subtitle D, and the State of Texas Procurement Manual. In addition, the agency procures goods and services utilizing statewide contracts administered by the Comptroller of Public Accounts and The Texas Department of Informational Resources. After these items are purchased, the vehicles and radios are tracked through an asset management system and come with manufacturer warranties upon delivery to the agency. Other items are reviewed by agency staff upon delivery and inspected for quality and content. After inspection or acceptance of the service and/or equipment, agency staff submits a Field Receiving Report that authorizes payment to the vendor for the service and/or equipment received as ordered. There are no known problems with any of these five contracted expenditures.

L. Provide information on any grants awarded by the program.

None.

M. Are there any barriers or challenges that impede the program's performance, including any outdated or ineffective state laws? Explain.

Staffing

Enforcement has 226 budgeted TABC agents to perform all of the critical functions noted in earlier items. While changes have been made to the hiring process for agents by implementing a year-round application process, hiring of agents to fill vacancies are dependent upon the agency's ability to host an academy. In order for a new agent academy to be hosted, TABC must hire a minimum number of agents at one time to achieve cost efficiencies in hosting an academy. Once a date is identified for an academy, significant time is required to complete the remaining steps of the hiring process.

The inability to hire and the delays in hiring replacements for vacant agent positions adversely affects performance achievements. Failure or inability to maintain adequate skill and proficiency levels among the agents also affects performance achievements, and of course, the range of skills and proficiencies necessary will expand as new tactical methods are employed. Enforcement needs to increase their FTEs to maintain a minimum number of agents in each region to reduce the impact to performance when positions are vacant.

Although TABC law enforcement salaries are competitive with other state law enforcement agencies, state law enforcement salaries still lag behind municipal and county law enforcement agencies. The increased level of skills and experience that is needed for agent positions coupled with the lower salary range than municipal and county law enforcement agencies will continue to add difficulty in attracting and recruiting law enforcement candidates.

To minimize risks associated with increased public scrutiny on law enforcement, TABC must invest more resources in agent training and development particularly in the areas of conflict resolution, use of force, customer service and safety. The agency's Training Division will need to proactively develop training above and beyond mandated law enforcement training. In addition, the division must develop training that is specific to the needs of each division to increase skills and develop employees.

Because the unusually high number of retirements will create immediate and acute shortages in the knowledge and skills needed for operations, a greater proportion of this investment will have to be made at the front-end of careers than ever before.

Expected shortages include a lack of technical skills required to utilize the equipment and systems needed by an agent. Because of the salary limitation, newly hired agents are not expected to be sufficiently familiar with investigative techniques and procedures or with techniques and procedures for undercover operations. Lack of knowledge concerning the Alcoholic Beverage Code has always been common among recruits therefore training and development will be even more critical due to the presence of fewer tenured employees to provide on-the-job instruction in practical applications.

Administrative authority

Section 11.641(c) of the Alcoholic Beverage Code, indicates a civil penalty, including cancellation of a TABC license, may not be imposed on the basis of a criminal prosecution in which the defendant was found not guilty, the criminal charges were dismissed, or there has not been final adjudication.

A district court case has prevented TABC from pursuing administrative penalties against a license holder if criminal charges are filed first, even if they are filed against an individual who is not the license holder or is an employee (e.g., bartender) of the license holder. In effect license holders avoid a civil penalty or cancellation if a criminal charge is still pending at the time TABC wants to pursue the administrative charge. Waiting for pending criminal charges to be resolved causes long delays before administrative due process can be initiated, if it all.

There is a contention that a deferred adjudication or probation for the defendant (which are more common than a conviction) does not constitute final adjudication, so TABC cannot pursue administrative sanctions against a licensed business if the defendant receives deferred adjudication or probation. The current interpretation negates TABC's ability to move forward with administrative charges simultaneously with criminal charges arising from the same event. This impotence prevents TABC from taking appropriate administrative action to ensure public safety.

Example: Twin Peaks shootings in Waco in May 2015 - If Twin Peaks had not voluntarily suspended its alcohol permit, presumably the restaurant today would be selling alcohol and TABC would be waiting to pursue administrative action because criminal charges are still pending against patrons of Twin Peaks.

Communications

As stated before, agents rely heavily on the radio communications with other agencies in order to request and offer assistance, coordinate during disasters and other emergency situations, coordinate police actions with other agencies, and to relay and receive time sensitive information through the dispatching services for those agencies areas of the state. A significant challenge to the agency is having to maintain a functioning list of frequency programs that are constantly in change due to changes being made by other agencies and the expertise personnel in order to maintain those programs and understanding the ever-changing technological advances to law enforcement radio communications. Salary for this position needs to be in line with the experience expected in order to properly maintain the agency's radio resources and repairs to emergency equipment on the agency's fleet of vehicles.

N. Provide any additional information needed to gain a preliminary understanding of the program or function.

The Fleet/Communication/Supply warehouse is operated by the Enforcement Division. The warehouse previously operated under the Business Services Division. The change in Divisions was decided by leadership because the majority of items being tracked and issued belonged to the Enforcement Division.

The warehouse is supervised by a Lieutenant and consists of three employees: Team Lead, Clerk and Radio Specialist (Currently Vacant). Warehouse personnel are responsible for tracking all purchases or items received at the warehouse. Maintaining all supplies to ensure that the demands of all divisions are met when needed. All divisions of the agency order supplies through the Warehouse. The orders are processed in a timely manner and then sent or delivered to the ordering division. These supplies typically consist of paper goods, records, educational materials, etc.

The bulk of the items tracked and issued belong to the Enforcement Division. These items are valuable assets that include vehicles, firearms, radios and equipment to outfit Enforcement personnel. The Lieutenant works closely with all Divisions to ensure that any equipment ordered meets the needs of those Divisions and is fiscally responsible to the agency and the people of Texas. The Lieutenant is responsible for maintaining these assets in the internal tracking database when the items are issued out to the Field. The lieutenant is also responsible for maintaining the Texas Fleet Management System database. When new vehicles are purchased, all information is uploaded into this database. When vehicles are issued to personnel, this information also has to be uploaded. Once a vehicle is retired and no longer owned by the agency, it is removed from the system. The Team Lead works with the Texas Facilities Commission when equipment or vehicles are retired from the agency's use. The Team Lead completes the proper paperwork to transfer the property to the possession of the Texas Facilities Commission. The Clerk is responsible for shipping items that are ordered from other Divisions and completing receiving reports when new items are received at the warehouse. The Radio Specialist is responsible for maintaining the agency's fleet of Enforcement vehicles. This includes programming/installing radios and maintaining the emergency equipment installed in the vehicles. When a vehicle is retired, the Radio Specialist is responsible for removing all equipment to be used again in a new vehicle if the equipment is in good condition.

- O. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:**
- **why the regulation is needed;**

Alcohol is a legal recreational drug and as such is extremely popular throughout the state and generates large sums of revenue for the State. Excessive abuses of alcoholic beverage products cause great harm either to an individual, society or both. Businesses engaged at the retail level of the alcoholic beverage industry are entrusted in the dispensing of alcoholic beverages to the ultimate consumer but they violate that trust when they continue to serve persons who have become intoxicated to the point it puts the individual and or the community at risk.

The licensed location also has a duty to prevent sales, service or consumption of alcoholic beverages by underage youths or engage or promote criminal conduct such as drug sales, human trafficking, etc. to occur on their premises. While all law enforcement offices in the state have the authority and duty to investigate violations of the Alcoholic Beverage Code, most lack the expertise to be as effective as TABC agents in those efforts and TABC is the only agency in the state that has the authority to pursue administrative actions against permit holders for the violations of the Code.

- **the scope of, and procedures for, inspections or audits of regulated entities;**

TABC regulates the alcoholic beverage industry in Texas in part by conducting inspections of licensed locations. The agency strives to inspect all licensed premises at least once a year. Inspections occur in the form of an open walk-throughs or undercover operations/surveillance. The form chosen will depend upon the circumstances. Open walk-throughs are the norm but in the past decade more emphasis has been put on undercover surveillance as they have proven to be the most effective in detecting violations. During the course of open walk-throughs, agents will identify themselves to the staff and management and will openly check for possible violations as well as being a resource for the staffs' or management's questions, concerns and providing helpful recommendations.

When, however, violations are expected, as in case of a complaint, or when an establishment has a history of past offenses, the inspection is more likely to consist of an undercover operation/surveillance. During the course of such inspections, the agents will either station themselves within the premises and pose as customers or remain at a distance outside observing activity through a pair binoculars or some other optical aid.

If violations are observed during the course of an inspection, agents may, at their discretion, depending upon the nature of the offense, issue a verbal or written warning, issue a citation to the offender indicating an intent to file criminal charges, and/or issue an administrative notice to the license holder or a representative of license holder indicating an intent to file administrative charges.

Information concerning each inspection conducted is data entered onto the agent's daily activity report to create an automated record of the inspection. For inspections of licensed

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premises, the information captured for each inspection includes the date of the inspection, the establishment's primary license number, a code indicating the purpose of inspection (routine, complaint investigation, special operation, etc.), one or more codes indicating outcome (no violations found, criminal charges to be filed, administrative charges to be filed, verbal or written warning issued, etc.), and an identifier for the agent claiming the inspection.

- **follow-up activities conducted when non-compliance is identified;**

Much depends upon the nature of the violation and the type of sanction applied. Generally, agents are expected to re-inspect an establishment once every 14 days until it has undergone three inspections with no public safety violations found. At that time, agents will continue to perform inspections at the rate of once a month for until six months have passed with no public safety violations found. At the end of a year, a final inspection will be conducted in the form of an undercover operation to ensure that the location has not returned to committing violations.

Establishments are also re-inspected when under suspension or after cancellation to ensure that alcohol sales have ceased as directed by the suspension or cancellation order.

- **sanctions available to the agency to ensure compliance; and**

While most regulated entities voluntarily comply with law and exercise adequate control of their premises. For those that don't, the agency has a host of administrative sanctions ranging from verbal warnings for the most minor regulatory violations to cancellation for the most grievous or repeated offenses. Specific sanctions include verbal warning, written warning, suspensions of various length, civil penalties in lieu of closing, and outright cancellation. The application of these administrative sanctions is governed by Chapter 37 of the Rules.

Being commissioned peace officers, enforcement agents also have the ability to initiate sanctions (formal warnings, criminal charges) for any criminal violations they might observe or detect during the course of their work. Unlike administrative charges which are filed only against the license holder, who is administratively responsible not only for his or her actions or omissions but also for those of his or her employees, servants, or agents, criminal charges are filed against the person or persons who actually commit the criminal offense. All violations of the Alcoholic Beverage Code can have both criminal and administrative consequences, though agents seldom file criminal charges when the violations are of a technical and purely regulatory nature.

- **procedures for handling consumer/public complaints against regulated entities.**

TABC receives complaints through a number of different methods. The preferred method of securely filling complaints is through TABC mobile app and provides verification of receipt by TABC. There is also the availability to submit a complaint through an online form on TABC website. TABC also receives complaints through the submission of a complaint form, downloadable from the TABC website, and sending it either electronically by email to complaints@tabc.texas.gov, regular mail through USPS to TABC Enforcement Headquarters, or

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by fax to 512-206-3449. The complaint form can also be delivered to a local field TABC field office in person, via email, or via fax.

TABC maintains a toll-free complaint hotline (1-888-THE-TABC) which will route the complainant to a local field office based upon the zip code in reference to their complaint. TABC requires its licensees to prominently display signs that provides TABC address for written complaints, the toll-free number, complaint email address, and information about TABC's mobile app that urges to the public to report if they have complaint concerning the business. In the course of any given year, enforcement agents also distribute thousands of push cards and hundreds of posters that provide the toll-free number and also urge the public to report underage drinking.

Once the agency receives a complaint, it is forwarded to the field office that serves the area in which the entity or person that was the subject of the complaint is located. Upon reaching the field office, the complaint is assigned to a specific agent or agent team for investigation. While the tactics actually employed will vary with the nature of the alleged violation, the assigned agents will make a good faith effort to ascertain the validity of the allegations and will physically inspect the licensed establishment at least once and by preference three to four times. If evidence of any criminal or administrative violations are found, appropriate enforcement action is taken.

At the end of each investigation, a supervisor will update the automated complaint record created at the start of the investigation and add details to that record concerning the activities undertaken and the disposition of the complaint. At this time, the supervisor will ensure that contact was made to the complainant, if the complainant had indicated the desire for a follow up contact to be informed of the disposition of the complaint.

Regardless of the method or location in which a complaint is received, the process for handling a complaint is essentially the same; only the roles of certain players change.

- P. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices. Please include a brief description of the methodology supporting each measure.**

See *Complaints Against License or Permit Holders* in the introduction to Section VII for an explanation on how the agency handles complaints against license holders. Exhibit 29 follows the explanation and summarizes the complaints against license holders received by TABC over the last two full fiscal years.

Audit and Investigations Division

The Audit and Investigations Division employs auditors, commissioned peace officers and administrative staff to perform a variety of functions focused on keeping licensed locations compliant with state law. The core staff (Audit) conducts inspections of licensed locations, conducts field excise tax audits, and performs in-depth reviews of a permit holder's records and operations, and pursues other regulatory activities to ensure compliance with the Alcoholic Beverage Code and Rules.

Three additional separate units within the division exist to investigate persons associated with the alcoholic beverage industry accused of serious offenses. The Marketing Investigations Unit (MIU) is comprised of auditors that investigate schemes and cross tier relationships which potentially impede fair competition within the three tier system. Investigations are administrative in nature. The Special Investigations Unit (SIU) and the Financial Crimes Unit (FCU) employs commissioned peace officers to conduct long-term investigations involving both administrative and criminal violations of the Alcoholic Beverage Code, Texas Penal Code and other state laws. The SIU conducts operations and investigations statewide to detect, disrupt and dismantle organized criminal activity while the FCU investigates financial-related crimes such as money laundering, tax evasion and other fraud at licensed businesses. All of the units deal with un-lawful activities that are either administrative or criminal in nature that has nexus to the alcoholic beverage industry and therefore some of the investigations may be conducted as joint operations utilizing members of several of the units that comprise the Audit and Investigations Division.

Audit Unit and Marketing Investigations Unit

A. Name of Program or Function: Audit Unit and Marketing Investigations Unit

Location/Division: Audit & Investigations Division; statewide

Contact Name: Chief Dexter Jones

Actual Expenditures, FY 2016: \$4,609,746.16

Number of Actual FTEs as of June 1, 2017: 64

Statutory Citation for Program: The Texas Alcoholic Beverage Code provides authority for auditing functions and the Marketing Investigations Unit in Sections 5.31, 5.32, 5.33, 5.36, 5.44(a), 102.01(a)-(b), 102.31, and 102.32.

B. What is the objective of this program or function? Describe the major activities performed under this program.

Audit Unit: The unit's primary responsibility is to ensure compliance with regulatory and tax requirements under authority of the commission by initiating a variety of audits, conducting inspections, and administering education initiatives aimed at seeking voluntary compliance from industry members. The unit plays a role in the initial phases of the licensing process: conducting new location inspections, interviewing applicants for a license, and reviewing management and concessions contracts as requested by the Licensing Division. The unit is also responsible for monitoring seller/server training schools to ensure compliance with agency standards. In addition, auditors conduct investigations to include marketing practices, subterfuge, cash/credit law, investigative financial record reviews, and assists the SIU, FCU, MIU, and Enforcement agents in various types of investigations.

Auditors provide training classes to permit holders and their employees upon request as well as in response to age law violations by permittees related to sales of alcohol to minors. In addition, presentations are delivered to school students, ranging from elementary to university settings. Finally, the unit's employees provide presentations to civic organizations, media groups, and industry trade associations in an attempt to promote a better understanding of the law and the roles and responsibilities of the agency.

Marketing Investigations Unit (MIU): The unit's mission is to investigate complaints regarding complex marketing practices and/or illegal relationships within the three tier system and bring the parties into compliance through administrative proceedings. Examples of illegal relationships include, but are not limited to, the following:

- the introduction of "control" or "associated" alcoholic beverage product brands into the Texas marketplace in an attempt by one tier to control product distribution and/or pricing in the marketplace;
- Illegal monetary promotional incentives between the tiers;
- Illegal retail advertising funded by upper tier members;
- tied house ownership of a tier member by another tier member;
- illegal retail sponsorship activities funded and/or controlled by an upper tier member;
- unlawful contract agreements between different tier members; and
- other prohibited cross tier relationships.

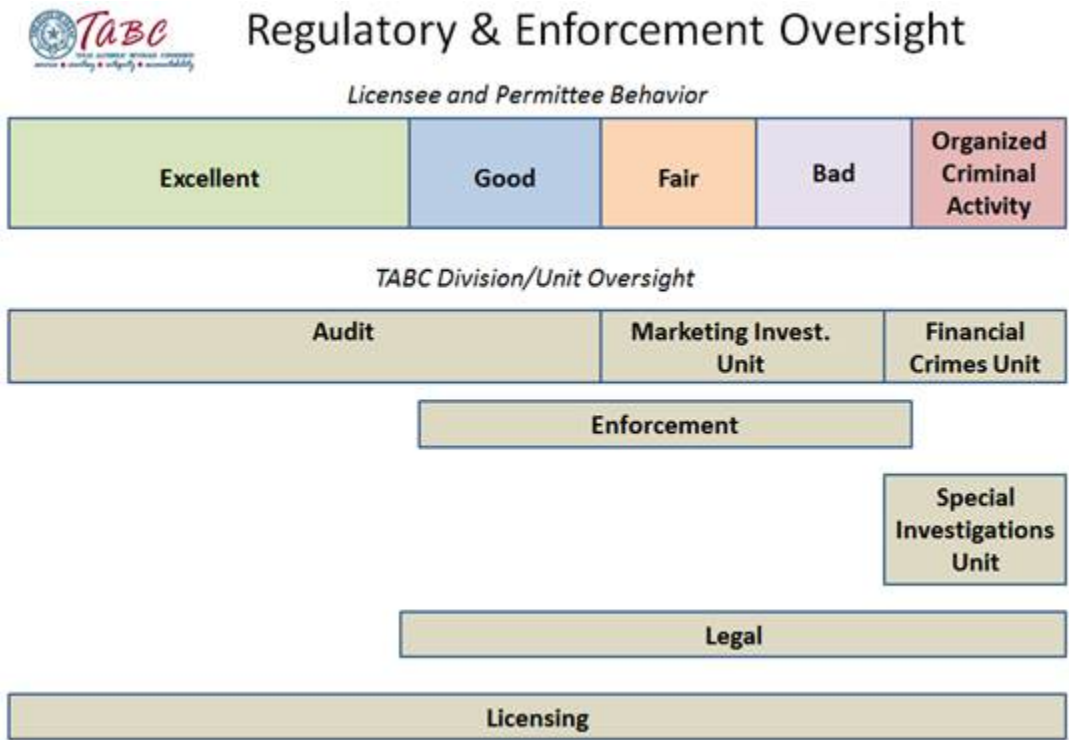
The MIU conducts investigatory interviews and extensive reviews of business records and financial documents obtained from permittees through demand letters, subpoenas and/or search warrants as applicable. In addition the MIU may provide auxiliary support to the Audit Unit, Financial Crimes Unit, Special Investigations Unit and other divisions as applicable. It is typical for an MIU investigation to take several months to a year to complete.

Self-Evaluation Report

The objective of investigating tied house complaints is to ensure public safety for Texas communities and promote fair competition within the Texas alcoholic beverage industry. These types of complex investigations often derive from competing permit holders seeking an opportunity to be successful in a highly competitive market. Competition often results in the deployment of business models that are in conflict with tied house provisions of the Code. The agency is not directed by the Legislature to determine winners and losers but rather to ensure the laws in place are being adhered to by all permit holders.

As can be seen in Exhibit 38, the Audit Unit primarily deals with license holders who are, for the most part, good and honest business people. MIU becomes involved when the permittee’s business model encourages illegal behavior and there is little chance of self- correction without administrative intervention on the part of the agency. When the activity becomes criminal in nature, the SIU or FCU units become involved as noted in the chart.

Exhibit 38: Regulatory and Enforcement Oversight by Division/Unit



- C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program. Also please provide a short description of the methodology behind each statistic or performance measure.**

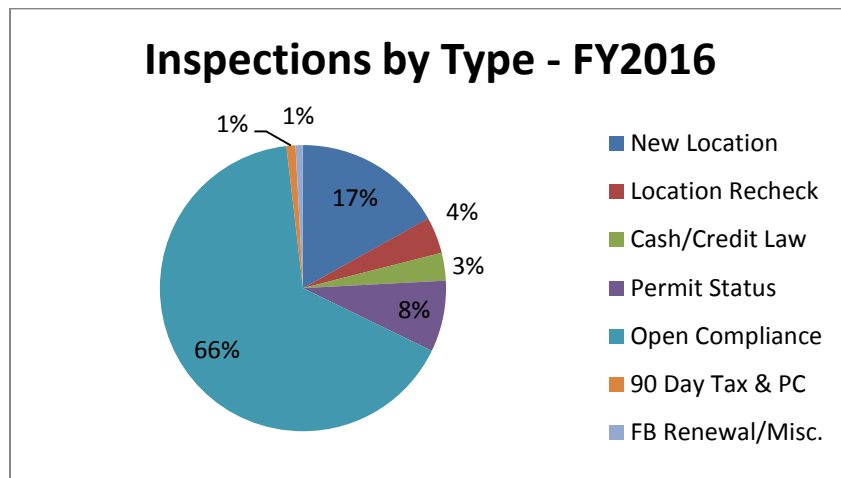
Audit Unit

The unit is the “boots on the ground” workforce of the agency that deals with the industry on a daily basis through open inspections, audits, and education initiatives. Auditors within the unit are in the field on a daily basis, not only ensuring regulatory compliance, but assisting the industry with questions, training, and providing one-on-one interaction and personal goodwill on the part of the agency. Goodwill can best be measured through customer survey’s, which are randomly mailed to permit holders that have had contact with an auditor through an inspection or audit. The unit has almost a 100% positive response from the industry as it relates to professionalism and assistance. Time spent in the field is relative to the outcome measures related to inspections, audit and education initiatives.

FY2016 Performance Measures

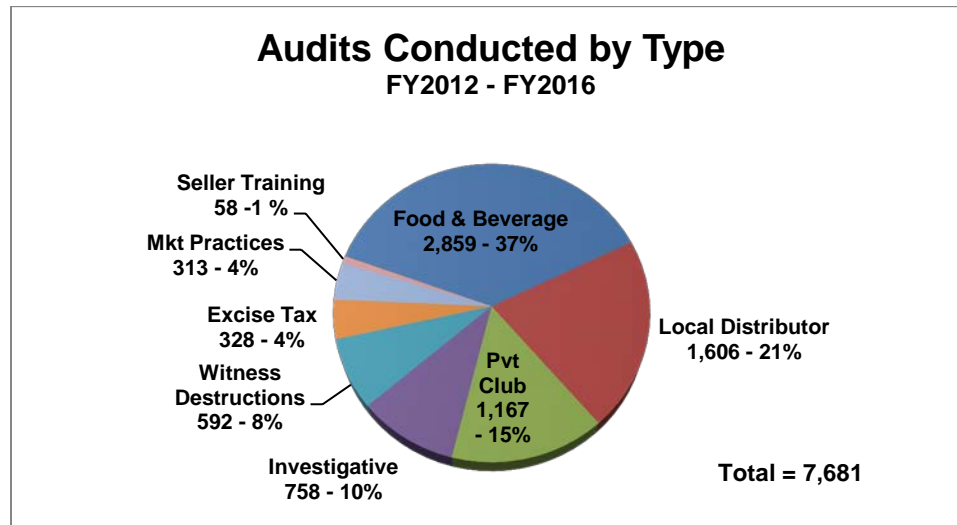
Output Measure: Number of inspections conducted by auditors. In FY2016 24,580 inspections were conducted, which was 105.95% of the projected goal of 23,200. Inspections come from a variety of sources, with the majority coming from routine weekly open inspections of licensed retail locations for violations of the Code and Rules. Some inspections are specific in nature, such as new location inspections, 90-day inspections of excise tax accounts and Private Club Permits, and the delivery and service of summary suspension notices and ad valorem tax delinquency notifications for municipalities. As an efficiency outcome, the average cost per inspection for FY2016 was \$168.97, while the original projected cost was \$176.29. Exhibit 39 reflects a percentage breakdown of inspections conducted by type for the time period of FY2012 through FY2016.

Exhibit 39: Audit Inspections by Type, FY2016



Output Measure: Number of audits. The number of regulatory, tax, and investigative audits conducted in FY2016 was 1,699, which was 107.19% of the projected goal of 1,585. Audits are conducted throughout the year and involve regulatory, financial, tax, marketing, investigative, and permit fee audits. As an efficiency measure, the average cost per audit for FY2016 was \$254.27, while the original projected cost had been \$435.26. Exhibit 40 reflects a percentage breakdown of the audits conducted by type for the time period of FY2012 through FY2016.

Exhibit 40: Audits Conducted by Type, FY2012 – FY2016

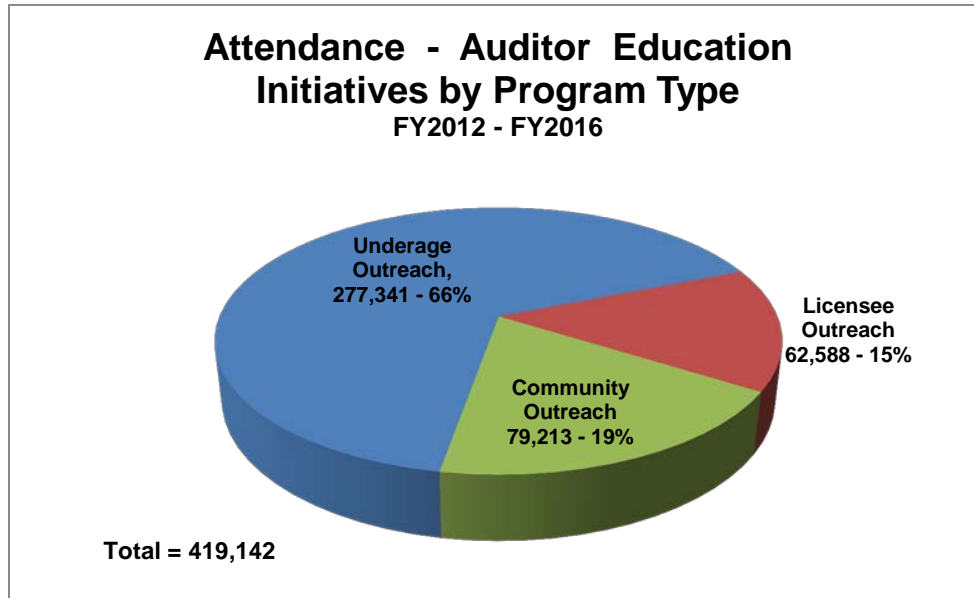


Output Measure: Number of persons instructed by auditors. The number of individuals to which auditors provided education to were 62,454, which was 112.94% of the projected goal of 55,300. Annual target is based on past performance and is a computation of participants from school, industry and public education initiatives. Large school programs such as Red Ribbon Week and Shattered Dreams comprise the majority of the total number. One-on-one and group classes with segments of the industry, media outlets, and the public comprise a smaller portion of the total; however, they require more time and manpower as the instruction classes are longer with less participants. Industry classes are formulated to provide individual training for retailers, middle tier members and upper tier members. Media outlet training classes are designed to encompass marketing issues, advertising restrictions and tier relationships. Industry organization classes are geared toward the issues related to the specific organization members such as the Texas Restaurant Association, wine and beer organizations, or the Texas Package Store Association. Public and civic organization classes are generic in nature and designed to provide an overview of TABC activities.

As an efficiency measure, the average cost per person attending educational programs taught by auditors for FY2016 was \$5.67. This cost is determined by taking the dollar (salary) value of the work hours associated with the education activities and dividing it by the number of persons attending the various type of education events.

Exhibit 41 reflects a breakdown of the education initiatives by type for the time period of FY2012 through FY2016.

Exhibit 41: Auditor Education Initiatives by Program Type



Marketing Investigations Unit

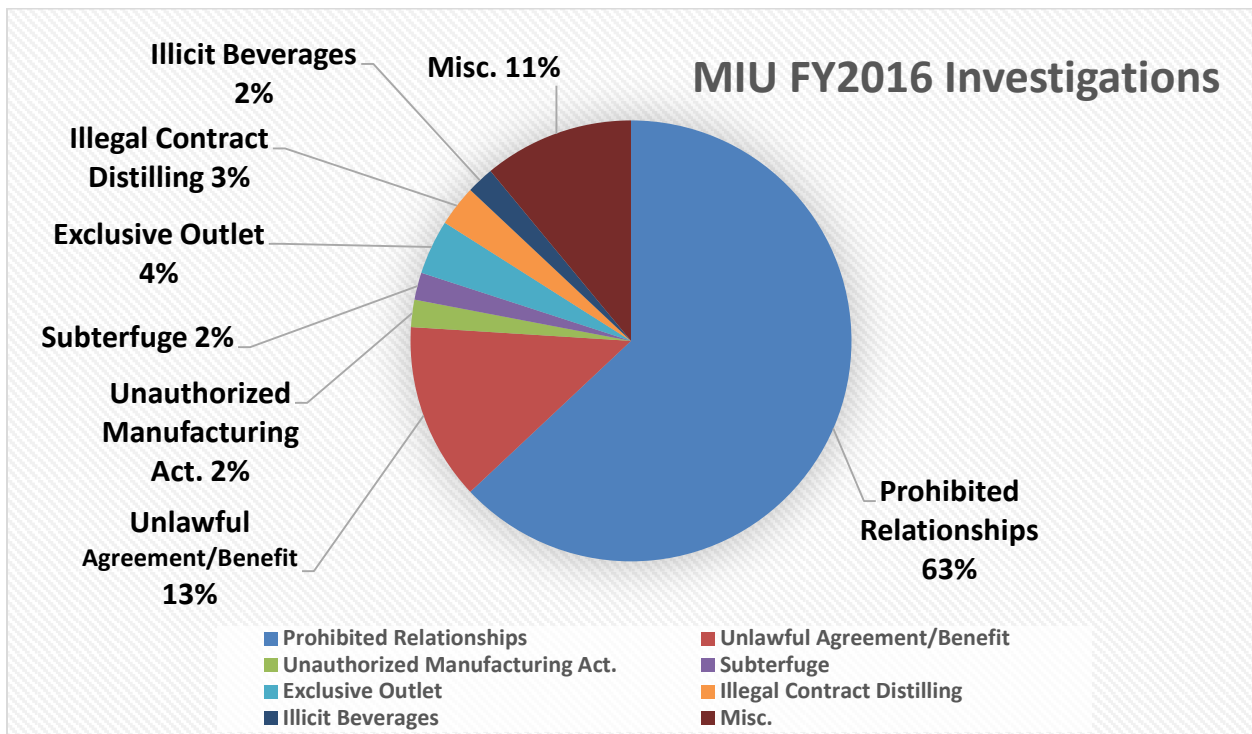
The unit investigates complaints of illegal cross tier relationships related to any provision of Chapter 201 of the Code that impedes a fair marketplace for any tier member. Examples of some of the types of investigations conducted are

- illegal discounting practices, favoring one retailer over another,
- the use of control brands by retail chains in an attempt to control the distribution and wholesale pricing of products,
- illegal advertising schemes at the retail level funded by upper tier members to promote their brands over competitors,
- subterfuge ownership i.e., control of a different tier’s business through hidden ownership or illegal contractual agreement,
- illegal manufacturing activities by the distribution (middle) tier or retail tier, and
- illegal control and distribution of malt beverage brands through intellectual property rights.

Self-Evaluation Report

During FY2016, the MIU opened 49 investigations, closed 34 investigations and had 49 investigations in progress at the fiscal year's end. The unit issued four warnings, filed 24 administrative cases and assessed \$255,100 in administrative fines. The unit's activities primarily deal with administrative violations and seldom result in permit cancellation for cause. Goal is to bring the license holder into regulatory compliance through administrative proceedings if not voluntary compliance. Investigation activities are complaint driven and tracked manually by the unit's Team Lead. Without the unit's oversight, you would have a monopolistic industry controlled by large suppliers and big box retail chains, severely limiting the ability for a start up to be successful in the marketplace. The unit is about maintaining a level playing field under the three tier system. Exhibit 42 displays a breakdown of the various types of violations that were worked in FY2016:

Exhibit 42: Investigations Conducted by Marketing Investigations Unit, FY2016



NOTE: Investigations may encompass multiple violations. Example: Exclusive Outlet investigation might also contain a Prohibited Relationship violation.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

Audit Unit

Since TABC was established in 1935, auditors have always had a presence in the agency. Until 1971 auditors primarily collected and performed excise tax-based audits of manufacturers, distributors, wholesalers, brewers, and wineries and conducted permit fee and regulatory audits of private clubs. With the passage of *liquor by the drink* legislation in 1971, the Audit Division expanded and began collecting gross receipts tax and conducting audits of mixed beverage and private clubs which paid the gross receipts tax. In 1994, the collection of the gross receipts tax was transferred to the Comptroller of Public Accounts resulting in the reduction of more than 100 auditor positions. The Audit Division changed direction and assumed more of the administrative duties previously performed by the Enforcement Division. This change allowed law enforcement agents to focus on public safety issues. The division changed its name to the Compliance Division and took control of the evidence rooms at each major office across the state, began enforcement of cash and credit laws, oversaw the seller/server certification function, and began monitoring seller/server classes taught by third party training providers. With the creation of the Food and Beverage Certificate, auditors began conducting regulatory audits of certificate holders to ensure the primary permit holder was eligible to hold and renew the certificate under the qualifications outlined in the Code and Rules.

Since 1971, auditors had always checked identification stamp records at package stores that held local distributor permits in conjunction with gross receipts tax audits of mixed beverage and private club permit holders. With the transfer of the gross receipts tax to the Comptroller in 1994, the physical inventory of the stamps and required record keeping for distribution of the identification stamps were incorporated into a newly designed audit for the Local Distributor's Permit. Local Distributor's Permits (LP) issued to package stores authorize them to assign and attach TABC Identification (control) Stamps to distilled spirits bottles sold to permit holders that pay the gross receipts tax. These audits also incorporate checking for cash and credit law violations, discounting practices, illegal promotions or sweepstake activities, and required recording keeping.

In 2004, the legislature authorized additional audit personnel and the division took over field operations for marketing practices and field review and processing of applications for new licenses. Auditors began conducting licensing interviews in the field with applicants along with new location inspections to ensure the prospective locations met the Code requirements for the type of license being issued. In 2009, field licensing operations moved to the Licensing Division while responsibilities regarding the collection and processing of excise taxes, marketing practices and seller/server training were separated from the Compliance Division to form two new divisions. The Compliance Division moved under Field Operations, joining the Enforcement and Ports of Entry divisions. In 2014, the Compliance Division, based on its field operations duties, changed its name to the Audit and Investigations Division.

Marketing Investigations Unit (MIU)

Prior to 2014, the Audit and Investigations Division had been involved in several large-scale tied house investigations which involved considerable manpower and resources. As a result of these investigations, it became apparent that investigations of this nature were complex, took long time periods to complete, and required experienced auditors knowledgeable of the tied house provisions of the Code that could focus exclusively on the investigations at hand. These investigations often require dealing with intellectual property rights; review of contracts, stock or other ownership holdings; general ledger accounting records; income tax filings; and bank account transactions. Records often have to be obtained from out-of-state corporate entities or through subpoena. As a result, the MIU was created formally in 2014 with a dedicated staff to handle these complex investigations.

Auditors assigned to the unit are stationed in the major metropolitan areas and work under the direction of the Marketing Practices Supervisor at TABC's Austin headquarters. The unit investigates complaints specific to the tied house provisions of the Alcoholic Beverage Code and handles high profile investigations involving cross-tier relationships which are prohibited under the three tier system. The team consists of six auditors (including one supervisor) and at any one time will have 50-plus open investigations. Based on violations uncovered, the unit files administrative cases against industry members which can result in fines, suspension or cancellation of the license. Members of the unit work closely with the Legal Division as a large number of these cases end up in legal proceedings.

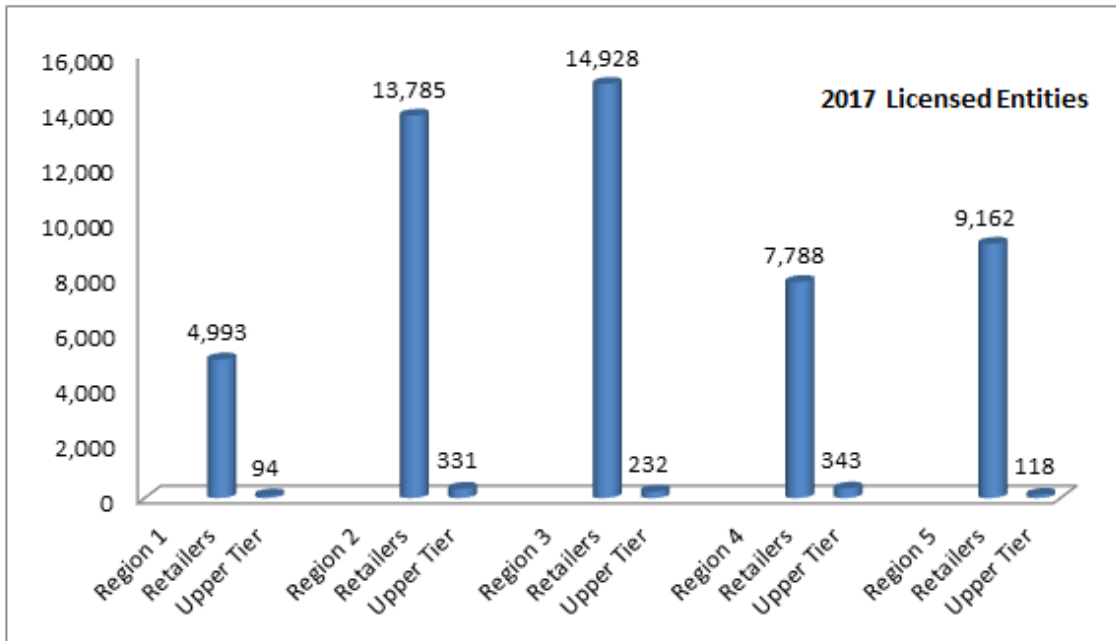
E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

TABC's Audit and MIU Units potentially may interface with any alcoholic beverage industry license holder operating in Texas, and as part of an investigation, with licensed entities outside the state of Texas. The Audit Unit is responsible for inspecting, auditing, and providing education activities for current and prospective license holders while the MIU conducts high-profile, complex investigations which reach into all tiers of the industry, many of which are located outside the state.

In April 2017, there were 51,774 retail and upper tier (manufacturing and distribution) licenses which require oversight through inspection, audit, or education. Looking back over 24 months, the number of accounts is increasing at roughly 90 accounts per month. In some cases, more than one license is issued to the same location; therefore, there are several thousand less actual locations than there are actual licenses.

As shown in Exhibit 43, these 51,774 licenses are broken down into retailer and upper tier members by TABC region. The chart shows the greatest concentration of upper tier members can be found in Region 2 (Arlington) and Region 4 (Austin) compared to the number of retail outlets. This is primarily due to the high concentration of craft brewers and distillers in Region 2 and Region 4 along with a large concentration of wineries in Region 4.

Exhibit 43: Distribution of License Holders by Tier and Region, as of April 2017



F. Describe how your program or function is administered, including a description of the processes involved in the program or function. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.

The Audit and Investigations Division’s field operations for the Audit Unit are divided into five regions to correlate with the Enforcement and Licensing field operations. Each region works under the direction of a Regional Audit Supervisor with the two largest regions having Assistant Regional Audit Supervisors. Fiscal year allocation of audits, inspections and education initiatives are assigned by the Director of Audit and Investigations and are based on a correlation of the number of licensed locations in each region and the number of auditors assigned to each region. Based on legislative performance measures and considering prior year statistics for each region, an action plan is designed for each region in August for the coming fiscal year. The action plan breaks down the number of audits, inspections and education initiatives by type for each region. From this allocation, each auditor is assigned regulatory and tax audits to complete on a monthly or quarterly basis.

Inspections are also distinguished by type and assigned to auditors by sectors, which are based on zip codes in metropolitan areas and on county borders in rural areas of the state. Inspections are conducted weekly by the auditing staff based on the week’s assignments and other factors. Results of audits and inspections findings often lead to administrative cases being filed against the license holder.

Self-Evaluation Report

Education initiatives with schools, industry, media, and the public are assigned as requested by those entities or required by the agency during the year as needed based on law or rule changes that affect the industry. Action plan results are monitored monthly at the regional and headquarter levels. Quarterly performance measure results for inspections, audits and education initiatives are reported along with an explanation for any variance over or under 5%.

The physical conduct of the majority of all inspections are paper form-driven to ensure uniformity and that the proper items are checked during routine inspections. After entry into the agency's computer database (ARTS), the inspection forms are filed at the regional offices and randomly reviewed by supervisory personnel.

Regulatory and tax audits are format driven and checked for correctness and form by supervisory staff. Delinquencies from tax audits are collected at the field level. After entry into the agency's computer database (ARTS), the audits are filed and maintained at the Regional Offices. All audits are reviewed by two supervisory levels for content and format. All audits and inspections conducted by the Audit Unit follow the Audit and Investigations Procedures Manual for uniformity and content.

Complaints against a license holder for non-public safety issues are received by the division and assigned to the appropriate staff and monitored through completion. Many complaints turn into investigative audits. Complaints involving cross-tier relationships that may require a long-term investigation period are referred to the MIU for investigation.

The MIU works off complaints received from both internal and external sources. Based on the nature of a complaint, it is assigned to an MIU auditor by the MIU Team Lead. MIU auditors are located Arlington, Houston, Austin, and San Antonio. The unit's Supervisor and Team Lead are stationed at the TABC Headquarters facility. The assigned MIU auditor researches the complaint and in conjunction with the Team Lead develops an action plan to address the complaint. Depending on the complexity of the investigation, more than one auditor may be assigned or additional staff from the Audit Unit may be assigned to assist. Depending on the circumstances, assistance from Enforcement, SIU, or FCU may be needed. The MIU Supervisor and team members work closely with legal staff in the development of any resulting administrative cases. The Audit Supervisor and Team Lead are responsible for monitoring the progress of all open investigations. Monthly update reports are provided to the Director of Audit and the Chief of Audit and Investigations. At any one time, there are more than 50 open investigations in progress.

In addition to their primary duties, some auditors serve as property custodians charged with recording, tracking and safeguarding evidence (such as alcohol, drugs, weapons, etc.) held for pending administrative and criminal cases. Sixteen evidence rooms are maintained statewide. Field auditors also file and settle administrative cases with industry members related to violations of the Alcoholic Beverage Code and Rules. Auditors field phone and in-person questions related to marketing and licensing issues and interview new applicants for licenses, providing them with information on laws, regulations, and recordkeeping requirements related to their specific license.

- G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).**

The Audit Unit and Marketing Investigations Unit's funding source was 73% of the general revenue appropriated to the Compliance Monitoring Strategy in FY2016.

- H. Identify any programs, internal or external to your agency that provides identical or similar services or functions to the target population. Describe the similarities and differences.**

Functions that are carried out by the Audit and MIU Units are unique to the alcoholic beverage industry. It takes several years to fully train a field auditor in all the work activities he or she is expected to routinely handle. Understanding the complexity of the industry, the Alcoholic Beverage Code and Rules, and the three tier system in general, is not an easy undertaking. Outside of the industry and TABC, few organizations, much less other state agencies, would have the knowledge base or trained workforce to attempt to regulate all phases of the industry as this agency is charged to do. Auditors attend a four week academy their first year with the agency and go through a five phase field training program, where they are mentored by senior auditors. Auditors are expected to understand excise tax law, marketing practices regulations, licensing procedures, the nature and utilization of more than 70 types of permits, licensing business structures, analyze management and concession contracts, settle administrative cases, and conduct investigations of various types to include subterfuge, protests, and financial interests. Additionally, auditors have education goals to meet in education presentations with industry, schools and the public.

MIU auditors are focused specifically on investigating violations related to the tied house provisions contained in Chapter 102 of the Code. There is no other agency with the training to take on these types of investigations. The agency offers one stop shopping for the industry and the public.

- I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.**

The Audit Unit and MIU have no formal MOU's with any other agency; however, field staff has contacts with the field offices of the Comptroller, Texas Workforce Commission, etc. Gross receipts and sales tax issues noted during routine inspections and audits by field staff are referred to the Comptroller's office for appropriate action. The Audit Unit serves summary suspensions on behalf of the Comptroller for delinquent tax payers related to the gross receipts tax and sales tax.

J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.

The Audit Unit's field staff interacts with city and county administrations in answering questions related to the Alcoholic Beverage Code and in the collection of ad valorem delinquent tax requests. Field staff file administrative cases against license holders as requested by cities and counties on delinquent ad valorem taxes exceeding \$1,000. Field staff may also work with city and county officials involving protests of applications for a license.

Field staff including MIU, occasionally interact with federal agencies such as the Alcohol and Tobacco Tax and Trade Bureau or U.S. Immigration and Customs Enforcement in conjunction with investigations involving alcohol that may be illicit or counterfeit due to labeling or content issues. Investigations of this nature are often joint investigations with TABC's Enforcement Division, Special Investigations Unit (SIU), or Financial Crimes Unit (FCU). Typically the Audit Unit or MIU handles the administrative violations against the license holder during these joint investigations.

K. If contracted expenditures are made through this program please provide:

- a short summary of the general purpose of those contracts overall;
- the amount of those expenditures in fiscal year 2016;
- the number of contracts accounting for those expenditures;
- the method used to procure contracts
- top five contracts by dollar amount, including contractor and purpose;
- the methods used to ensure accountability for funding and performance; and
- a short description of any current contracting problems.

Not applicable.

L. Provide information on any grants awarded by the program.

None.

M. Are there any barriers or challenges that impede the program's performance, including any outdated or ineffective state laws? Explain.

The Code is complex and fully understood by very few people. Most laws in recent years have created exceptions to the three tier system, making enforcement of tied house provisions of the Code (Ch. 102) difficult. After prohibition, tied house provisions were written to protect the retailer from upper tier members, who--prior to prohibition--often influenced or controlled the retail segment of the industry. With today's global economy, the buying power of retail chains often dictates or attempts to control distribution and/or wholesale pricing for specific brands purchased and distributed by middle and upper tier members. The retail tier is exempt from many of the tied house provisions in the Code. Chapter 102 could be amended to hold retail members accountable to standards similar to middle and upper tier members in terms of tied house violations.

Self-Evaluation Report

There are several differences between a Mixed Beverage permit and a Wine and Beer Retailer's [On-Premise] Permit or Retail [Beer] Dealer's On-Premise License. A mixed beverage location cannot allow an alcoholic beverage to be brought onto the premise unless it is purchased by the mixed beverage permit holder from an authorized supplier. By the same token, no drink that is sold to a consumer may leave the premise. The mixed beverage location can also post advertising on the outside of its business advertising anything but the price of an alcoholic beverage.

These same restrictions do not apply for the holder of a Wine and Beer Retailer's [On-Premise] Permit or Retail [Beer] Dealer's On-Premise License. Customers can freely come and go with a drink in their hand. Both this permit and license holder are restricted in what they can advertise on the outside of their business. Advertising is limited to the use of the words "beer" and "wine" one time each and the letters cannot exceed 12" in height.

These disparities create an un-level playing field for the businesses and often results in administrative tickets being issued for minor infractions related to product control and advertising infractions. The Alcoholic Beverage Code should be changed to create a level playing field for all on-premise license and permit holders.

The Audit and Marketing Investigation Units have evaluated their approach to encouraging compliance among license holders, particularly as it relates to violations of the Code which do not impact public safety. In the FY2018-2019 biennium, TABC will apply the concept of combining education with a warning in lieu of administrative action against a license holder for those with no prior history of the same or similar type of marketing practices violation. A marketing violation of a more egregious nature involving multiple tiers may also be settled by issuing warnings and providing education. The frequency depends on the circumstances and severity of the violations, but follow-up activities will occur to ensure all parties involved have corrected the illegal activity. Failure by the license holder to take corrective action may result in an administrative case being filed to bring the license holder into compliance. Audit and MIU believe this approach of combining education with a warning, in lieu of an administrative case, will better serve the needs of the industry the agency is charged with regulating.

N. Provide any additional information needed to gain a preliminary understanding of the program or function.

The majority of the Alcoholic Beverage Code is regulatory in nature. The Audit and MIU Units have the primary function of ensuring that industry members operate within the regulatory and tax guidelines addressed in the Code for their respective license. The units monitor regulatory compliance and ensure there are no prohibited cross tier relationship between different tier members that will contribute to the disruption of a stable marketplace..

- O. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:**
- **why the regulation is needed;**

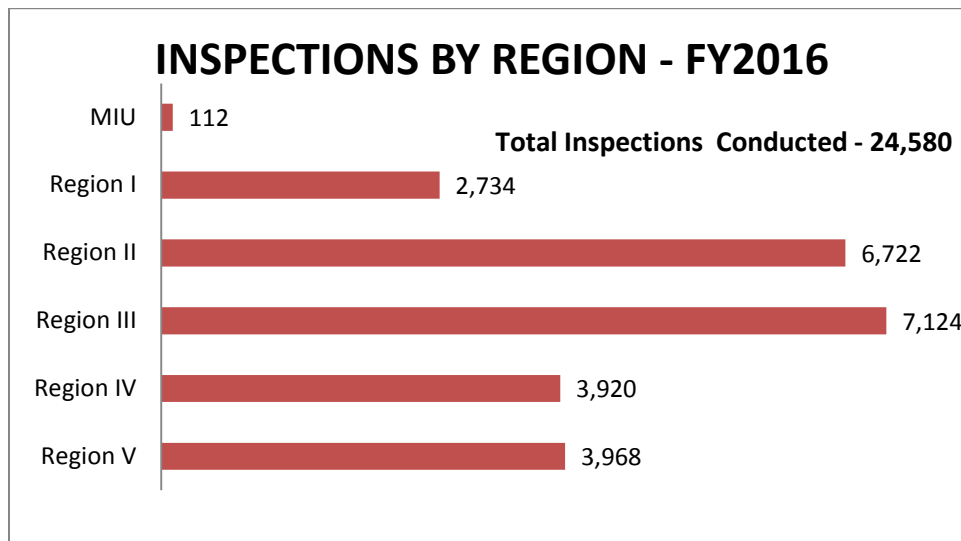
The Alcoholic Beverage Code, Sections 1.06 and 5.31, authorize and mandate that the agency regulate every phase of the business of manufacturing, importing, exporting, transporting, storing, selling, advertising, labeling, and distribution of alcoholic beverages, and the possession of alcoholic beverages for the purpose of sale or distribution. Routine inspections, scheduled audits and complaint investigations by the Audit and MIU Units assist in meeting this mandate. These activities provide the agency with an active presence in the industry on a daily basis to ensure compliance with provisions of the Code and Rules relative to industry activities. TABC's presence along with education initiatives serve to promote public safety and voluntary compliance within the industry.

- **the scope of, and procedures for, inspections or audits of regulated entities;**

Inspections

The Audit Unit conducts a variety of inspections and audits. Exhibit 44 shows inspections completed in FY2016 by TABC region.

Exhibit 44: Inspections by Auditors by Region, FY2016



1) Open Inspection - Auditors conduct routine open inspections of all types of licensed locations. The inspection is form-based and structured to review basic requirements for both on-premise and off-premise locations. The inspection reviews required posted signage, marketing and promotion issues, seller/server training for personnel, outdoor advertising restrictions, and other provisions. During these inspections, auditors answer questions from the license holder related to Code and Rule requirements. Auditors conducted 14,135 of these inspections during FY2016.

2) New Location - Auditors inspect facilities associated with new applications for a license to ensure the location meets requirements for the type of license to be issued. Restaurant equipment; correct address; location diagram; multiple permits at location (such as a hotel); required barriers to prevent alcohol from leaving the controlled premise (depending on the permit); and distance from churches, hospitals, schools, and day care centers, etc. are examined before the location is approved or rejected. Auditors work closely with field Licensing Division personnel in this endeavor. Minor items which can be corrected are pointed out to the applicant and a follow-up inspection is scheduled once the license has been issued to ensure changes were made. New locations and follow-up inspections accounted for 6,840 inspections in FY2016.

3) Cash/Credit Law - A retailer's failure to pay cash or cash equivalent for beer (i.e., cash law violation) or failure to pay for liquor (distilled spirits, wine, or ale) under payment terms for sales on credit (i.e., credit law violation) results in the supplier of the product reporting the retailer through the agency's Automated Cash & Credit Law System. Seven or more incidents of either cash or credit law within a twelve-month period results in an administrative case being filed against the license holder. After three incidents of either, field auditors are assigned to visit the location and discuss the incidents with the owner to explain the laws and the consequences of an administrative case being filed if the licensee continues to violate either law. During the visit, the auditor conducts an inspection of the premise and records to verify the operation is not a subterfuge operation and checks for other violations of the Code or Rules. During FY2016, the unit conducted 729 of these inspections.

4) Food and Beverage Certificate Renewal Inspections - Auditors conduct routine inspections of Mixed Beverage Permit (MB) locations that also hold a Food and Beverage Certificate (FB). Some hold the FB certificate for bond exemption purposes while others are required to hold the FB certificate in order to keep their MB permit. Locations are checked to ensure they meet the kitchen, menu, and hours of food service operation required for the FB certificate. In FY2016, the division conducted 297 of these inspections.

5) 90-Day Inspections - Auditors conduct inspections of manufacturers, brewers, wineries, distilleries, and private clubs 90 days after the license is issued to confirm proper records are maintained. These inspections benefit the license holder, ensuring there are no surprises during a scheduled tax or regulatory audit. Inspections of this nature totaled 243 for FY2016.

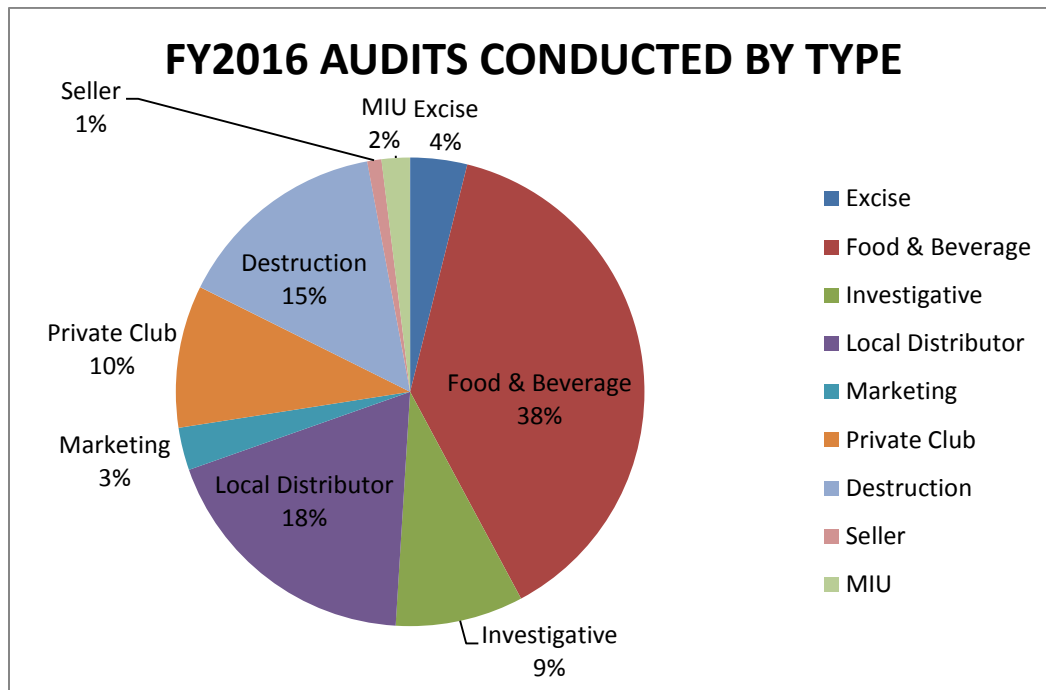
6) Other - Auditors occasionally are assigned to conduct undercover or surveillance inspections (interior/exterior), most often in conjunction with an investigation involving the Enforcement Division. Auditors also inspect alcohol products for destruction and clear locations for new permits. Auditors conducted 47 of these in FY2016.

7) MIU Inspections - MIU Auditors conduct inspections of various types in conjunction with investigations they are working. MIU auditors completed 112 inspections in FY2016.

Audits

Exhibit 45 reflects the percentage of each type of audit conducted in FY2016.

Exhibit 45: Percentage of Audits Conducted by Type, FY2016



1) Food and Beverage Certificate (FB) Audit - A permit holder that has a Food and Beverage Certificate (Code, Sections 25.13, 28.18, 32.23, and 69.16) avoids posting a conduct surety bond and, based on some local option elections must maintain the FB Certificate in order to sell mixed drinks. TABC auditors certify that holders of Wine and Beer Retailer’s Permits and Retail Dealer’s On-Premise Licenses qualify for an FB Certificate. The Comptroller certifies FB Certificates issued to holders of Mixed Beverage Permits and Private Club Permits. Beginning Sept. 1, 2017, as a result of HB 2101 (85th Legislature, Regular Session), TABC will be responsible for the certification of all FB Certificate holders. This change in the law will increase the number of certificate holders subject to audit from less than 4,000 to over 9,500 locations. Additionally, the percentage of alcohol sales to the total gross receipts (including food) for the licensed location will increase from 50% to an allowable 60%. The expectation is that more license holders will qualify for an FB Certificate. Other requirements of an FB Certificate include kitchen equipment, multiple entrees, recordkeeping, and service time requirements as outlined in Rule 33.5. TABC auditors conduct a random selection of audits of FB Certificate holders to ensure they meet Code and Rule requirements. Failure to do so may result in filing an administrative case for cancellation of the FB Certificate.

2) Local Distributor's Permit (LP) Audit - As part of routine open inspections of Package Store Permit (P) locations that hold a Local Distributor's Permit, auditors conduct an audit of the location's sales to Mixed Beverage and Private Club Permit holders. The audit is comprised of a physical inventory of the TABC Identification Stamps issued by the LP permittee, the required records being maintained for the stamps (Rule 41.71), a review of sales invoices for content, any violation of cash or credit law reporting requirements, observance of delivery restrictions, illegal promotions or sweepstakes, and unauthorized sales. Ownership of the identification stamps is vested with the TABC and the stamps are used to control the legal flow of distilled spirits into Mixed Beverage and Private Club locations for tax purposes.

3) Excise Tax Audits – To determine if the correct taxes are being paid to the state, auditors will perform excise tax audits on a random selection of permit holders. Distilleries, wineries, manufacturers (beer), breweries (ale), wholesalers, and distributors all pay excise taxes to the state through the TABC Tax & Marketing Division. These field audits examine production reports and importation receipts, verify exemptions claimed, and review sales invoices. Control, substantive, and compliance tests are conducted. These audits are conducted using the attestation standards of the American Institute of Certified Public Accountants (AICPA).

4) Marketing Practices Audits – Auditors, through an automated random selection of distilleries, wineries, manufacturers (beer), breweries (ale), wholesalers, and distributors, check for cross-tier relationships which violate tied house provisions of the Code, cash and credit law incidents, and marketing restrictions related to advertising, sweepstakes, promotional items (beer), novelty items (beer), and specialty items (liquor).

5) Private Club Audits - Auditors conduct audits of private club permits to ensure:

- the correct permit fee was paid by clubs using the methodology described in Code, Section 32.02(b)(1) (i.e., fee is progressive based on membership increments);
- the club is complying with requirements specific to private clubs in Chapter 32 of the Code and Rule Sections 41.49, 41.51 and 41.52.
- the club is not a subterfuge operation that is being operated for the benefit of someone other than the club's membership.

6) Destruction Audits - Each licensee subject to the provisions of Code Sections 201.03, 201.04, 201.42, or 203.01 is entitled to receive a tax exemption or a tax credit for alcoholic beverages destroyed. Rule 41.54 deals with the procedure and paperwork that must be submitted to authorize the destruction. By rule, auditors routinely approve these destruction requests and may elect to physically inspect, count, and/or witness the destruction of the alcohol. In all cases, the calculation of the amount of the tax exemption authorized is computed and/or verified and authorized by the auditor.

7) Marketing Investigations Unit Audits - The MIU conducts investigative audits based on complaints received from the public, industry, and internally for violations of the tied house provisions of the Code (Chapter 102). Internal complaints are received from Licensing, Enforcement, Special Investigations/Financial Crimes Units, and the Audit Unit of the Audit and Investigations Division. Illegal cross-tier relationships have become prevalent in today's global economy. Retail chains' tremendous buying power have often led to business models which violate the three tier system. Investigative audits involve in-depth analysis of various business-related records to include but not limited to financial statements, bank records, business agreements, business structures, intellectual property rights, and other related business records. Such audits enhance the commission's ability to effectively identify non-compliant business practices in response to complaints received by the commission.

8) Seller Server Training Audits - Auditors conduct investigative audits of Seller Server Schools as assigned by the Seller Server Training Section of the Education and Prevention Division. Both open and undercover investigations are conducted based on the complaints received concerning the schools. An open audit consists of a reconciliation of training certificates issued by the school, a review of testing materials and graded tests, and a review of student applications. Undercover investigations may involve the auditor registering for and attending the school and, depending on the complaint, failing the test or monitoring the material being taught for mandatory teaching requirements.

- **Follow-up activities conducted when non-compliance is identified;**

Major violations noted during investigations or audits often require scheduled follow-up reviews to ensure the noted violations have been corrected and recommendations have been implemented or to determine if follow-up reporting on the part of the license holder is required. Many high profile investigative audits conducted by the MIU require that changes be implemented to the business model of the license holder to bring the business into regulatory compliance. In some cases, the recommendations in the audit are written into the legal order as part of the settlement offer to the license holder. Failure to comply with the recommendations could result in additional sanctions, including cancellation of the license.

Follow up activity also comes into play with new location inspections. Often the new location is approved to avoid holding up the issue of the license with the understanding that changes to the facility will have to be completed within a designated timeline.

● **Sanctions available to the agency to ensure compliance;**

Through audits and inspections of licensed locations, auditors find violations of the Code and Rules. Auditors issue administrative notice warnings for minor infractions of the Code and Rules, but major administrative violations may result in an administrative case being filed against the license holder. Penalties for major violations are assessed on the basis of Rule, Chapter 34 (Schedule of Sanctions and Penalties). Related Code sections authorizing sanctions and penalties are Sections 11.61, 11.64, 11.641, and 106.13. Other than penalties noted for violations of cash or credit law, the rule does not address sanctions or penalties for major marketing practices violations. As a general guideline and for consistency purposes, a violation involving marketing practices carries a penalty of \$300 per day for retailers, \$500 per day for middle tier members, and \$1,000 plus per day for manufacturing-level license holders. Investigations by MIU often deal with cross-tier violations resulting in cases being filed against license holders in all three tiers, and in some cases, results in cancellation of the license.

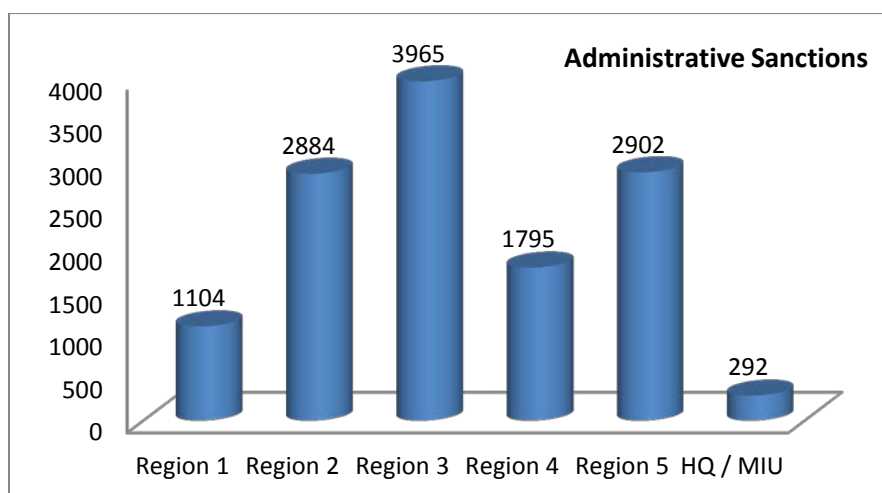
In addition to administrative sanctions originating from inspections, investigations, and audits, the following items contribute to sanctions initiated by the Audit Unit and MIU:

- incidents of cash and credit law reported by the industry,
- protests of a license investigated by the Audit Unit,
- issuance and service of summary suspensions,
- service of ad valorem delinquent tax notifications,
- delinquent tax collections, and
- entries on the agency’s published “Delinquent List”

Violations from all of these sources accounted for a total of 12,942 administrative sanctions in FY2016. Sanctions attributed to MIU are incorporated with Headquarters.

The breakdown of sanctions by region is identified in Exhibit 46.

Exhibit 46: Administrative Sanctions Initiated by Audit and MIU, FY2016



- **Procedures for handling consumer/public complaints against regulated entities;**

The Audit and MIU Units receive complaints from industry members and the public via the agency website's complaint system, email, phone, and in person at the Headquarters in Austin and regional offices. Complaints are assigned to regional office personnel relative to the source or location of the complaint. Complaints for non-criminal violations are entered into the agency's computer database, assigned to individual auditors, and their status is monitored by supervisory personnel through automated reports. The agency's goal is to resolve complaints within 60 days of assignment. If the person filing the complaint provides his/her contact information, he/she is notified of the outcome. Cross tier related complaints are directed to the MIU. Many times, there is no basis in the law for the complaint and the complainant is so notified. Resolution of complaints found to be valid can range from a simple written warning to a suspension or fine. Repeated violations, depending on their severity, could lead to an administrative case for cancellation of the license. Day-to-day public safety violations are directed to the Enforcement Division, while major public safety violations requiring long term investigations are directed to SIU or FCU.

- P. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices. Please include a brief description of the methodology supporting each measure.**

See *Complaints Against License or Permit Holders* in the introduction to Section VII for an explanation on how the agency handles complaints against license holders. Exhibit 29 follows the explanation and summarizes the complaints against license holders received by TABC over the last two full fiscal years.

Special Investigations Unit

A. Name of Program or Function: Special Investigations Unit

Location/Division: Audit and Investigations Division

Statewide – Arlington, Austin, Del Rio, El Paso, Houston, Laredo, McAllen, San Antonio

Contact Name: Chief Dexter Jones

Actual Expenditures, FY 2016: \$1,702,839.02

Number of Actual FTEs as of June 1, 2017: 19

Statutory Citation for Program: Sections 5.361 and 6.03(f), Alcoholic Beverage Code.

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Special Investigations Unit (SIU) conducts long-term investigations to identify and interdict organized criminal activity taking place at locations operating under a TABC permit. SIU proactively seeks out investigations through various sources, such as intelligence gathering, data mining, and the agent's personal knowledge. They also conduct reactive investigations based on complaints received, task force participation, or the use of confidential sources.

The unit also utilizes other internal TABC divisions to assist in gathering intelligence and coordinating investigations. SIU frequently works with the Audit Unit, Financial Crimes Unit, Marketing Investigations Unit, Licensing Division, Ports of Entry Division and Enforcement Division to facilitate and further SIU's investigations.

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.

The unit routinely works in partnership with other local, state, federal law enforcement agencies such as the Drug Enforcement Agency, Federal Bureau of Investigation, United States Secret Service, Immigration and Customs Enforcement, Internal Revenue Service, Joint Terrorism Task Force, U.S. Office of Attorney General, U.S. Marshal's Office, Texas Department of Public Safety, State Comptroller's Office, Texas Workforce Commission, Texas Attorney General's Office and a variety of other police and sheriff's departments. Unit members also form partnerships with county prosecutors' offices throughout Texas.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program. Also please provide a short description of the methodology behind each statistic or performance measure.

In the years that the Special Investigations Unit has been in operation, there have been 82 permits cancelled for cause – an average of 20.5 per year. Incidental to these investigations, there have been over 100 criminal warrants issued for subjects accused of drug dealing and other crimes. The SIU has also participated with investigations which have resulted in the seizure and forfeiture of millions of dollars, and the agency has shared in a percentage of those seized and forfeited funds, which are earmarked for law enforcement use. This has been possible due to the majority of the SIU agents being assigned to task forces consisting of other law enforcement agency partners such as the FBI, HSI, U.S. Secret Service, IRS, Texas DPS, and various local and state agencies.

Most arrests are a result of joint operations with other law enforcement agencies. In some investigations SIU is the lead agency and will file the criminal cases as the affiant. In other investigations the assisting agency will handle the criminal charges while SIU focuses on the administrative violations of the Alcoholic Beverage Code. For the last three fiscal years (FY2014-2016), an average of 60 arrests have involved the SIU as both lead and support.

The Special Investigations Unit has found that drug trafficking organizations (DTOs) frequently utilize the alcoholic beverage industry to further their criminal enterprise. Joint SIU Investigations have led to several large seizures of narcotics. SIU reported the following averages of narcotics seized during operations led by SIU or as part of a joint operation with other law enforcement agencies for the last three fiscal years (FY2014-2016):

- 88,766 grams of cocaine
- 11,459 pounds of marijuana
- 3874 grams of heroin, and
- 7048 grams of meth

SIU has been given four performance measures. Each year the SIU has consistently met the measures as noted in Exhibit 47. Definitions for all performance measures are available in the [TABC FY2015-2019 Strategic Plan](#).

Exhibit 47: Performance Measures for Organized Criminal Activity (OCA) for Special Investigations Unit

Measure	FY2014 Performance	FY2015 Performance	FY2016 Performance	FY2016 Target	FY2016 % of Annual Target
Average Cost Per OCA/Joint Op	New	\$1,558.73	\$2,427.30	\$2,400.73	101.11%
OCA Investigations Closed	130	98	130	100	130.00%
OCA Investigations (Border Region)	369	535	457	360	126.94%
OCA Investigations (Statewide)	440	734	614	440	139.55%

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

The Code provides the agency broad administrative and police power to regulate all aspects of the alcoholic beverage industry. Working organized criminal cases is not a shift nor change in the agency’s core mission. Section 6.03 (f) of the Code orders TABC with keeping the alcoholic beverage industry free of organized crime. Section 5.361 requires the agency to develop a risk-based approach to enforcement actions and focus on serious violations that threaten public safety. It also requires the agency to develop benchmarks, goals and identify trends of violations to determine the most effective enforcement activities.

TABC conducted a trend analysis and found a continuum of complaints relating to allegations of organized criminal activities (OCA) involving narcotics trafficking, gang-related activity, cartel infiltration, financial crime-related fraud, prostitution, and human trafficking taking place inside of licensed bars, restaurants and nightclubs throughout the state. The results of the analysis revealed that Enforcement agents were being pulled from their regular duties to investigate long-term OCA complaints. In doing this the agents' service areas and regular duties were having to be covered by agents from other service areas, creating delays in non-OCA investigations.

In an effort to address these issues the agency created the Special Investigations Unit in April 2013 using nearly all internal resources to fill the positions. One captain, one sergeant, and eight agents were initially assigned to the unit, but additional supervision and support was needed due to the vast distances between agents and the complexity of the cases. A second sergeant and an analyst were added to the team bringing the unit to twelve FTEs.

Self-Evaluation Report

In FY2016 the SIU received additional funding from the legislature for six FTEs. These six were designated under a Border Security Initiative to increase security and criminal investigations along the Texas/Mexico border. During the same timeframe the Enforcement Division authorized the transfer of one FTE to SIU, bringing SIU to 19 FTEs.

Agency resources utilized to establish SIU are less than 10% of the total number of commissioned peace officers allocated to the TABC. This realignment of resources has enabled the agency to better respond to threats to public safety involving sales of alcohol to minors and intoxicated persons while being able to dedicate resources to address the ongoing problem of organized criminal activity inside of licensed bars, nightclubs, and restaurants in the state.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The SIU takes on cases that affect the worst of the worst permit holders, most involving narcotics sales, human trafficking and smuggling, and other organized criminal activity. These locations usually are brought to the attention of the SIU by local law enforcement due to citizen complaints and high calls for service.

One such example involved two bars in the city of El Paso that were located within the same shopping center. SIU observed multiple narcotic sales involving employees and known gang members who were supplying narcotics to the employees to sell while working inside the establishment. Agents also witnessed drink solicitation and prostitution occurring at the locations. SIU worked closely with the El Paso County Attorney's Office and utilized Section 101.01 of the Code to issue temporary injunctions to shut the establishments down due to the nuisance they were causing. Ultimately each location had their permits cancelled for cause as a result of the investigation led by SIU.

SIU conducted an analysis of calls for service one year before and after the businesses were closed to discover that calls for service within a quarter mile radius of the two establishments dropped from 467 to 320, a 31.5 % decrease in crime for that area. Both locations were purchased by a car dealership and are no longer creating a nuisance to the community.

This is an example of the purview of cases that the unit investigates, always with the goal of taking the bad actors out of business, thereby protecting the citizens of Texas and ensuring that law-abiding permit holders are not taken advantage of by those who violate the law.

F. Describe how your program or function is administered, including a description of the processes involved in the program or function. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.

As seen in Exhibit 38, the SIU is the primary unit within TABC that investigates organized criminal activity (OCA) at licensed locations. SIU receives complaints from a variety of sources to include citizen tips, confidential sources, law enforcement entities, TABC Enforcement and Audit staff, and by conducting exterior/interior surveillance of organized criminal activity that has a nexus to the alcoholic beverage industry. When the SIU receives a complaint of OCA involving a licensed premise, a complaint is generated in the Agency Reporting and Tracking System (ARTS). Due to lack of security within that system, limited information is entered. Therefore, a secondary Case Management Log (CML) was created to store sensitive data. During the course of an SIU investigation, SIU typically places a management halt on the licensed location(s) and permit holder(s) as a precaution to ensure the Licensing division does not approve an application for that location(s) or permit holder(s) without knowledge of the investigator.

SIU: Investigating a Case

Once a case has been opened, SIU agents will begin their investigation. This process involves various intelligence research depending on the type of complaint. Most often data mining law enforcement research database web sites such as Accurint, NCIC/TCIC, TDex, and checking the calls for service from local law enforcement are completed. The agent will then coordinate inspections at the suspected establishment. These inspections may include exterior/interior surveillance, open inspections and/or undercover operations.

Exterior surveillance inspections are beneficial for finding hours of operation, gathering intelligence on suspect vehicles, and determining the amount of resources that will be needed to complete the investigation. These inspections are entered into the ARTS system and related to the ARTS complaint to ensure proper tracking.

Interior surveillance inspections allow SIU agents/investigators to enter a licensed location in an undercover capacity and observe for violations. They typically do not lead to an overt attempt by the agent/investigator to solicit evidence or attempt a purchase of narcotics; however it does allow the agent/investigator an opportunity to build rapport with employees and familiarize themselves with the interior of the location for future undercover operations. These inspections require a minimum of two agents/investigators working inside the establishment and the approval of a supervisor. These inspections are entered into the ARTS system and related to the ARTS complaint to ensure proper tracking. An operation plan or field activity plan is completed prior to the inspection and an After Action Report completed when finished.

Open inspections, which usually require the assistance of Enforcement agents, are beneficial because they provide an opportunity to meet with the permittee and employees and see inside the establishment without drawing attention to the SIU investigation. Because Enforcement agents are inside establishments on a regular basis it is seen as a routine inspection and does not draw undue attention. These inspections are entered into the ARTS system and related to the ARTS complaint to ensure proper tracking.

Undercover operations require additional manpower and resources. Most operations have more than the minimum personnel due the type of location, crowd size, suspected violations to occur and officer safety. Various tools such as pole cams and video and/or audio recordings are utilized during these operations to capture evidence. After Action Reports are then completed at the conclusion along with any other required paperwork to document cash expenditures, use of force incidents, etc. These inspections are entered into the ARTS system and related to the ARTS complaint to ensure proper tracking.

SIU most frequently conducts multiple inspections prior to closing an investigation. Multiple violations are witnessed to establish that the violations were not a one-time incident or just a rogue employee.

SIU: Concluding a Case

The lead agent documents and combines the multiple operations into a case narrative which is attached to the ARTS Complaint. TABC schedules a meeting with the permittee and discusses the allegations and evidence. Because SIU investigates those who are knowingly committing these violations and have multiple offenses, cancellation of the permit is the most common administrative sanction sought; however, the criminal investigation runs concurrently with the administrative portion. Those person(s) involved in the criminal activity are arrested and prosecuted by the local district attorney or, if the investigation was worked jointly with a federal task force partner, the criminal cases may be prosecuted the Assistant US Attorney.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

The Special Investigations Unit's funding source was 6% of the general revenue appropriated to the Enforcement Strategy in FY2016, however the unit falls within oversight of the Audit & Investigations Division which focuses on long-term complex administrative and criminal investigations. In addition, a small portion of funding was designated as appropriated receipts.

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.

A variety of law enforcement agencies at all levels of government target and investigate organized criminal activities. What sets the SIU apart is that SIU targets organized criminal activities that specifically have a nexus to the alcoholic beverage industry. TABC regulates all aspects of the alcoholic beverage industry and SIU investigators possess superior subject-matter expertise in the operations of bars, nightclubs, and other businesses dealing with alcoholic beverages unlike other law enforcement agencies.

TABC has the unique ability to enter and inspect licensed locations without drawing attention to an investigation unlike local and other state law enforcement personnel. TABC also has regulatory authority which allows access not only to the physical premises, but also to documents, property, etc. This effective combination results in many federal, state, and local law enforcement partners engaging with the SIU on investigations relating to organized criminal activity at licensed locations.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

TABC has systems in place to notify commissioned peace officers in other divisions of conflicting operations. For example, when an SIU agent opens an investigation at a licensed location and an investigation is already open by an Enforcement agent, both agents are notified through the Agency Reporting and Tracking System (ARTS). This does not preclude two active investigations to occur concurrently because the two divisions may be investigating different allegations; however, it does ensure a level of de-confliction to make sure resources are not wasted investigating the same violations. SIU also conducts de-confliction on all undercover operations to ensure that another law enforcement agency is not investigating the same location or person(s). This is done through local High Intensity Drug Trafficking Area (HIDTA) Task Forces, the DPS Fusion Center, or the El Paso Intelligence Center (EPIC).

Additionally, SIU agents receive specialized training and are authorized to operate in an undercover manner and maintain a level of anonymity which creates a very specific skillset. This separates them from other TABC CPOs who tend to work in an open capacity. These skillsets have enabled them to infiltrate several criminal organizations operating in TABC-licensed establishments and witness serious violations, resulting in many bad actors being removed from the alcoholic beverage industry.

SIU agents also participate in task forces across the state, with MOUs and appropriate interagency contracts and/or agreements established for each assignment.

J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.

SIU works regularly and closely with a variety of agencies such as the Federal Bureau of Investigation, Department of Homeland Security Investigations, United States Secret Service, Department of State, Department of Justice, Drug Enforcement Administration, Texas Department of Public Safety, Office of the Attorney General, Texas Comptroller of Public Accounts, and other federal, state, and local agencies as operationally necessary. As a force multiplier, SIU is partnered with many agencies through task force agreements. Some examples of the task forces are the Houston Regional Alliance Task Force (HRATF) targeting human trafficking; FBI Safe Streets Task Force which targets narcotics, weapons and organized crime; the FBI Cross Border Task Force targeting organized crime with a nexus to border-related security; and several Homeland Security Task Forces. In addition the Chief of the Audit & Investigations division is a board or task force member of the following partnerships: Houston Area Council on Human Trafficking (Mayor's Office), Texas Human Trafficking Prevention Task Force (Governor's Office), Texas Violent Gang Task Force (Governor's Office), and Joint Terrorism Task Force Executive Board (FBI). Each SIU agent assigned as a Task Force Officer (TFO) undergoes a federal background investigation which enables them to obtain the appropriate federal Secret or Top Secret clearance.

K. If contracted expenditures are made through this program please provide:

- a short summary of the general purpose of those contracts overall;
- the amount of those expenditures in fiscal year 2016;
- the number of contracts accounting for those expenditures;
- the method used to procure contracts
- top five contracts by dollar amount, including contractor and purpose;
- the methods used to ensure accountability for funding and performance; and
- a short description of any current contracting problems.

SIU is a specialized unit which focuses the majority of its investigations on undercover operations. These types of operations require SIU agents and investigators to maintain a high level of anonymity. One method to ensure anonymity is a diversified fleet of vehicles. Utilizing various CPA automated term contracts via TXSmartBuy, such as those established with Caldwell County Chevrolet LLC and Cowboy Chevrolet, to purchase vehicles has helped ensure the safety of undercover agents and maintain their undercover status. In FY2016, SIU spent \$47,770.00 with Caldwell Country Chevrolet LLC and \$74,385.00 with Cowboy Chevrolet. The vehicles are received and taken possession of by employees at the TABC warehouse. A receiving report is completed and they are entered into the agency's tracking system (Capps/Mobile Assets). Because of the undercover nature of the SIU, the vehicles receive an alias registration in accordance with TxDOT policy and procedures. The alias registration will return to a fictitious person or company to ensure the agent's anonymity and safety are not compromised. Each vehicle is then assigned an Asset Tag number which identifies the vehicle. Vehicle maintenance, fuel purchases and mileage are entered into the agency's Daily Activity Reports (DARS) using the Asset Tag number for tracking and accounting purposes.

L. Provide information on any grants awarded by the program.

None.

M. Are there any barriers or challenges that impede the program's performance, including any outdated or ineffective state laws? Explain.

The primary and most apparent barrier or challenge affecting the SIU's performance is a lack of manpower. The SIU has less than 10% of the manpower than does Enforcement. With a state the size of Texas and a limited number of SIU agents, their travel is frequent and long. At times SIU will send agents from El Paso to Houston for an investigation due to a specific skillset the El Paso agents have or just because additional manpower is needed. This takes the El Paso agents away from their investigations for a significant amount of time. Additional manpower would make the team more efficient, increase focus on each service area, and ultimately result in more cancellations of permits for high-risk locations, additional arrests of individuals engaged in organized criminal activity, and an improved quality of life for Texas communities.

The SIU continues to address issues pertaining to subterfuge ownership wherein criminal elements will induce an otherwise qualified person to apply for (and oftentimes obtain) a permit. In some of those cases the SIU has been able to thwart the issuance of a permit. However, the SIU identifies issues with seizing the permit fees associated with subterfuge applications. Additionally the permit fees in these cases are considered contraband and not subject to return, but there is no clear direction in the Code to deal with those situations. Having statutes that directly address this problem would enable SIU to be more effective at preventing subterfuge applicant(s) and the straw owner(s) from utilizing those proceeds to continue illegal business operations.

It has been discovered that often times an unqualified applicant has already had a permit cancelled or is a convicted felon and is not authorized to hold a TABC permit; therefore they recruit or intimidate the qualified applicant into applying for the permit. If a close examination of the application is not completed, the criminal organization is able to take control of the establishment and conduct illegal activities under the new permit and subterfuge ownership.

These investigations require a detailed investigation of bank records, utility bills, payments to alcohol distributors, and other sources to determine true ownership. Money laundering is frequently found to be associated with these subterfuge investigations because the criminal element can easily clean their illegal proceeds in the establishment and remain anonymous because their name is not officially on the permit.

SIU is frequently involved in human trafficking investigations and has noted during these investigations that the females working in TABC-licensed establishments are most often found to be Undocumented Aliens (UDAs). These UDAs are brought into the US via a *coyote* who incurs the UDA's debt, which is usually about \$3000-\$5000. The coyote then *sells* the UDA to a person already inside the US who has an establishment and can put the UDA to work; the UDA can pay off the debt by working, usually forced labor. Most often the young females are sold to

bars and cantinas so that they can work as *ficheras*, also known as *drink solicitors* or *taxi girls*. The females sell drinks to customers at an inflated price; portions of the inflated price go to pay off the debt from the coyote fees. These drinks are most often un-invoiced and not being properly reported for tax purposes creating a form of tax evasion. The UDAs are typically encouraged to engage in prostitution and narcotics sales with the proceeds split with the business owner as a way to pay off their coyote fee more quickly.

There is a need for prima facie evidence to prove a violation when multiple undocumented aliens are working and committing crimes in one establishment. Implementation of a law that enables law enforcement to establish prima facie evidence of intent to engage in human trafficking where there exists two or more undocumented foreign nationals (international) or United States citizens (domestic) engaging in sexual conduct and/or other criminal activity for hire on a licensed premise would bolster the ability of the agency to effectively target human trafficking/smuggling-related crimes. Having such an offense enables law enforcement to take criminal and administrative action against those involved and provides the ability to assist victims who are otherwise unwilling to testify.

N. Provide any additional information needed to gain a preliminary understanding of the program or function.

None.

O. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- why the regulation is needed;
- the scope of, and procedures for, inspections or audits of regulated entities;
- follow-up activities conducted when non-compliance is identified;
- sanctions available to the agency to ensure compliance; and
- procedures for handling consumer/public complaints against regulated entities.

Refer to Item F regarding complaints.

P. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices. Please include a brief description of the methodology supporting each measure.

See *Complaints Against License or Permit Holders* in the introduction to Section VII for an explanation on how the agency handles complaints against license and permit holders. Exhibit 29 follows the explanation and summarizes the complaints against license or permit holders received by TABC over the last two full fiscal years.

Financial Crimes Unit

A. Name of Program or Function: Financial Crimes Unit (FCU)

Location/Division: Audit and Investigations Division; statewide

Contact Name: Chief Dexter Jones

Actual Expenditures, FY 2016: \$293,668.50

Number of Actual FTEs as of June 1, 2017: 5

Statutory Citation for Program: Sections 5.361 and 6.03(f), Alcoholic Beverage Code.

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Financial Crimes Unit's (FCU) mission is to proactively gather and analyze financial intelligence while providing auxiliary support to the SIU, Audit Unit, Licensing, Ports of Entry, and Enforcement divisions for the purpose of joint or internal investigations of a financial nature. The FCU focuses its efforts primarily on the prevention, investigation and detection of finance-related crimes. Investigations include money laundering, prohibited tier relationships, tax fraud, business and corporate fraud, and other organized financial crimes activity committed by persons/entities which hold a permit issued by the commission. Other activities include the identification, seizure and forfeiture of assets associated with alcohol beverage permittees engaged in organized criminal activity on their licensed premises. In addition the FCU provides investigatory and support assistance as applicable to Enforcement and SIU.

Three of the five members of the SIU team were employed by TABC as auditors prior to joining the FCU. The FCU investigators possess a background in auditing, expertise in interpreting the Code, and the skillset to complete very complicated depletion analyses of licensed establishments. This foundation enables team members of the unit to perform long-term, complex financial investigations.

In addition the majority of FCU agents/investigators are Certified Fraud Examiners (CFE) and members of the Association of Certified Anti-Money Laundering Specialist (ACAMS). These certifications and credentials are recognized internationally by financial institutions, governments and regulators as a serious commitment to protecting the financial system against money laundering.

- C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program. Also please provide a short description of the methodology behind each statistic or performance measure.**

The FCU has cancelled 12 permits for cause since its inception in 2013. Several other FCU cases have resulted in protests of new permits (in which the applications were ultimately withdrawn), cases forwarded to the TABC Legal Division, fines assessed in lieu of cancellation, and voluntary cancellations of permits.

FCU agents/investigators regularly assist the SIU and the Enforcement Division with investigations and operations. All FCU agents/investigators have assisted as undercover or close cover agents during operations and have been involved with the writing and execution of search warrants, specifically for financial documents and records. FCU agents/investigators are assigned to work with various task forces which focus on financial analysis; one such task force is the US Department of Homeland Security High Intensity Financial Crimes Area (HIFCA). This relationship provides additional resources to the agency and team.

- D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.**

Similar to the reasoning for creating the Special Investigations Unit, TABC created the Financial Crimes Unit in April 2013 to focus on long-term, financial related administrative and criminal complaints. The unit filled positions using existing resources and was composed of one team lead and two investigators. It was quickly discovered that additional manpower was needed due to the vast distances between the investigators and the complexity of the cases; therefore, two additional investigators were added to the unit. Today the unit is comprised of one team lead and four investigators.

Throughout American history it has been shown that a combination of skillsets to include background in accounting, auditing, fraud examination, finance and law enforcement is essential in working financial crimes investigation. It is this combination of skillset by which the financial crimes unit was established. Each member has a background in the preceding skillsets and all are commissioned peace officers. A process is in place to move FCU investigators from the Schedule B pay scale to Schedule C if desired and minimum qualifications are met. This has been a notable modification to ensuing equity for the FCU team.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The Financial Crimes Unit (FCU) affects the safety of all Texans by removing organized criminal activity from the alcoholic beverage industry. FCU provides a safer environment and ensures a fair marketplace. FCU focuses its efforts on some of the worst actors within the alcoholic beverage industry, most often felony offenses or cases that are prosecuted in the federal court system. The FCU has cancelled for cause 12 permits to date. Some of the violations that caused these permits to be cancelled involved subterfuge ownership, money laundering/tax evasion, and Supplemental Nutrition Assistance Program fraud.

Frequently FCU conducts parallel investigations with other internal units such as the SIU, the Audit Division or the Enforcement division. While SIU may be conducting an investigation into narcotics or human trafficking, the FCU team will provide supplemental and/or concurrent investigation into the financial components such as bank records, issuing administrative subpoenas or obtaining grand jury subpoenas for financial records. FCU also has executed search warrants for financial documents during a joint SIU/FCU investigation in which a Drug Trafficking Organization (DTO) was utilizing subterfuge ownerships to apply for new alcohol permits. The SIU team focused on the DTO and the narcotics violations, while FCU focused their efforts on the financial components of the DTO in an effort to seize illegal proceeds from the DTO and application fees which were found to be used in an attempt to commit a felony.

FCU team members work closely with other law enforcement agencies. They frequently work with the Texas Health and Human Services Commission (HHSC) and the US Department of Agriculture (USDA). HHSC is the primary state administrator for the Lone Star Program and USDA is the federal agency who regulates the SNAP Program (Supplemental Nutrition Assistance Program). FCU and these partner agencies work closely on SNAP fraud investigations. Several TABC licensed locations which accept the Lone Star card or SNAP program were discovered to be illegally accepting the cards by allowing the customer to purchase items not approved by the programs and then overcharging the card. This illegal activity results in Texas losing tax money to a program that is being manipulated for illegal purposes. FCU provides subject matter expertise and a very specific skillset to investigate crimes of this nature.

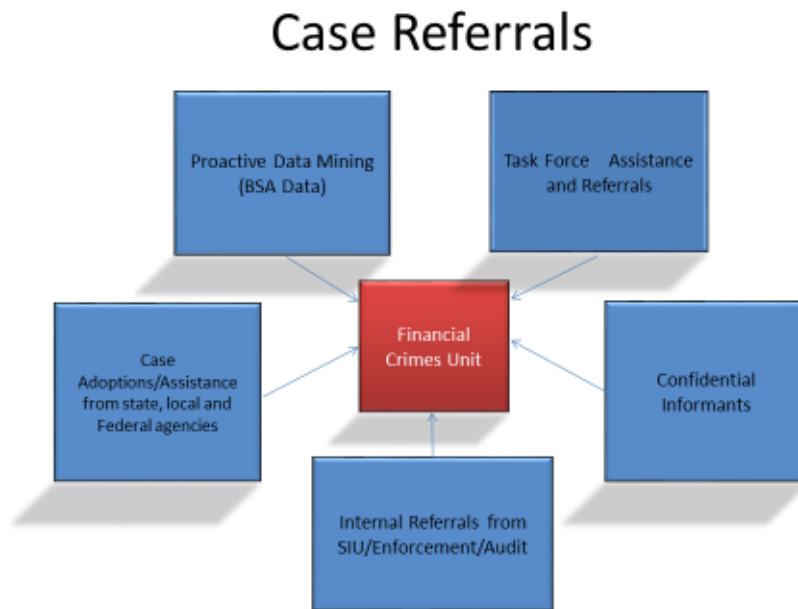
The FCU also attends and obtains intelligence on possible violations of the Bank Secrecy Act (BSA) that have a nexus to the alcoholic beverage industry. When these suspected violations are brought to their attention, FCU investigators can quickly analyze large amounts of bank statements or invoices through the use of newly acquired Comprehensive Financial Investigative Solution (CFIS) software. The FCU's combined skillset, experience and resources enable the team to work efficiently and provide the best possible service to the people of Texas and other government agencies.

- F. Describe how your program or function is administered, including a description of the processes involved in the program or function. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.**

FCU is a unit within the Audit and Investigations Division; administrative operations are coordinated by the unit's captain with day-to-day oversight of the four FCU agents/investigators handled by a team lead. Similar to the SIU, Exhibit 38 shows the FCU's focus on organized criminal activity for some of the most corrupt permit holders in the industry. The key difference between the two is the narrowed focus FCU has on crimes with a financial element.

FCU receives complaints from SIU, other law enforcement agencies, task force members, TABC agents and auditors, and others as indicated in Exhibit 48. Unique to FCU is the proactive measure of employing data mining techniques to scour financial databases and reports as a way to detect financial crimes. In terms of protocols and tracking information in TABC's internal systems, FCU follows similar procedures to SIU.

Exhibit 48: Impetus for Referrals to Financial Crimes Unit



- G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).**

The Financial Crimes Unit's funding source was 5% of the general revenue appropriated to the Compliance Monitoring Strategy in FY2016. In addition, a small portion of funding was designated as appropriated receipts.

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.

The unique nature of FCU investigators--commissioned peace officers with backgrounds in auditing and financial analysis—and their knowledge of the Code, combined with the authority of TABC to file criminal and administrative charges, makes for a one-of-a-kind unit.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

FCU works closely with other divisions and agencies to ensure its operational capabilities do not conflict with investigations conducted by other law enforcement agencies. This process is accomplished by conducting a deconfliction report on all operations/investigations to ensure there are no duplications or conflicts. This report is run through local, state and federal databases which check for overlapping interest or a mutual point of interest. Several MOUs are in place authorizing FCU agents to work on federal task forces. TABC also has several MOUs for asset sharing when property or criminal monetary proceeds are seized.

J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.

Having limited manpower and a responsibility to cover the entire state, the FCU team collaborates with various task forces on joint investigations. These operations are a force multiplier and share resources such as manpower, resources and intelligence. Some of the task forces that the FCU team is working with are the High Intensity Drug Trafficking Area (HIDTA) in Bexar County, Homeland Security Investigations - Human Trafficking Squad in Dallas, Drug Enforcement Agency (DEA) in Houston, Homeland Security Investigations - Financial Asset Seizure Team (FAST) unit in Hidalgo County, and Homeland Security Investigations – High Intensity Financial Crimes Area (HIFCA) unit in El Paso.

K. If contracted expenditures are made through this program please provide:

- a short summary of the general purpose of those contracts overall;
- the amount of those expenditures in fiscal year 2016;
- the number of contracts accounting for those expenditures;
- the method used to procure contracts
- top five contracts by dollar amount, including contractor and purpose;
- the methods used to ensure accountability for funding and performance; and
- a short description of any current contracting problems.

None.

L. Provide information on any grants awarded by the program.

None.

M. Are there any barriers or challenges that impede the program's performance, including any outdated or ineffective state laws? Explain.

The challenge affecting the Financial Crimes Units (FCU) performance is a lack of manpower. With a state the size of Texas and only five FCU investigators/agents, their travel is frequent and long. At times FCU has had to send team members from McAllen or Arlington to El Paso for an investigation due to a specific skillset or because additional manpower is needed. This takes those individuals away from their primary investigations for a significant amount of time. Additional manpower would make the team more efficient, increase focus on each service area, and ultimately result in more cancellations of permits engaged in money laundering and other financial crimes, additional arrests of individuals engaged in organized criminal activity, and an improved quality of life for Texas communities.

The FCU has identified a trend wherein non-qualified individuals with a criminal background will induce an otherwise qualified person to apply for (and oftentimes obtain) a permit. In some of these cases the SIU and FCU have been able to thwart the issuance of a permit. The permit fees from the subterfuge application are obviously contraband and not subject to return, but there is no clear direction in the Code to deal with those situations. If the funds are returned to the subterfuge applicant, the funds will most likely be returned to the criminal elements who fronted the money. Having statutes that directly address this problem would enable FCU to be more effective at preventing subterfuge applicant(s) and the straw owner(s) from utilizing those proceeds to continue illegal business operations.

Historically non-qualified applicants are either prohibited from obtaining a permit because they previously held a permit that was cancelled for cause or the non-qualified applicant is a convicted felon. In either case the non-qualified applicant is not authorized to hold a TABC permit; therefore, they recruit or intimidate a qualified applicant into applying for the permit. If a close examination of the application is not completed, the criminal organization is able to take control of the establishment and conduct illegal activities under the new permit and subterfuge ownership.

These investigations require a detailed investigation of bank records, utility bills, payments to alcohol distributors, and other sources to determine true ownership. Money laundering is frequently found to be associated with these subterfuge investigations because the criminal element can easily clean their illegal proceeds in the establishment and remain anonymous because their name is not officially on the permit. FCU has played a major role in helping to identify these illegal funds and network with district attorneys to file Chapter 59 asset forfeiture seizure proceedings to ensure the illegal funds do not return to the Drug Trafficking Organization.

FCU assists the SIU, Enforcement Division, their task force partners, and other law enforcement agencies, so are frequently involved in human trafficking investigations. Most often the FCU's role is to investigate any potential ties to money laundering or drink solicitation which usually

Ports of Entry

A. Name of Program or Function: Ports of Entry

Location/Division: Ports of Entry Division; 28 land ports and two seaport terminals organized in seven districts located in El Paso, Eagle Pass, Laredo, Hidalgo, Progreso, Brownsville and Galveston

Contact Name: John Reney Jr.

Actual Expenditures, FY 2016: \$5,297,686.69

Number of Actual FTEs as of June 1, 2017: 109.95

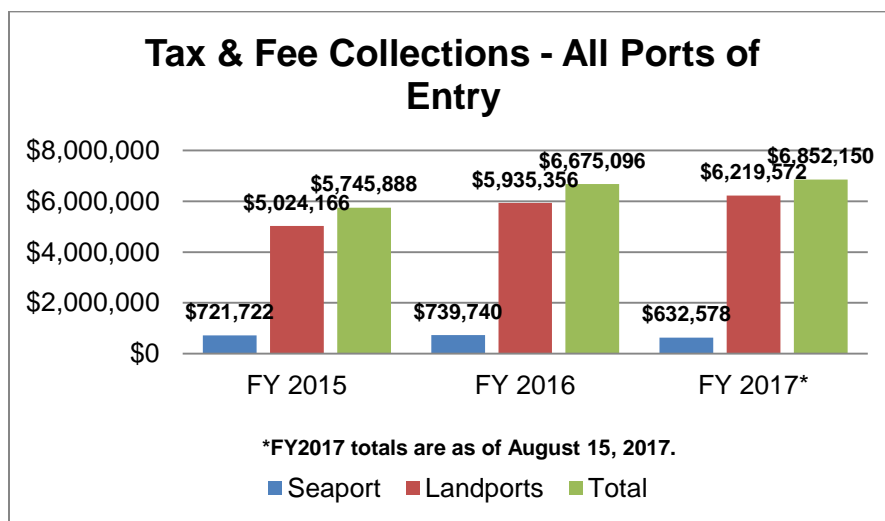
Statutory Citation for Program: Alcoholic Beverage Code, §§1.04(4), 5.37, 103.03, 107.07 and 201.71 et seq.

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Ports of Entry Division (POE) is charged with ensuring that persons importing alcoholic beverages and cigarettes at international bridges (ports of entry locations along the Texas-Mexico border and the Galveston Seaport terminals) are complying in meeting the legal requirements for the importation of distilled spirits, beer, wine and cigarettes and paying the appropriate taxes under the Code and Rules. The division is also responsible for stemming the personal importation of hazardous alcoholic beverages through the ports of entry to ensure public health.

In FY2016 the Ports of Entry Division collected more than \$6.6 million for the state of Texas.

Exhibit 49: Historical Revenue Growth in Ports of Entry



Major Activities

Tax Compliance Officers (TCOs) are strategically stationed and monitor 28 international crossings along the Texas/Mexico border and two cruise ship terminals in Galveston. TCOs are civilian representatives of the agency. TCOs at land ports make contact with customers who have legally crossed into the state from Mexico and are importing personal use amounts of distilled spirits, wine, beer or cigarettes. The TCO’s responsibilities are to collect state tax for each container imported within the statutory limits and affixing a tax stamp on each container as defined by Code Section 107.07.

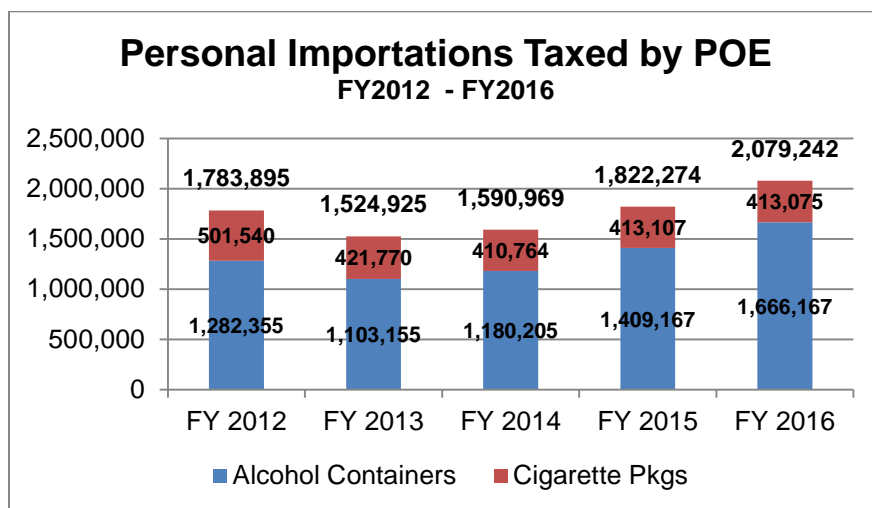
The Galveston Seaport is also staffed with both part-time state employees and temporary contracted employees and collect taxes from customers that are disembarking from a cruise ship that has returned from Mexico or other international destinations. TCOs and temporary employees follow the same procedures as outlined in the previous paragraph.

Other major activities conducted by the TCOs are the disallowance of overages of personal use amounts of distilled spirits, beer, and wine and the disallowance of illicit alcoholic beverages and containers.

- C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program. Also please provide a short description of the methodology behind each statistic or performance measure**

As seen in Exhibit 49, the revenue collected at the ports of entry steadily increases every year and is not expected to slow. This continued increase in cross-border traffic and resulting increase in revenue is due to an increase in the number of alcoholic beverage containers stamped or cigarette packages stamped (Exhibit 50).

Exhibit 50: Number of Alcoholic Beverage/Cigarette Packages Stamped by TABC POE



Performance Measures

Outcome Measure: Revenue As a Percent of Expenses. The value reported for this measure for FY2016 was 129% i.e., revenue was 29% higher than expenses. Revenue is derived from the taxes and fees collected for the personal importation of alcoholic beverages and cigarettes divided by the total cost of Ports of Entry operations.

POE has two key performance measures articulated in Exhibit 5 regarding the total number of containers of alcoholic beverages (1,666,105) and cigarette packages (413,075) personally imported into Texas by persons paying the required taxes and fees.

Efficiency Measure: Average Cost Per Alcoholic Beverage Container/Cigarette Package. This measure calculates the total cost of the Ports of Entry Division attributable to stamping alcoholic beverage containers/cigarette packages or handling disallowed alcoholic beverage/cigarette importations divided by the total number of alcoholic beverage containers/cigarette packages imported or disallowed. A container or package is “disallowed” when its importation would be illegal under Texas law and is, therefore, blocked by a TABC tax compliance officer. This measure is intended to show the average cost incurred by the agency for each alcoholic beverage container/cigarette package imported or disallowed.

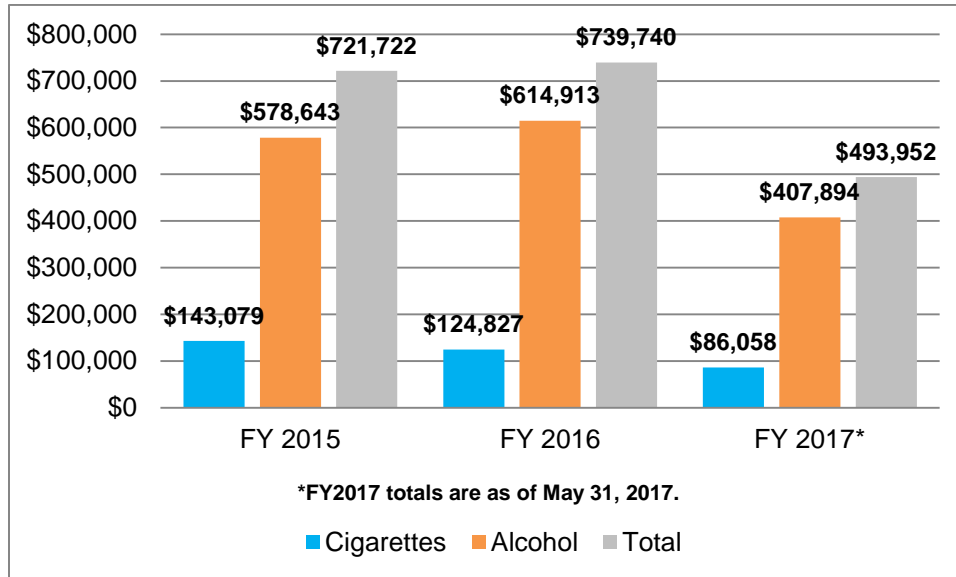
Two explanatory measures (Number of Alcoholic Beverage Containers Disallowed and Number of Cigarette Packages Disallowed) indicate the 4,259 alcoholic beverage containers and 1,416 cigarette packages whose entry into the State of Texas was disallowed by Ports of Entry Tax Compliance Officers (TCOs) in FY2016. TABC's Tax Compliance Officers assess each attempted personal importation. When a particular importation is deemed unlawful, the TCO will disallow the importation. An alcoholic beverage container is considered to be illegally imported if it is in excess of the legal importation quota; the container itself is illegal; it is imported by minors or intoxicated persons; or it is not declared or the importer refuses to pay the required tax. A package of cigarettes is considered to be illegally imported if it is imported by persons under 18 years of age; it is not declared; or the importer refuses to pay the required tax. When individuals are advised that an importation is illegal under Texas law, most choose to voluntarily surrender the products rather than return the products to their point of origin. The surrendered products are taken into TABC custody and destroyed shortly thereafter.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

Section 107.07 of the Alcoholic Beverage Code had been in effect for decades, but TABC did not have the funds to post employees at seaports to collect personal importation taxes at seaports. TABC requested funding in the 83rd Legislature and was appropriated funding to collect taxes from passengers returning from cruises at Texas seaports. In January 2014, POE began collecting taxes at the Galveston Terminal 1 and 2 for personal importation of distilled spirits, beer, wine and cigarettes. In October 2014, TABC began collecting taxes at the Houston Seaport and suspended operations in April 2016 when the sole cruise line stopped servicing

that location. Tax collection at the seaport continues to generate money for the state and has steadily increased every year.

Exhibit 51: Tax and Fee Collections at Galveston Seaport



E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The \$6,675,096 collected in personal importation taxes and fees by POE in FY2016 is deposited into the state's General Revenue Fund and supports the financing of the state’s public schools, local government, research, human services, and other areas in which state government provides services to the citizens.

By enforcing the statutory limits of importations of alcoholic beverages into the state, the agency limits the potential for alcoholic beverage products without label approval from entering the retail market which helps ensure the integrity of the three tier system and protects the public from untested products.

By stemming the flow of hazardous alcoholic beverages entering the state through personal importation at ports of entry along the Texas-Mexico border, the POE division safeguards public health and safety.

F. Describe how your program or function is administered, including a description of the processes involved in the program or function. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.

POE division is organized into two geographical regions: the Rio Grande Valley Region with four districts (Galveston Seaport, Brownsville, Progreso and Hidalgo) and the Southwest Region with three districts (Laredo, Eagle Pass and El Paso). Each region has a Regional Manager who oversees the daily operations of their districts; each port district has a Port Supervisor who supervises a number of employees stationed at the land bridges in each district.

POE Tax Compliance Officers are strategically placed at international bridges and ports of entry on the Texas-Mexico border and the Galveston Seaport terminals. As customers enter the state from Mexico or disembark from a cruise ship that has returned from international travels, customers importing distilled spirits, beer, wine or cigarettes for personal consumption are directed to the TABC booth or station. The TCO then collects the state tax for each container imported within the statutory limits and affixes a tax stamp on each container.

Employees utilize a handheld device connected to a Port of Entry Tax Collection System (POETCS) to assess the proper taxes per container, collect payment with US currency or via a credit card transaction, and place the proper tax stamp on each container (as required by statute). While conducting this duty, employees encounter persons who are importing more than the limit allowed in Alcoholic Beverage Code, Section 107.07:

- 1 gallon of distilled spirits;
- 3 gallons of wine; or
- 24 twelve-ounce containers of beer

In this situation, the TCO advises the customer they have three options: travel back to Mexico to relieve themselves of the excess alcoholic beverage product, personally destroy the overage or disallowed product, or abandon the overage/disallowed product. Regardless, the customer is provided with a receipt of the abandoned product.

TCOs come into contact with customers who are attempting to enter the state with illicit alcoholic beverage containers and, in some cases, have located alcoholic beverage containers that contained illegal narcotics. TCOs who encounter illicit alcoholic beverage containers follow the same procedures for disallowance of the product as described previously. When the TCO believes a container may contain narcotics, the TCO will immediately notify US Customs and Border Protection personnel (federal law enforcement partners) stationed nearby who will take control of the illicit product and the customer.

At the end of the work day, a TCO uses the POETCS system to reconcile the containers stamped with the amount of money collected and make the proper deposit into the work safe. The money is then deposited by a supervisor into a bank account set up by the Texas Comptroller.

Self-Evaluation Report

Field personnel (commissioned peace officers) from the TABC Enforcement Division are periodically used at all seven POE districts to destroy excess disallowed alcohol that has been confiscated by POE personnel. Field agents are also used during peak travel events in Laredo and Progreso to help with traffic control and protection of POE personnel and assets.

TABC has a memorandum of understanding with the Comptroller of Public Accounts which makes POE personnel responsible for determining compliance with the state laws in the importation of cigarettes and collecting the taxes.

- G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).**

The Ports of Entry Division was appropriated \$5,352,432.00 in general revenue for FY2016.

- H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.**

None.

- I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.**

The POE Division has a memorandum of understanding with the Comptroller of Public Accounts to collect taxes for the importation of cigarettes. POE personnel collect taxes on imported cigarettes and the money is deposited into the state's General Revenue fund.

- J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.**

US Customs and Border Protection (CBP) is the federal organization charged with keeping terrorists and their weapons out of the United States while facilitating lawful international travel and trade. TABC leases space for POE at ports of entry along the Texas-Mexico border and the TABC booth/work station is often located near CBP personnel. TABC Tax Compliance Officers work very closely with CBP counterparts, but have no overlapping responsibilities.

CBP personnel make first contact with persons entering the United States at the Texas-Mexico border. When a traveler enters the Texas border, CBP personnel verify the person has the required credentials to enter the country and asks what the person is declaring (importing). If the person declares an alcoholic beverage product or cigarettes, CBP vets the items and directs the person to TABC personnel to pay state taxes on the imported product(s).

Self-Evaluation Report

CBP officers are federal police officers and therefore provide front line protection for TABC personnel while at the ports of entry. If POE personnel come in contact with any unknown substance, CBP personnel are notified and respond to identify the unknown substances and, if needed, take possession of the product.

K. If contracted expenditures are made through this program please provide:

- a short summary of the general purpose of those contracts overall;
- the amount of those expenditures in fiscal year 2016;
- the number of contracts accounting for those expenditures;
- the method used to procure contracts
- top five contracts by dollar amount, including contractor and purpose;
- the methods used to ensure accountability for funding and performance; and
- a short description of any current contracting problems.

POE expended \$301,318.44 for the top five contracts within the program. Four of the five are lease spaces for the program in various locations. The purpose of the General Services Administration (GSA) contract is to lease building spaces for POE operations at the U.S. Ports of Entry, Texas-Mexico which is federally owned and operated. POE uses the building space to provide a base of operations for POE employees to collect taxes from persons importing personal amounts of alcohol beverages and cigarettes. FY2016 contract was \$106,439.14.

The purpose of the contract with Action Personnel Inc., procured via open market solicitation procedure, is to provide contracted temporary employees for the TABC-POE tax collection process at the Galveston Seaport. The nature of the cruise ship schedules does not support using full-time state employees to collect taxes. Therefore, when a cruise ship is scheduled to port, a supervisor notifies the contracted company and they provide the temporary employees so POE can collect personal importation taxes. The agency contracted with Action Personnel in the amount of \$87,010.10 for FY2016.

The agency contracted with Sam R Sparks LP DBA B&P Bridge Company to lease building space for POE at the port of entry facility in Progreso which is privately owned and operated. POE uses the building space to provide a base of operations for POE employees to collect personal importation taxes. The company was paid \$54,000.00 in rent for the year.

The agency paid the city of Donna \$27,000.00A to lease building space for POE at the port of entry facility in Donna, which is owned by the city. POE employees use the space to collect taxes.

A contract with the city of McAllen in the amount of \$26,869.20 for FY2016 is to lease building space for POE at the port of entry facility in Hidalgo that is owned by the city of McAllen. POE uses the building space to collect taxes.

L. Provide information on any grants awarded by the program.

None.

M. Are there any barriers or challenges that impede the program's performance, including any outdated or ineffective state laws? Explain.

POE personnel disallow illicit or illegal distilled spirits, wines and beer from being imported into the State of Texas and also regulate when a customer is attempting to import more product than allowed by statute. In FY2016, 4,702 containers were disallowed at all ports of entry. Although not all are the responsibility of TABC to destroy, a significant amount are. TABC does not have the facilities or storage capacity to store disallowed products and the only personnel allowed to destroy the disallowed product are Enforcement agents (commissioned peace officers), none of which are regularly assigned to ports of entry stations. If certain TABC personnel, specifically POE Supervisors, had the authority to destroy disallowed distilled spirits, beer and wine, then Enforcement agents would no longer have to be called upon and diverted from their public safety duties and POE facilities could remain free of untested and disallowed alcoholic beverage products.

N. Provide any additional information needed to gain a preliminary understanding of the program or function.

None.

O. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- why the regulation is needed;
- the scope of, and procedures for, inspections or audits of regulated entities;
- follow-up activities conducted when non-compliance is identified;
- sanctions available to the agency to ensure compliance; and
- procedures for handling consumer/public complaints against regulated entities.

Not applicable.

P. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices. Please include a brief description of the methodology supporting each measure.

Not applicable.



Licensing

A. Name of Program or Function: Licensing

Location/Division: Licensing Division; statewide

Contact Name: Jo Ann Joseph, Acting Director

Actual Expenditures, FY 2016: \$4,387,969.63

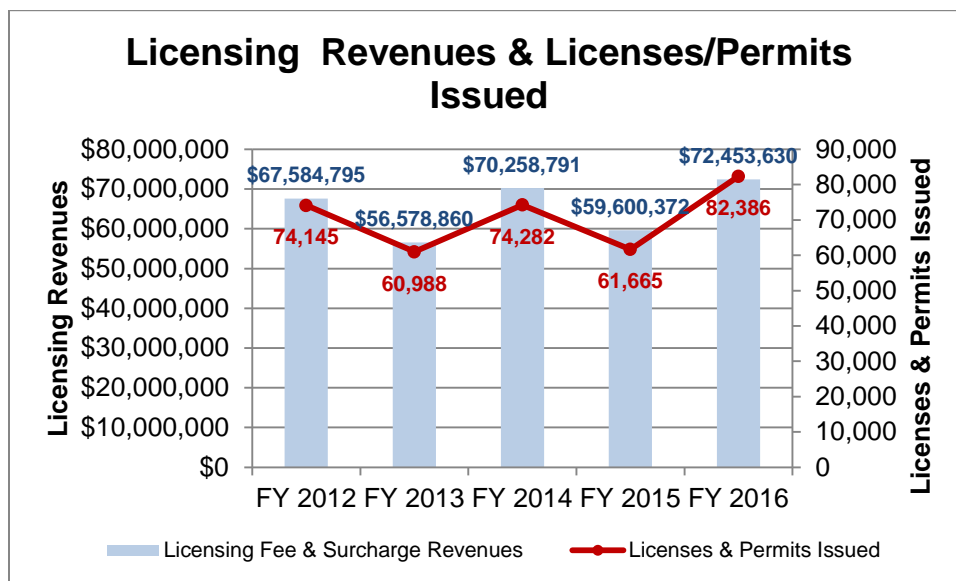
Number of Actual FTEs as of June 1, 2017: 72

Statutory Citation for Program: Alcoholic Beverage Code, Sections 5.31, 5.33, 5.35, 5.48, 5.55, 6.01, 11.01, 11.31, 61.01, and Chapter 102. There are numerous specific citations that support each and every license and permit issued by the division.

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Licensing Division’s primary function is to process and issue licenses and permits for all phases of the alcoholic beverage industry including transportation, distribution, storage, sale, or service in compliance with the Alcoholic Beverage Code. The issuance of these licenses and permits enables businesses within Texas and across the world to participate in the alcoholic beverage industry, providing jobs for Texans, growth for the economy, and revenue for the government.

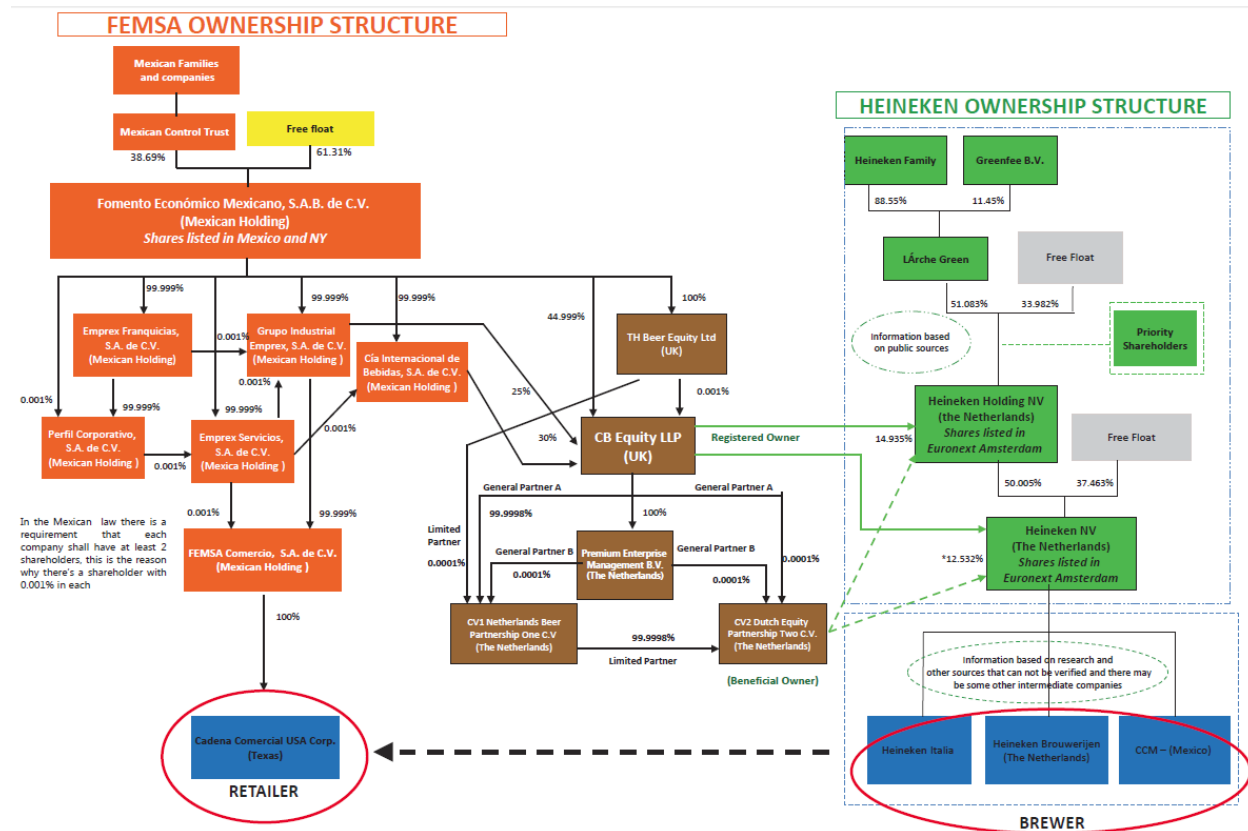
Exhibit 52: Licensing Revenue and Permits Issued, FY2012-2016



Self-Evaluation Report

Though the process can be complex, TABC’s Licensing Division has leveraged technology and expertise to streamline the process in multiple areas, advancing Texas’ practices beyond those of any other state. Adding to the difficulty is the ever-evolving organizational structure of applicants and permit holders. The days of the “mom and pop” business have given way to exceedingly complicated, hierarchical corporations with multiple holdings and brands existing across all tiers of the alcoholic beverage industry. To illustrate the complexity of corporate structures, Exhibit 53 is a chart used to show the ownership interests of an applicant, Cadena Commercial USA Corp. d/b/a/ OXXO, for a retail license. As explained in Section III under *Key Litigation*, when a License and Permit Specialist traced the holdings of the applicant (a retailer), it was discovered that the applicant's parent company also held an interest in Heineken (a brewer); this is a prohibited relationship as detailed in the Alcoholic Beverage Code.

Exhibit 53: Illustration of Complex Organizational Structures of Applicants



To ensure each applicant for a license qualifies to hold such a license and adheres to all applicable regulatory requirements for the issuance of the license, the Licensing Division follows documented processes. Common among all processes is superior customer service. The customer, whether a first-time applicant or a long-term license holder, expects and deserves professional, timely, and responsive communications from all licensing personnel. Based on TABC’s Customer Satisfaction Survey for FY2016, 94.9% of customers are satisfied with their experience with Licensing. This level of excellence is maintained when executing these high-level processes:

Self-Evaluation Report

- Receive, review, investigate, data enter, and process original, renewal and supplemental applications for more than 70 different types of licenses. This process includes the granting, refusal, suspension or cancellation of such license.
- Enter, maintain, and update all data associated with applications/licenses in all major systems of the agency, making data available to agency personnel and application/license status through [Public Inquiry](#) on the TABC website. Data entry from one application could range from one individual/entity to several hundred individuals/entities.
- Verify, assign, and reconcile all monies associated with applications. (There were approximately 97,000 applications in FY2016.) Licensing issues statements and remits monies to 254 counties for certain licensing fees as appropriate. These statements are also provided on the [TABC website](#).
- Review, process, verify, and data enter all bonds (conduct, performance and fee interest) including the subsequent forfeiture, cancellation, or amendments of those bonds. Currently there are more than 20,000 bonds on file with the agency.
- Intake and track protests against an application (for a new license or renewal), including executing Orders of refusal, granting/denying motions for rehearing, and forwarding cases to Legal Division for hearings.
- Assign required location inspections and pre-licensing assessment reviews (PLAT) to the appropriate program (Audit Unit or Enforcement Division) to verify all location criteria for the license applied for is met i.e., number of required entrances, distance from a school, etc.
- Create, maintain, and update applications, forms, processes, and procedures based on legislative changes, changes to or creation of Rules, input from industry members, and feedback from customer satisfaction surveys and division personnel.
- Evaluate, develop, and update training materials on licensing functions and processes and provide training to division and agency personnel, local governments, the alcoholic beverage industry, and licensing services.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program. Also please provide a short description of the methodology behind each statistic or performance measure.

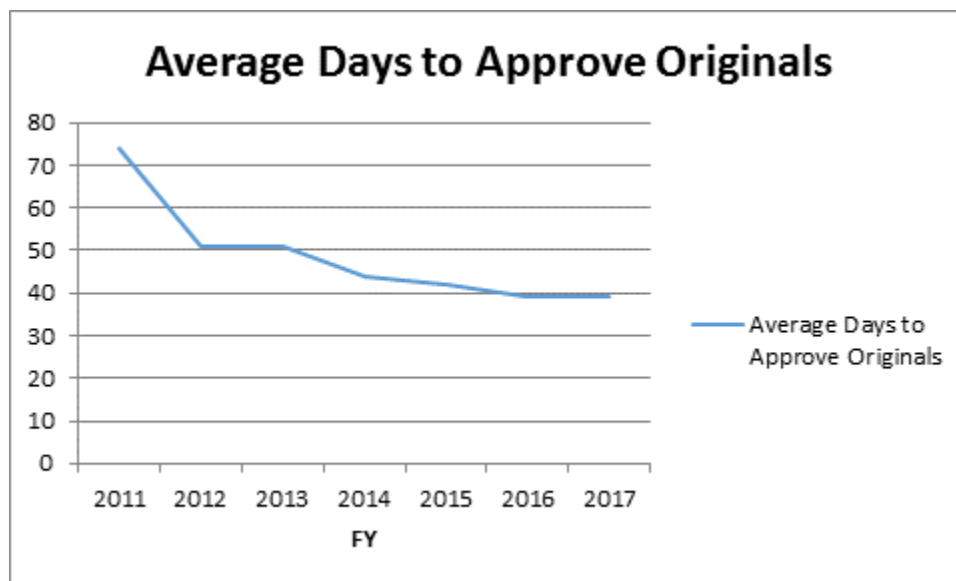
The licenses required to sell, distribute, and manufacture alcoholic beverages in Texas have been established in the Alcoholic Beverage Code since its creation (initially the Liquor Control Act) in 1935. With the evolution of the industry, additional licenses have been created. In 1935 there were 27 different licenses; in 2002 there were 64 licenses; as of today there are more than 70 licenses. With limited resources and a growing number of applicants, the Licensing division has made improvements over the years to be more effective and efficient.

Approval Times

During 2008-2011, original applications took an average of 74 days to be approved. In order to reduce this average, the Licensing Division was reorganized in 2012. Activities were reassigned so that a License and Permit Specialist (LPS) in the field office became the manager of an application and all correspondence to an applicant was handled by that LPS. LPS staff employed at headquarters began performing data entry, review, and other actions associated with the application that had been previously handled by several different positions within the division. This streamlined the process due to fewer steps and personnel involved in processing applications. All of these changes resulted in a reduction in the time it took to approve an original application. By the end of 2012 it took an average of 51 days to approve an original application that originated in a field office.

The effects of these changes continued and by 2014 the average was reduced to 44 days. With efficiencies gained from the implementation of operational and technological changes (as explained later), the average approval time was further reduced to 42 days in FY2015 and 39 days in FY2016.

Exhibit 54: Average Number of Days to Approve an Original Application



Applications

In 2009 applications were revised to streamline the licensing process. One of the reasons for overhauling the application was feedback from the alcoholic beverage industry expressing frustration that applicants were continually providing data on their business structure and personal information, both of which were already provided to the agency for an existing permit. New designations (*new* or *known*) were created for applicants. Known entities are no longer required to provide information the agency already has on file. This change resulted in a decrease in paperwork by 33% and 66%, respectively, for the applicant and the division.

Self-Evaluation Report

Applications are divided into three packets to be completed by applicants: Prequalification, Business, and Location. The Prequalification Packet requires the applicant to obtain local government certifications for wet/dry status prior to submission of the completed application to TABC. Previously applicants would submit an application that did not contain certification or was certified incorrectly. By placing this required step at the beginning of the process, the applicant is more aware of the steps to be followed before submission.

Imaging

In 2008 the Licensing division began imaging all paper files associated with current licenses. As of July 2017 there are more than 9 million images in the system with images added daily as applications are received. Imaging creates digital copies of applications which are viewable by any agency employee across the state. Applications are imaged once they are received in a field office. This not only increases the ability to accurately track and monitor applications, but allows for parallel processing by field and headquarters staff, ultimately contributing to more efficient and timely approvals.

In addition, imaging has made processes more fluid in that Licensing field staff (LPSs) are able to assist other regions with workload as necessary e.g., the Odessa office may assist the Arlington office with processing applications during a high volume period for the Arlington office or when there is a staffing change/shortage. Applicants benefit because an application may be delivered to any office across the state regardless of the location of the premise to be licensed.

An enhancement to the imaging process is the establishment of barcodes on each license. Licensing staff is no longer required to manually identify the correct file prior to imaging a license. Now the system automatically reads the barcode and places the document in the appropriate file, bringing about additional efficiencies and saving time.

Another advantage to the imaging system has been the development of V-Box, a virtual mailbox utilized by surety companies. Bonds are required to be submitted for most on-premise licenses and all retail locations within 1000 feet of a public school. There are several types of bonds that may be required: conduct or performance bonds for retailers and fee interest bonds for the manufacturing level. Some retailers may require both conduct and performance bonds depending on the county where the business is located. Surety companies can use this mailbox to deliver bonds, bond cancellations, bond riders, and bond reinstatements, saving time, money, and ensuring secure receipt of the bond money.

Online

The greatest advancement for Licensing in the last few years is the ability for businesses to renew their licenses online through [TABC's online portal](#). Applicants receive an immediate confirmation of receipt of their renewal application and fees so they can have peace of mind knowing their renewal is being processed. Submitting online reduces paperwork, postage costs, notary fees, and lost mail. Online submissions save time for businesses and increases efficiencies for the division and its employees. To encourage renewing online, beginning in September 2017, applicants will receive a renewal notice postcard in the mail prior to their expiration date. The postcard will include instructions on how to access TABC's online portal. By the end of calendar year 2017, the goal is to have the majority of renewals submitted online.

Personnel

Initially, two license and permit specialists were given the opportunity to work from home with the intent to increase productivity and decrease absenteeism. As of the end of FY2017, eight employees (classified as LPS III and IV) work from home. As shown by Exhibit 55, the telecommuting project has proven highly successful with a significant increase in productivity.

Exhibit 55: Productivity of Telecommuting Program, FY2014 compared to FY2017

Original Applications Approved by Telecommuters

FY2014				FY2017			
Month	Total Approved	Approved by Home LPS	% of Total Approved by Home LPS	Month	Total Approved	Approved by Home LPS	% of Total Approved by Home LPS
January	500	398	79.60	January	543	483	88.95
February	381	267	70.08	February	490	411	83.88
March	538	330	61.34	March	570	478	83.86
April	589	331	56.20	April	429	342	79.72
May	653	409	62.63	May	663	493	74.36
June	595	490	82.35	June	499	383	76.75
Totals	3256	2225	68.34	Totals	3194	2590	81.09

Another pilot program in the works is allowing a field license and permit specialist to process renewal applications. This is only a pilot; however, the division has seen positive results and will continue to monitor and expand the program.

Temporary applications and caterer requests can now be emailed to licensing field staff in the appropriate office rather than requiring applicants to deliver in person. This is expected to decrease paper and increase efficiencies.

Self-Evaluation Report

Licensing has four performance measures, three of which are considered key measures. (Refer to Exhibit 5 for details associated with each key measure.) The director utilizes quarterly reports on performance measures to monitor efforts to meet targets and evaluate actions to be taken, if necessary. Daily and weekly reports are also monitored by field and headquarters supervisors and analyzed to ensure optimal efficiencies and allocation of resources.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

Some of innovations in FY2016-2017 include:

- **Online responsibility course:** A joint effort between Licensing and the Audit and Investigations Division resulted in an online Responsibility Course which provides an alternative to face-to-face interviews. This course is used to educate new license holders on authorities related to their license.
- **Sima kiosk:** An automated sign-in log for visitors to TABC field offices. This decreases wait time and reports reveal traffic by division, enabling supervisors to ensure appropriate office coverage.
- **The TABC:Mobile app:** Available for the public to find licensed locations in their neighborhood. The app also allows users to report TABC-licensed businesses which are violating the Code, submit complaints, provide feedback about TABC employees, and receive email confirmations after submitting breach of peace reports.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The Code is very specific as to the qualifications and requirements to hold a license and the Licensing Division is tasked with ensuring that those qualifications and requirements are satisfied before a license is issued. It is a privilege, not a right, to hold a license so this responsibility is taken very seriously. Specific sections of the Code apply to each license type and outline the exact qualifications required to exercise the privileges granted by each. These qualifications vary depending on tier (manufacturer, wholesaler, and retailer) as well as type (liquor or beer).

One consideration for meeting licensing qualifications are specific local government requirements and local option election status in 254 counties and thousands of cities across the state that certify wet/dry status as well as sales tax requirements that are certified by the State Comptroller. Other factors that may affect issuance of a license include but are not limited to citizenship, agency, and state complaints or protests against a person, entity, license, or application. The Licensing Division is tasked with logging protests and forwarding them to the appropriate divisions for investigation and evaluation.

Self-Evaluation Report

In FY2016, the Licensing division processed 97,420 applications and issued 82,386 licenses and certificates (excluding catering certificates) throughout the state and the world. The state continues to benefit by the continued growth of the alcohol beverage industry as seen in Exhibit 52. TABC strives to keep good establishments in business and contributing to the growth of the state's economy. Also, through the licensing process, local officials of cities and counties are actively involved from the beginning of the process. Citizens of each city, justice precinct, and county also have a voice in the type of licenses authorized in their communities.

In terms of level of effort and volume of activity, Exhibit 56 represents the distribution of the 82,386 licenses and certificates issued in FY2016. Exhibit 52 shows the steady increase in volume through the years, which is not expected to slow.

Exhibit 56: Licenses and Certificates Issued in FY2016

LICENSES, PERMITS AND CERTIFICATES* ISSUED IN FY2016		
*Catering certificates are excluded		
Abbreviation	License/Permit/Certificate	Volume
A	Agent's Permit	6,712
AB	Airline Beverage Permit	16
AW	Manufacturer's Agent's Warehousing Permit	5
B	Brewer's Permit	71
BA	Manufacturer's License	42
BB	General Distributor's License	61
BC	Branch Distributor's License	63
BE	Beer Retailer's On Premise License	727
BF	Beer Retailer's Off Premise License	4,475
BG	Wine & Beer Retailer's On Premise Permit	6,975
BH	Temporary Beer License or Wine and Beer License (4 Day)	2,814
BI	Importer's License	116
BJ	Importer's Carrier's License	9
BK	Agent's Beer License	6,888
BL	Retailer's On Premise Late Hours	1,197
BP	Brewpub License	16
BP	Brewpub License	65
BQ	Wine & Beer Retailer's Off Premise Permit	13,761
BS	Non Resident Manufacturer's License	182
C	Carrier's Permit	256
CA	Temporary License - Charitable Auction Permit (5 Day)	235
CB	Caterer's Permit	901
D	Distiller's and Rectifier's Permit	64
DA	Self Distributor Permit	52
DB	Self Distributor License	24
DK	Distiller's Agent's Permit	70
DS	Direct Shipper's Permit	689
E	Local Cartage Permit	758
ET	Local Cartage Transfer Permit	2

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LICENSES, PERMITS AND CERTIFICATES* ISSUED IN FY2016		
*Catering certificates are excluded		
Abbreviation	License/Permit/Certificate	Volume
FB	Food and Beverage Certificate	5,646
FC	Forwarding Center Authority	16
G	Winery Permit	211
GF	Winery Festival Permit	148
GS	Winery Storage Permit	2
HP	Temporary License - Special Wine and Beer Permit (4 Day)	15
I	Industrial Permit	67
J	Bonded Warehouse Permit	3
K	Public Storage Permit	14
L	Private Storage Permit	22
LB	Mixed Beverage Late Hours Permit	4,055
LI	Local Industrial Alcohol Manufacturer's Permit	4
LP	Local Distributor's Permit	479
LX	Local Class B Wholesaler's Permit	1
MB	Mixed Beverage Permit	5,894
MI	Minibar Permit	29
N	Private Club Registration Permit	485
NB	Private Club Beer & Wine Permit	24
NE	Private Club Exemption Certificate Permit	173
NL	Private Club Late Hours Permit	170
O	Private Carrier's Permit	460
O	Private Carrier's Permit	30
P	Package Store Permit	1,882
PE	Beverage Cartage Permit	4,125
PR	Promotional Permit	32
PS	Package Store Tasting Permit	1,379
PT	Passenger Train Beverage Permit	2
Q	Wine Only Package Store Permit	2,226
RM	Mixed Beverage Restaurant Permit with FB	1,467
S	Non Resident Seller's Permit	1,883
SB	Temporary License - Special 3 Day Wine and Beer Permit	1,972
T	Manufacturer's Agent's Permit	792
TB	Daily Temporary Mixed Beverage Permit	895
TN	Daily Temporary Private Club Permit	83
U	Non Resident Brewer's Permit	216
V	Wine & Beer Retail Permit - Excursion Boat	8
W	Wholesaler's Permit	165
X	General Class B Wholesaler's Permit	65
Total - All Licenses, Permits and Certificates Issued		82,386

F. Describe how your program or function is administered, including a description of the processes involved in the program or function. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.

Licensing processes all original applications within 39 days of receipt provided applicant is timely in responding to requests, there are no protests filed, no 60-day sign requirements, and no investigations pending. Filing an in-state original application for an alcoholic beverage license begins in the local field offices and requires a completed application comprised of a prequalification packet, a location packet, and a business packet if applicable.

There are three paperwork packets required for most **original** applications:

- **Prequalification Packet** contains basic information for the type of license sought. This is the first step in the application process and allows local governments to certify that this type of business is allowed in their community.
- **Business Packet** contains specific information as to the type of business and provides TABC with the information necessary to determine whether each business entity meets the legal requirements to operate a business within the industry. This prevents violations of the Code's regulatory provisions, such as cross-tier ownership, conflicts of interest, or disqualifications related to prior criminal history.
- **Location Packet** contains information pertaining to the specific location of the business. This information is used to ensure the location meets the qualifications and eligibility of the Code concerning bond requirements, property ownership, financing, and any other agreements.

Once the completed packets are submitted to the TABC field office with the appropriate fees and bonds, the application processing timeline begins. In FY2016, 17,400 original applications were approved.

- Field personnel perform a preliminary review of an application, complete data entry into ARTS, and image the application and any attachments into Neabus. This begins the parallel processing of application between field staff and headquarters staff. The application is assigned an application manager in the field i.e., Field License and Permit Specialist (FLPS). Fees/surcharges are mailed to headquarters for deposit.
- The assigned FLPS sends an introductory email to the applicant with contact information and sends the link for the Responsibility Course. The FLPS reviews the application for bond requirements, address standards for data entry, certifications, federal permits, assigns location inspection to audit personnel, reviews all agreements and supporting documents for qualification, determines signage requirements, reviews for outstanding license, assigns pre-licensing assessment (PLAT) to Enforcement personnel, runs criminal history checks, and determines all necessary information has been filed. Communicates and records status of all functions performed in the ARTS data system.

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- A License and Permit Specialist at headquarters (HQLPS) enters data into the primary system (Versa:Regulation (VR)) and verifies all qualifications are met. Any deficiencies, corrections, or issues are recorded in ARTS and VR and communicated to the FLPS who then notifies the applicant.
- If a current license holder occupies the location referenced in the application, the FLPS notifies the current licensee about relinquishing the license and receiving a letter enumerating their responsibilities until a license is issued to the new applicant.
- As outstanding items are addressed and actions take place with the application, systems are updated and new images are scanned into Neubus. Licensing monitors any protests of the application and conveys information to Enforcement and Legal Services per policy.
- Once protests and processing are concluded, if the application is denied, fees are refunded to the applicant. If the application is approved, the license is printed, scanned to Neubus, and mailed to the license holder.

Renewal Applications

License holders must renew their license every two years in order to continue to operate. In FY2016, 39,641 renewal applications were approved. In terms of processing fees and bonds and recording information in multiple systems, the steps for handling a renewal (paper or online) are similar to an original application. If the review determines that the license holder no longer qualifies for the license due to new, changed, or unreported information, Licensing notifies the license holder that the renewal application is refused and the applicant must file an original application. Due process includes the ability to request a hearing.

Licensing's goal is for most renewal applications to be submitted online by the end of 2017. Also, only an HQLPS (rather than an LPS in both the field and headquarters) reviews the renewal application to determine if qualifications continue to be met. Another goal is for LPS in the field to process and approve renewals.

Supplement Applications

Supplemental applications are required any time there is any change to the existing license. Changes include but are not limited to a change in trade name, business location, or business structure including conversions, mergers, or changes to the entity, officers/directors, or members/stockholders. In FY2016, 9,050 supplemental applications were approved.

Some of these changes are akin to original applications and require certifications and fees. Therefore, the process for a supplemental application is most similar to an original application. Supplemental applications are filed in a local TABC office and reviewed by an FLPS and HQLPS. Part of the process is if the review determines that the license holder no longer qualifies for the license due to the new information (in the supplemental application), Licensing notifies the license holder that the supplemental application is denied and the applicant must file an original application.

Miscellaneous Applications

Some miscellaneous original and renewal applications are received by Licensing headquarters in Austin. As indicated in Exhibit 57, 17,826 applications were approved for entities and individuals in other states and countries in FY2016. All processes are handled by an HQLPS.

Exhibit 57: Miscellaneous License Applications, FY2016

<u>License/Permit/Certificate Application</u>	<u>Number Approved</u>
Agent’s Beer License	6,888
Agent’s Permit	6,712
Nonresident Seller’s Permit	1,883
Manufacturer’s Agent’s Permit	792
Out-of-State Winery Direct Shipper’s Permit	689
Carrier’s Permit	256
Nonresident Brewer’s Permit	216
Nonresident Manufacturer’s License	182
Distiller’s Agent’s Permit	70
Industrial Permit	67
Promotional Permit	32
Airline Beverage Permit	16
Forwarding Center Authority	16
Manufacturer’s Agent’s Warehousing Permit	5
Passenger Train Beverage Permit	2
Total Received	17,826

- G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).**

The Licensing Division was appropriated \$4,700,328.00 in general revenue for FY2016. In addition, a portion of funding was designated as appropriated receipts which was from convenience fees for credit card payments.

- H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.**

Other state agencies issue a license to an individual to perform a profession based on certain certifications (e.g., pharmacist), or to grant a privilege based on meeting certain standards (e.g., driver license), and to organizations to be accountable for an item (e.g., drug manufacturers), or responsible for a function (e.g., emergency medical care, food service establishments). It is assumed all, including an alcoholic beverage license, are similar in that they involve an application, payment of fees, and guidelines for issuance, denial, suspension, or cancellation of

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the license. Some may check for indebtedness to the state and criminal history violations to determine if the applicant qualifies.

The differences between an alcoholic beverage license and those issued by other state agencies are vast. The most significant differences are the complexity of the three tier system, the sheer number of different types of specific authorities granted, and the regulation of a drug. It is easy to forget that an alcoholic beverage is a drug that poses a threat to public safety and health if not regulated appropriately and consistently. Other agencies may license various connections to an addictive or abusive drug, but none have the obligation or responsibility of checking for tied house relationships, indebtedness to state and local government, and ensuring all qualifications of the Alcoholic Beverage Code—which outlines different qualifications and authorities for more than 70 licenses—are met and satisfied.

The Alcoholic Beverage Code gives specific qualifications required to be granted the privilege of holding an alcohol license. The primary disqualifier for a license would be a tied house violation, which consists of an overlapping interest in more than one tier of the industry. Other qualifications specific to the Code deal with prior cancelations and suspensions, age requirements, indebtedness for product, citizenship, indebtedness to the state, bond requirements, and local option elections.

Another major difference to consider is the required local governmental and community involvement in the application process in the licensing for alcohol. Texas cities and counties certify the location for the applicant's business allows for the sale and/or service of alcohol (wet/dry status) as per the local option election, and that the business would not violate any local ordinances or laws. The community is given notice of the application not only through the publication of such in the local newspaper but, in some cases, with signage required to be posted at the location. Communities are allowed to protest against the issuance of a license which may lead to investigations and subsequent hearings being conducted. Communities may also have ordinances which regulate or prohibit locations that are within a certain distance of a church, school, or hospital.

Locations must also meet specific requirements depending on the type of license applied for and these sometimes require inspections of the locations to determine qualifications. Agreements and contracts are reviewed between parties to ensure compliance with the Alcoholic Beverage Code.

The Code allows for conduct, performance, and fee interest bonds. These bonds range in amounts between \$2,000 and \$30,000 per location. These bonds are reviewed, processed, and captured by the agency and are available for forfeiture based on violation history.

Because of the complexity, seriousness, and responsibilities associated with the privilege of holding an alcoholic license, applicants are required to complete a Responsibility Course to ensure they understand their obligations as a business operator under the Code.

- I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.**

Data is shared with the Comptroller after the issuance of certain licenses for notification and creation of accounts that will be utilized by the Comptroller in the collection of gross receipts taxes from holders of mixed beverage permits and private club permits. The Comptroller certifies original applications indicating that the applicant satisfies all legal requirements to hold a sales tax permit or is not required to hold a sales tax permit. The Department of Public Safety criminal history database is utilized to determine qualifications for applicants as required by the Code for the issuance of original and renewal applications.

Licensing utilizes the Secretary of State's data system to verify the existence of entities applying for a license. Additionally the Comptroller's database system is accessed to verify that the entity is active and has the right to transact business in Texas.

- J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.**

Cities and counties play a role in the prequalification portion of the application process. They certify that the proposed location is "wet" for the sale and/or service of alcohol as requested by the applicant. They also certify that the issuance of the license will not be in violation of any charter, ordinance, or order (per Code Sections 11.38 and 61.35).

Counties receive 5% of the total state fee for all license/permits of a certain types issued in that county. License/Permit holders remit fees to TABC and the agency transmits those fees monthly to the applicable counties. Before legislation put this process in place in 2013, counties collected fees directly from the applicant and then forwarded all but 5% to TABC. This significant change in process enabled the agency to transition to online renewal applications.

The Comptroller and Secretary of State contacts TABC and protests the issuance/renewal of a permit if the applicant has outstanding liabilities to the state, is in forfeiture, or is not in good standing. Liabilities must be resolved before a permit can be issued. As an initial step in the application process, the Comptroller must also certify that the applicant has obtained a valid sales tax identification number.

- K. If contracted expenditures are made through this program please provide:**

- a short summary of the general purpose of those contracts overall;
- the amount of those expenditures in fiscal year 2016;
- the number of contracts accounting for those expenditures;
- the method used to procure contracts
- top five contracts by dollar amount, including contractor and purpose;
- the methods used to ensure accountability for funding and performance; and

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- **a short description of any current contracting problems.**

A contract with Neubus for \$30,184.71 was procured utilizing the Government Code 2162.105 State Council on Competitive Government contracts. Neubus is the electronic system used for imaging all applications to capture, store, manage, and share documents and information that has been imaged and allows all divisions of TABC access to these records.

L. Provide information on any grants awarded by the program.

None.

M. Are there any barriers or challenges that impede the program's performance, including any outdated or ineffective state laws? Explain.

One of the challenges facing the Licensing Division are the attempts to streamline the licensing process as outlined in Code sections 11.37 and 61.37 to bring more equity between licenses and permits when it comes to qualifications and requirements. These sections require each county and city to certify that the proposed location is *wet* for the type of license sought and that its issuance would not be in violation of an ordinance, charter, or order. At present, applicants are required to have their local city and/or county governments certify the application prior to its submission to TABC. This procedure ensures that the applicant is able to know in advance of submission if the privilege is even possible to obtain. It also allows for the agency to ensure resources are being used to process only those applications that have met local approval. With these existing processes and technology it makes it nearly impossible for the majority of license types to file an original application online.

Sections 11.39 and 61.38 of the Code require certain original applicants to publish notice of their application to sell alcoholic beverages in two consecutive publications of the local city newspaper of the proposed location. This too has been part of the application process that the agency requires to be completed locally prior to the application submission so that the citizens may protest that application in their community. Without additional funding, it is not possible for the agency to automate these functions while still adhering to the requirements of the Alcoholic Beverage Code. This has resulted in a more complex, multi-step approval process for applicants and which requires them to visit multiple government offices before they can obtain their license and legally operate their business.

A huge impediment to the efficient processing of applications is the number of systems Licensing must utilize in daily operations.

- Agency Reporting and Tracking System (ARTS) is a home-grown system used to record activities conducted by Licensing and other divisions after they are completed. ARTS is used as the initial intake of the application and no processing takes place in this system. It is primarily used to communicate the application status to agency personnel.
- Versa Systems is the software systems used primarily by Licensing to process the application. Limited software licenses for Versa result in limited functions for field

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personnel therefore they must use ARTS. The system allows permit holders to renew online, but is very costly and time consuming to enhance or customize to the agency's needs that result from legislative or procedural changes. Consequently the agency must often implement work arounds or a temporary fix to obtain results, which is not an effective, long-term solution. Versa is used to communicate the application status in Public Inquiry.

- Neubus is the electronic system used for imaging all applications and to capture, store, manage, and share imaged documents and information with all divisions of TABC. As with all systems, updates are essential to keep up with future needs.

The ultimate solution is to have one system that provides all workflow needs, reports, and management. This would enable true online capability, streamline processing, decreased errors between systems, and improved efficiency and function of the entire process.

N. Provide any additional information needed to gain a preliminary understanding of the program or function.

The majority of revenue received by the agency is derived from the issuance of licenses and therefore the division has strict procedures regarding the assignment, refunds and reconciliation of those revenues. The licensing division works closely and collaboratively with the Business Services Division for the reconciliation of monies, fees, surcharges, late fees, and associated bonds. These reconciliations ensure collections are appropriated and assigned to the proper revenue code(s).

The online renewal process allows applicants to file online and submit fees and surcharges via electronic check or by credit card. Automation has streamlined the renewal process by eliminating common errors and has brought about efficiencies vital to the growth of the industry and the limited resources of the division. However, automation of the renewal application does not equate to automatic approval. As is, resources are still required to do the manual processing of online renewals. The automatic renewal process will be difficult to achieve without a more advanced system/program that will, for example, capture liabilities owed to the state and entity status with the Secretary of State.

With each license issued, there are specific privileges related to that license type. This requires extensive knowledge of the Code on the part of the licensing division personnel to field questions that are not necessarily related to the application process but the privileges available to those license types. Licensing division personnel are also expected to articulate audit and enforcement practices. In addition, the license and permit specialist have become more versed in the process as they now data enter the application and compose the correspondence to the license holder and/or the applicant. These functions were kept separate among sections within the licensing division, data entry section, correspondence section. With the reorganization and the implementation of imaging, team processing and online abilities, these functions were combined and assigned to the LPS in order to streamline the processing and improve efficiencies while empowering them respond effectively to challenges.

O. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Regulation is not only needed but necessary in order to maintain the integrity of the three tier system and prevent a criminal nexus. Manufacturers, distributors, and retailers must be ensured a fair and timely process and competitive marketplace to promote growth for the state of Texas.

Licensing must work in conjunction with Audit and Enforcement and other local, state and federal agencies throughout the investigating and processing of the application to ensure all qualifications are met before a license is issued to put and keep good people in business. The process involves not only the application but inspections, assessments, audits, and investigations.

When non-compliance is identified during the initial inspection or assessment, Licensing notifies and advises the applicant on corrective action(s) for compliance. If the applicant fails to respond, administrative action may be pursued. Administrative sanctions may include suspension of license, fine paid in lieu of suspension, cancellation or denial of license, forfeiture of bond, and criminal charges ranging from misdemeanors to felonies.

Complaints against license holders and applicants received by Licensing are reviewed and forwarded to the appropriate division i.e., Audit & Investigations, Enforcement or Legal Services.

P. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices. Please include a brief description of the methodology supporting each measure.

See *Complaints Against License or Permit Holders* in the introduction to Section VII for an explanation on how the agency handles complaints against license and permit holders. Exhibit 29 follows the explanation and summarizes the complaints against license or permit holders received by TABC over the last two full fiscal years.



Excise Tax and Marketing Practices Division

The Excise Tax and Marketing Practices Division conducts two major programs. The tax program staff processes and reviews monthly taxes, shipping, and transport reports related to excise taxes. The tax program also controls the issuance of temporary membership cards for private clubs and the issuance of identification stamps for distilled spirits sold through local distributors. The marketing practices program reviews and approves alcoholic beverage labels and tests certain alcoholic beverages entering the Texas market. The marketing practices program also monitors and responds to marketing issues and inquiries within the industry and provides industry and agency training regarding legal industry alcoholic beverage marketing practices. Finally, the laboratory and chemist serve to assist the Field Operations Division in the testing of seized beverages for administrative cases against permit holders.

Excise Tax Program

A. Name of Program or Function: Excise Tax Program

Location/Division: Excise Tax and Marketing Practices Division; Austin headquarters

Contact Name: Thomas Graham, Director

Actual Expenditures, FY 2016: \$562,125.84

Number of Actual FTEs as of June 1, 2017: 5

Statutory Citation for Program: Alcoholic Beverage Code, §1.03, §1.04, §5.31, §5.32, §5.33, §5.38, §5.39, §5.41, §11.61, §12.052, §14.05, §14.06, §16.01, §28.09, §28.15, §28.151, §32.20, §32.201, §37.14, §54.06, §54.07, §54.10, §62.122, §74.03, §74.06, §101.41 – 101.46, §101.65, §101.66, §101.671, §109.63 – 109.64, Chapter 201, Chapter 203, Chapter 206.

B. What is the objective of this program or function? Describe the major activities performed under this program.

The main program function of the Excise Tax program is to collect the tax imposed on the “first sale” of alcoholic beverage by authorized permittees. This tax is paid at the wholesaler/distributor level and at the manufacturing level by permittees who sell directly to the public or retailers. Statute assess six different tax rates based on beverage type and strength. Permittees are required by statute to file a monthly tax report with the division.

Exhibit 58: Excise Tax Rates

ALCOHOL EXCISE TAX RATES		
	Per Gallon	Per Barrel
Distilled Spirits	\$2.40	-
Low Wine (14% ABV and lower)	\$0.204	-
High Wine (more than 14% ABV)	\$0.408	-
Sparkling Wine	\$0.516	-
Beer (4% ABW and lower)	\$0.193548	\$6.000
Ale and Malt Liquor (more than 4% ABW)	\$0.198	\$6.138

The program is also responsible for tracking state per capita consumption. Finally, the program tracks and reports gallonage thresholds set forth by the Texas Legislature to ensure permittees are in compliance. Nearly all producers of alcoholic beverages in Texas have some form of gallonage or barrel limitation. In order to exercise certain privileges granted by the legislature, producers may be limited in the amount of product they can sell directly to consumers, ship, produce, and self distribute. For example, Chapter 14 of the Code prohibits distilleries from selling more than 5,000 gallons of distilled spirits to consumers for on-premise consumption at the distillery.

A secondary function of the tax program is to administer the Identification (ID) Stamps and Private Club Cards processes. Local Distributor permittees submit orders for ID Stamps that are affixed on bottles of distilled spirits sold to Mixed Beverage and Private Club permittees. The purpose of the stamp is to give the TABC and other regulatory law enforcement agencies the ability to track the sources of distilled spirits sold to mixed Beverage and private club permittees. Mixed beverage and private club permittees pay the state a gross receipts tax for alcoholic beverages sold to consumers. The issuing and tracking of ID Stamps allows the state to determine if a mixed beverage permittee or private club is paying the appropriate amount of taxes by allowing the TABC and Comptroller auditors to track the amounts of distilled spirits the permittee purchased and from whom they purchased. Without the ID Stamps program, TABC auditors would be unable to estimate how much tax mixed beverage and private club permittees owed and it would be easier for permittees to purchase illicit products from non-permitted sources that could result in public safety problems.

Exhibit 59: Example of an ID Stamp



Self-Evaluation Report

Private Club Temporary Membership Cards are issued by the same TABC employee who issues ID Stamps. Private club permittees that choose to pay permit fees based on the amount of individuals in the club versus paying a higher unlimited membership permit fee, purchase private club temporary membership cards from the agency. The cards serve to allow members of the club to invite guests to be temporary members of the club.

- C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program. Also please provide a short description of the methodology behind each statistic or performance measure.**

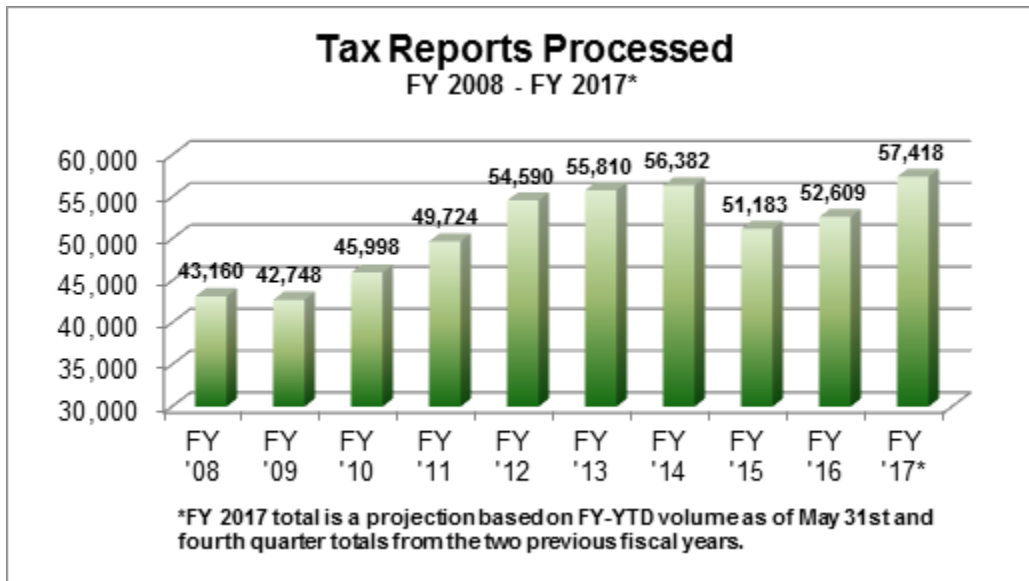
In FY2016 three accounts examiners and one employee (shared with the Marketing Practices program in the same division) analyzed and processed 52,609 reports (Exhibit 61) and collected \$225,516,849 in excise taxes (Exhibit 60). In addition to excise taxes collected, the division also collected \$80,292 in temporary private club membership fees (Exhibit 59).

Exhibit 60: FY2016 Excise Tax Program Revenue

Type of Revenue	Amount Collected
Excise Tax - Distilled Spirits	\$ 87,711,338
Excise Tax - Wine	\$ 15,661,848
Excise Tax - Malt Liquor	\$ 15,349,971
Excise Tax - Beer	\$106,738,227
Airline/Train Service Fees & Direct Liquor Tax	\$ 24,864
Excise Tax - Collections from Report Verifications	\$ 30,601
Subtotal – All Excise Taxes	\$225,516,849
Private Club Temporary Membership Fees	\$ 80,292
Total Collections – All Taxes & Fees	\$225,597,141

A breakdown of the type of report and total number analyzed in FY2016 is posted in Exhibit 61. Reports are broken into two categories: tax paying reports are filed by entities which may owe the state taxes and non-tax paying reports are filed by entities which are not required to pay taxes but are required to file reports. Non-tax paying reports include shipping entities (carriers), storage facilities, industrial plants that utilize non-beverage alcohol, and out-of-state producers shipping to Texas tax paying entities. Non-tax paying reports serve as source documentation to determine where in-state entities received their alcohol, the quantity received and whether or not the product has Texas label approval. Analyses of these reports resulted in the collection of \$30,601 in tax underpayments and late fees in FY2016.

Exhibit 61: Excise Tax Reports Processed



D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

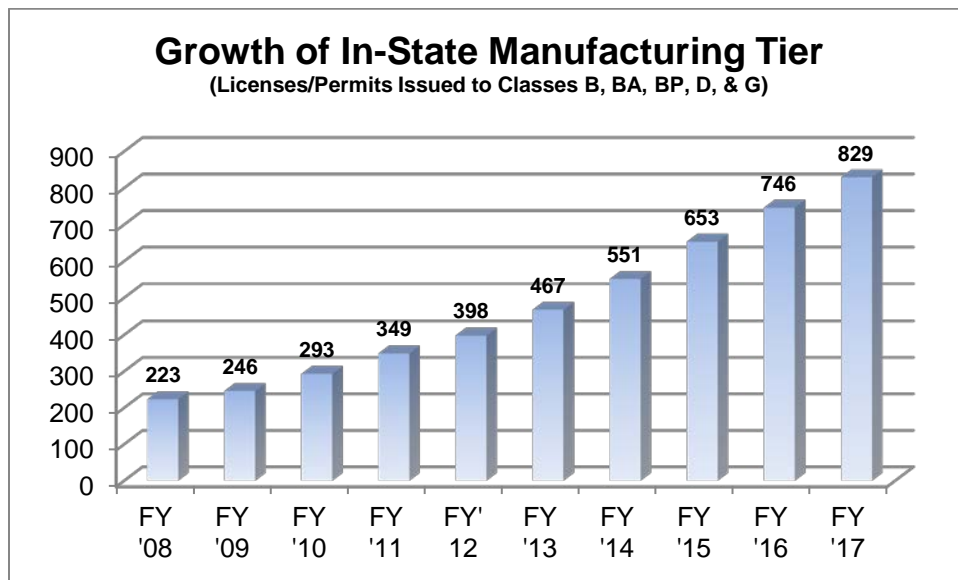
The growth in the craft alcohol market has resulted in a major increase the number of malt, wine and spirits producers. (See Exhibit 62 and Exhibit 63). This increase, fueled by legislative changes, has affected how the tax division processes reports. Over the last decade, as manufacturing tier permittees gained statutory privileges to conduct sales directly with consumer and retailers, reports had to be amended to track these sales. Staff time also had to be reallocated to ensure those permittees operated within the gallonage limitations set forth by the legislature. Much of the tax division staff’s time is spent compiling and tracking reports for production and sales data to ensure permittees’ activities do not exceed legislative thresholds for their perspective permits. To keep up with this demand, reports have also been amended to track gallons rather than the historic method of tracking container and packaging sizes. This change has resulted in more efficient reporting methods for both the permittees and the agency.

Self-Evaluation Report

Historically, the number of accounts examiner FTEs in the division was higher, however, staff has been reduced over time as positions have been reallocated to address the growing demand for label approvals due to increased product diversity and to other divisions within the agency. These reductions have taken place even though industry growth has resulted in massive increases in the number of permittees required to file reports. The reduction in staff has required staff to focus more on data entry and compiling reports versus detailed reviews of each report. These changes have resulted in the decline of the collection of underpayments over the last two years. In an effort to address this decline, the agency is pursuing an online tax form submission process in order to reduce data entry performed by accounts examiners by allowing the permittee to enter their data directly into Versa:Online, the agency's customer interface for Versa:Regulation. Implementation should help to reduce the division's time spent performing data entry so that staff can focus more on detailed report review.

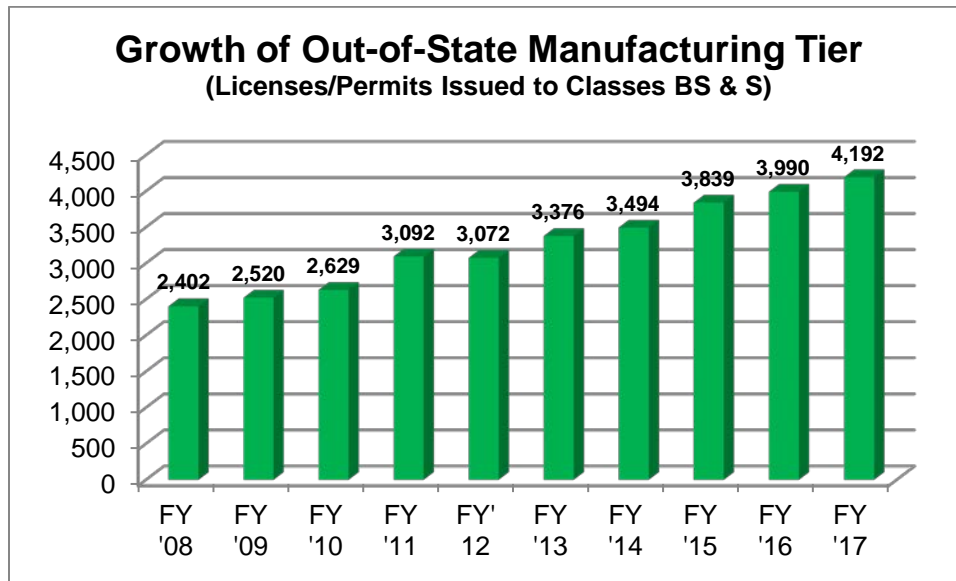
Exhibit 62 shows the exponential increase in the number of in-state alcoholic beverage producers since FY2008. The chart includes brewers (B) of ale, beer manufacturers (BA), brewpubs (BP), distilleries (D) and wineries (G).

Exhibit 62: Permits Issued to In-State Manufacturing Tier



The state has seen a 271% growth in permits issued to in-state producers in the past ten years. With reports submitted monthly, tax division FTEs will process almost 10,000 excise tax reports in FY2017 for in-state producers alone.

Exhibit 63: Permits Issued to Out-of-State Manufacturing Tier



As seen in Exhibit 63, the state has seen a 57% growth in the number of permits issued to out-of-state producers. Because statute requires these permittees to file a tax report on a monthly basis, tax division FTEs will process more than 40,000 out-of-state excise tax reports in FY2017.

In an effort to increase efficiency, the ID stamps subprogram conducted by the excise tax program has undergone recent changes. In FY2015, the agency released a request for proposals seeking a contractor to take over the ID stamp distribution and storage. The request required a software service in which the contractor would allow local distributors to order stamps online. The system would have to allow a review and approval process by an excise tax division employee. Upon approval by staff, those orders were to be filled by the contractor. This project was rolled out successfully. By the end of FY2016 all permittees were utilizing the new the online ordering system. The process change resulted in the increase in efficiency for TABC staff as orders no longer had to be physically filled by mailroom staff and stamps no longer had to be stored onsite and at the agency warehouse. A small number of stamps is kept on hand at TABC headquarters as a contingency should processing delays ever arise.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The excise tax division affects more than 20 types of permits, each of which are listed in Exhibit 64 by the number of active permits issued by type as of August 31, 2016. These permit holders interact with the excise tax program by submitting excise tax reports, ordering ID stamps, or requesting private club temporary membership cards.

Exhibit 64: Licenses and Permits Associated with the Excise Tax Program in FY2016

Abbreviation	License/Permit/Certificate	Total Active
S	Non Resident Seller's Permit	2901
DS	Direct Shipper's Permit	1357
N&NB	Private club permits	896
LP	Local Distributor's Permit	698
C	Carrier Permit	545
G	Winery Permit	395
BS	Nonresident Manufacturer's License	318
W	Wholesaler's Permit	213
BP	Brewpub License	140
I	Industrial Permit	118
B	Brewer's Permit	111
D	Distiller's and Rectifier's Permit	97
BB	General Distributor's License	90
X	General Class B Wholesaler's Permit	86
BC	Branch Distributor's License	63
BA	Manufacturer's License	58
BJ	Importer's Carrier's License	15
J	Bonded Warehouse Permit	11
PT	Passenger Train Beverage Permit	3
LX	Local Class B Wholesaler's Permit	2
Z	Wine Bottler's Permit	1

F. Describe how your program or function is administered, including a description of the processes involved in the program or function. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.

Regulations for permittees authorized to manufacture, import, export, transport, store, and distribute alcoholic beverages are needed to ensure taxes are paid timely, products have label approval, products are distributed through the three tier system, and that alcoholic beverage producers do not exceed statutory privilege thresholds set by the legislature. Monthly tax reports are filed on the 15th of each month following the month for which the report is made. The reports show liquor/beer that is received and disposed of during the month. All entries and amounts subject to tax are verified for completeness and accuracy. The initial review of the reports includes looking for illegal imports of illicit beverages and receipt of merchandise from non-licensed suppliers. Permittees that submit incomplete reports, do not file reports, or provide inaccurate reports are contacted and, depending upon the degree of the error, may receive Compliance Violation Notification letters (as referenced in Item C). These letters are placed into the permittee's excise tax digital file in Neubus. The digital files and the agency's database, Versa:Regulation, are used by TABC's Audit and Investigations Division to assist with

Self-Evaluation Report

excise tax audits. These records provide auditors the documentation to determine if a permittee paid the proper amount of taxes over a two- to four-year period. These detailed audits utilize AICPA standards to ensure taxpayers are paying the appropriate amount of excise taxes. To determine which permittees should be audited, the Audit and Investigations Division utilizes an agency report that takes into account the number and types of Compliance Notification Letters issued by the Excise Tax Division, ranking permittees to determine the amount of risk they pose due to past violations.

ID stamps are issued by the division. Distilled spirits purchased by Mixed Beverage and Private Club permittees must come from a Local Distributor (LP) permittee and must have a serially numbered Identification Stamp issued by the TABC. TABC pays for the printing and shipping of ID stamps. Local distributor permittees submit stamp orders to the agency online via a third party contractor. Agency staff review the orders for accuracy and determine whether the amount of stamps ordered aligns with previous order amounts to ensure permittees do not order more stamps than necessary to conduct business. This limits the amount of stamps a permittee can order and prevents stamps from being stockpiled which could lead to stamps being illegally distributed or sold by the package store. Once orders are approved by tax division staff, the amount of stamps and the serial numbers of stamps distributed to the local distributor permittees are uploaded into the agency's database Miscellaneous Order Management System (MOMs.) Agency personnel, including auditors and enforcement agents, have the ability to query that information to conduct local distributor identification stamp audits and mixed beverage audits. Local distributor permittees are required to record and document stamp numbers placed on products sold to mixed beverage permittees and private club permittees so agency Field Operations staff can pick up a bottle at a retail location and know where that particular product was purchased.

Temporary membership private club cards are issued to private club permittees that elect to pay permit fees based on the amount of members they have in their club. Guests of members of private clubs are required to purchase a temporary private club membership card issued by the agency. The cost of a card is \$3. Permittees submit an order form to the division of which a division employee verifies the club is eligible to purchase and paid in full for the cards. That data is then entered into the agency database MOMs and made available for field auditors to utilize when they conduct private club audits.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

The Excise Tax Program's funding source was 9% of the general revenue appropriated to the Compliance Monitoring Strategy in FY2016.

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H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.

None.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Not applicable.

J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.

Various local law enforcement agencies contact TABC when trying to determine the source of stolen alcoholic beverages. If the stolen items have ID Stamps affixed, TABC can provide law enforcement with the contact information for the local distributor from which the products were sold. From there, the local distributor permittee can provide law enforcement with TABC-required records showing when and to whom those products were sold.

K. If contracted expenditures are made through this program please provide:

- a short summary of the general purpose of those contracts overall;
- the amount of those expenditures in fiscal year 2016;
- the number of contracts accounting for those expenditures;
- the method used to procure contracts
- top five contracts by dollar amount, including contractor and purpose;
- the methods used to ensure accountability for funding and performance; and
- a short description of any current contracting problems.

Two contracts serve the programs of this division. Standard Register produces the ID Stamps issued by the division. Standard Register also provides the customer and agency interface for ordering and approving orders for ID Stamps and then Standard Register also ships the stamps to the ordering local distributor once the agency approves the order. The program contracted in total \$208,505.39 with the vendor in FY2016 via open market solicitation procedure.

Neubus provides the digital file storage system and interface for the division. All tax paying permittee reports are stored in Neubus and searchable by agency staff. The agency moved to this system in order to reduce the storage of paper documents. This system is used by several agency divisions. This program expended \$18,507.00 while utilizing the Government Code Section 2162.105 State Council on Competitive Government contracts.

L. Provide information on any grants awarded by the program.

None.

M. Are there any barriers or challenges that impede the program's performance, including any outdated or ineffective state laws? Explain.

While state laws are not outdated or ineffective when it comes to the collection of excise taxes or issuing of ID stamps and private club cards, the agency's tax collection process would be more efficient if the agency had an automated tax collection process. Reviewing and reconciling Excise Tax reports is a manual process at TABC. This process is very labor intensive. Approximately 50,000 reports are analyzed each year. The majority of time is spent reconciling the manufacturing tier shipping reports against wholesaling/distributing receiving reports and uploading these records into two agency databases.

Current excise tax filers include nonresident sellers, wholesalers, distillers, winery/wine bottlers, distributors, nonresident manufacturers, brewpubs, in-state manufacturers, brewers, direct shippers, carriers, industrial permittees and storage warehouses. Although much of the filing processes are similar, there are some distinct differences between filers.

The reports are received on the 15th of each month, following the month for which the report is made. The report analysis process takes approximately one month. Every report is checked to determine tax liability, product label approval and validity of shipper. Correspondence for discrepancies is generated and remains outstanding until it is resolved.

- A new system will allow the agency to use its resources more efficiently. Instead of submitting a report and invoices by mail, each permittee would be able to submit the required information electronically. The program would reconcile all the information and determine which transactions are not matching and a discrepancy report would be generated. This process would be in real-time, eliminating the month-long analyzation process.
- Fiscally, there will be many benefits to the state and the businesses it regulates. Postage costs would be drastically reduced. Businesses would be able to reallocate resources by not having staff manually generate and file these monthly reports. Businesses also would save space by not having to keep paper copies of each transaction as required for record retention.
- The time saved by tax division staff not having to manually process the monthly reports would be used to concentrate on more involved compliance violations in a timelier manner. Over the last several years, the increase in the number of permittees filing reports has increased. The amount of tax underpayments identified by accounts examiners as part of their report analyzation process has been reduced as the growth has impacted their ability to keep up with the manual process.

The Excise Tax Automation Project was approved by the 81st Legislature (2011). Unfortunately, this project was a casualty of the mandatory budget cuts in the following legislative session. This technological investment would result in efficiencies for TABC and the entities the agency regulates.

N. Provide any additional information needed to gain a preliminary understanding of the program or function.

In September of 2014, internal auditor Monday Rufus & Co., P.C. completed an internal audit of the Excise Tax program. The objectives were to determine:

- Reliability and Integrity of Information
- Compliance with Policies, Procedures, Laws, and Regulations
- Efficiency and Effectiveness of Operating Procedures
- Safeguarding of Assets

The scope of the internal audit work included reviewing the effectiveness of the Excise Tax and Marketing Practices Division's administration of the excise tax program for compliance with the Code, Rules, and Excise Tax Report Processing Procedures Manual (02/09). There were two findings.

Finding 1: Missing Monthly Excise Tax Report. One of the randomly selected reports for testing could not be located by staff. Retention procedures and processes were addressed.

Finding 2: The 2% Discount on Excise Taxes Due Is Being Included On Monthly Tax Reports With Underpaid Excise Taxes Due. Staff agreed with the finding to the extent that the manual did not reflect practice; however, staff disagreed with auditor's interpretation with regard to Sections 201.48 and 203.10 of the Code. The internal auditor interpreted statute in a manner that would cause the license holder that filed on time but with an error to lose their 2% discount as the error would mean the report was not filed on time. Staff disagreed as practice is that the license holder still gets credit for filing on time even if there is a reporting error. The 2% discount is only denied on any additional taxes due as a result of the error. The manual was updated to clarify current practice.

In June of 2015, the internal auditor completed an internal audit with the same objectives as the September 2014 audit. The scope of the internal audit work included reviewing the effectiveness of the Excise Tax and Marketing Practices Division's administration and processing of local distributor permittees' orders of Identification Stamps and Private Club permittees' orders of Temporary Membership Cards for compliance with the Code, Rules, and Excise Tax Report Processing Procedures Manual (02/09). There were two findings.

Finding 1: No Employee Cross-training Regarding ID Stamps/Private Club Cards Functions Performed By One Employee. Staff has since cross-trained other employees within the division.

Finding 2: There is Not an Established Timeline for the Transition of Local Distributor Permittees Ordering ID Stamps from the Outside Contractor Instead of TABC. Staff established a timeline and required all permittees to transition to the online system.

- O. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:**
- **why the regulation is needed;**
 - **the scope of, and procedures for, inspections or audits of regulated entities;**
 - **follow-up activities conducted when non-compliance is identified;**
 - **sanctions available to the agency to ensure compliance; and**
 - **procedures for handling consumer/public complaints against regulated entities.**

The Code authorizes and mandates that the agency to regulate every phase of the business of manufacturing, importing, exporting, transporting, storing, selling, advertising, labeling, and distribution of alcoholic beverages, and the possession of alcoholic beverages for the purpose of sale or distribution. Tax collection and report reviews, along with the issuing of ID stamps and private club temporary membership cards, assist in meeting this mandate. These activities conducted by the division allow the agency to collect excise taxes due and ensure that illicit beverages are not sold in the Texas marketplace, thus promoting public safety and voluntary compliance within the industry.

During their review of excise tax reports, accounts examiners analyze each excise tax paying account to ensure the correct taxes are being paid to the state. Distilleries, wineries, manufacturers (beer), breweries (ale), wholesalers, distributors, and brewpubs all pay excise taxes to the state through the division. Additionally, the examiners analyze reports to ensure correct taxes were paid through an analysis of production reports and importation receipts, verification of exemptions claimed, and a review of sales invoices. Accounts examiners differ from Audit Unit personnel in that accounts examiners view reports on a monthly basis. Auditors conduct comprehensive audits analyzing a two-year period using AICPA standards.

When errors or violations are found, Compliance Violation Notification Letters serve as administrative violation notices and require permittee follow-up to correct inaccurate or unverifiable data. When permittees fail to provide corrected data, the division has the ability to pursue three options: request a field audit conducted by the Audit Unit; seek an excise tax bond; or, as a last resort, seek a summary suspension against the permittee.

Finally, complaints are evaluated by the division director to determine if a compliance violation notification letter is appropriate. If further investigation is required, complaints are forwarded to Field Operations for investigation.

- P. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices. Please include a brief description of the methodology supporting each measure.**

See *Complaints Against License or Permit Holders* in the introduction to Section VII for an explanation on how the agency handles complaints against license and permit holders. Exhibit 29 follows the explanation and summarizes the complaints against license or permit holders received by TABC over the last two full fiscal years.

Marketing Practices Program

A. Name of Program or Function: Marketing Practices Program

Location/Division: Excise Tax and Marketing Practices Division; Austin headquarters

Contact Name: Thomas Graham, Director

Actual Expenditures, FY 2016: \$393,481.85

Number of Actual FTEs as of June 1, 2017: 6

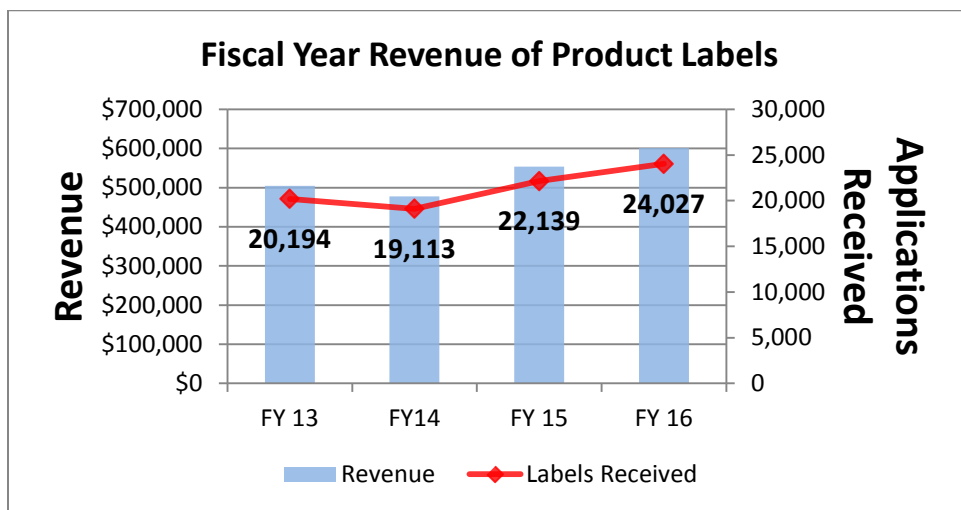
Statutory Citation for Program: Alcoholic Beverage Code, Sections 1.03, 1.04, 5.31, 5.32, 5.33, 5.38, 5.39, 5.57, 54.10, 74.06, 101.41– 101.46, 101.65, 101.66, 101.67, 101.671, 102.01 –102.22, 103.01, and Chapter 108

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Marketing Practices program aids in the enforcement of laws regulating the marketing of alcoholic beverage products and marketing relationships among alcoholic beverage retailers, wholesalers, and manufacturers. It also aids in the education and enforcement of regulations pertaining to the advertising, marketing, labeling, and bottling of alcoholic beverage products.

The Excise Tax and Marketing Practices Division administers the label approval process, which generated \$600,675 in revenue for the agency in FY2016. The Label Approval Team in the Excise Tax and Marketing Practices Division consists of five personnel, one of which is the chemist.

Exhibit 65: Revenue for Label Approval Applications



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As indicated in Exhibit 65, the number of applications is steadily increasing every year. Not only does this mean money for the state due to fees, but each approval represents another product potentially being introduced to the Texas marketplace. A person may not ship or cause to be shipped into the State of Texas any alcoholic beverage unless the product has received label approval from TABC. Label applications will not be accepted unless the permittee has a valid permit issued by TABC. The manufacturer, winery, distiller, or owner of the product--when it becomes a marketable product--is responsible for completing the label approval process.

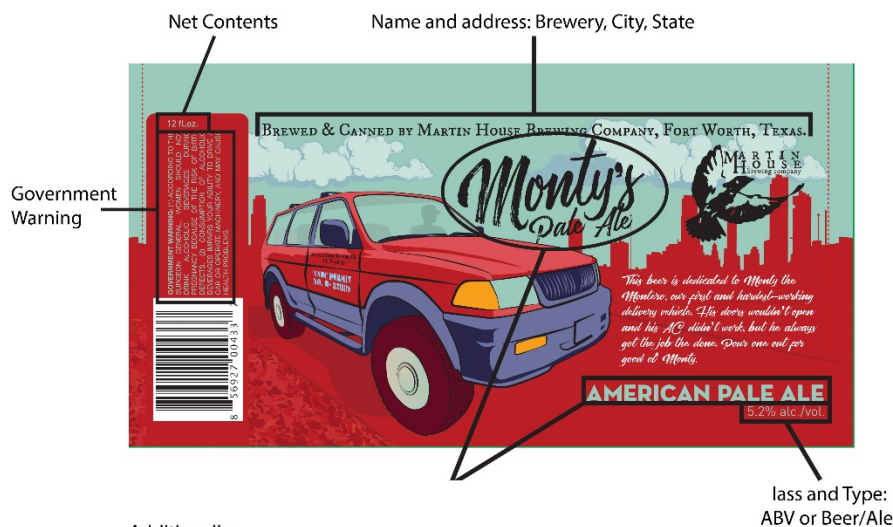
(Note applications *received* is different than applications *processed* in Exhibit 67. Applications *processed* are those actually approved.)

Alcoholic beverage products are defined as

- Beer – a malt beverage containing four percent of alcohol by weight or less (< 4%)
- Ale/Malt Liquor – a malt beverage containing more than four percent of alcohol by weight (>4%)
- Wine – a product obtained from the fermentation of sound ripe grapes, fruits, berries, or honey
- Distilled Spirit – alcohol or liquor produced in whole or in part by the process of distillation

Exhibit 66: Example of an Approved Malt Beverage Label

Malt Beverage Label Approval (Example)



Additionally:

- Check for statement of contract brewing/alternating proprietorship agreements
- Check name, trade name or trademark of any retail licensee or permittee

Self-Evaluation Report

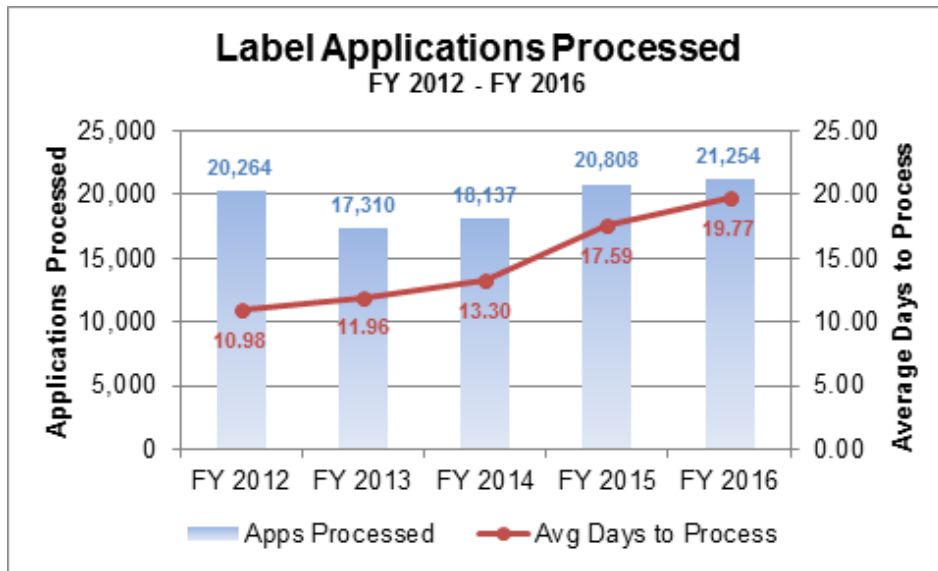
Label approvals for malt beverages and low wine (<7% alcohol content) require a product sample for analysis. Sample analyses are conducted at the TABC laboratory at no charge, but an analysis stating the alcohol content both by volume and by weight may be provided from an independent laboratory which is neither affiliated with nor regulated by TABC. During the 85th Legislature (Regular Session) HB 2299 changed Section 101.67 of the Alcoholic Beverage Code to allow breweries that have in-house laboratories certified by the federal Alcohol and Tobacco Tax and Trade Bureau to submit their own alcohol content analysis to the commission rather than send in samples.

The marketing practices program is also charged with the development and implementation of training programs for agency staff and industry permittees with regard to marketing practices. The division reviews proposed industry marketing programs and inquiries. Examples include sweepstakes programs, bar spending events, tastings, social media campaigns, on-premise retailer promotions, advertising, product rotation/restocking, charity sponsorships, public entertainment facility events, retailer events, manufacturer and wholesale tier promotions and giveaways, trade shows, industry training programs, intra-tier dealings/relationships and market research programs. Review of these inquiries fosters voluntary compliance by providing industry permittees a central contact point for education and proposal review prior to program implementation.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program. Also please provide a short description of the methodology behind each statistic or performance measure.

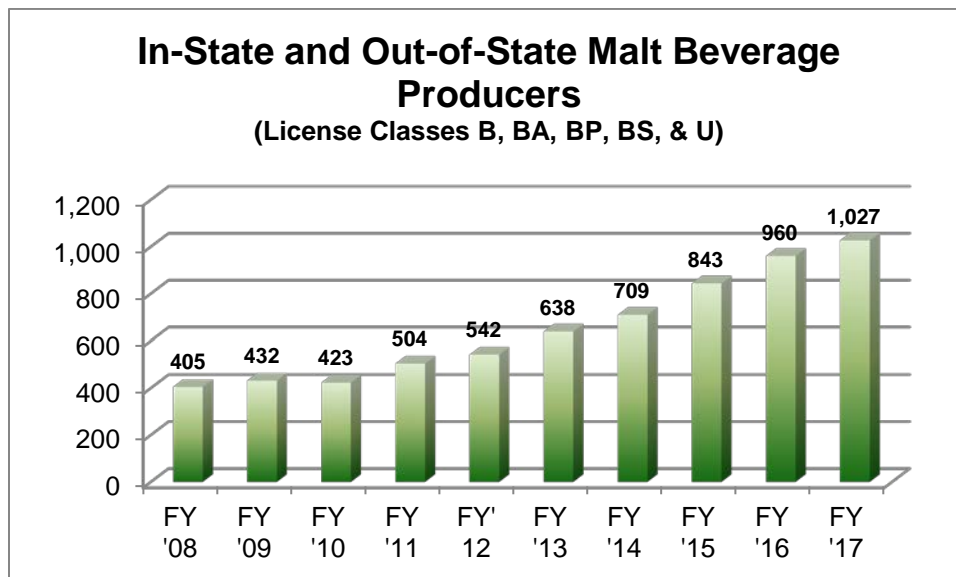
During FY2016 the marketing practices label approval program approved 21,254 applications, withdrew 997 and denied none. The breakdown of applications approved by category is 13,887 wine, 4,132 malt beverage and 3,235 distilled spirits. The total average number of days to process all applications in FY2016 was 19.77 days. All statistical data reported comes from the division's internal database for label approvals, Versa:Regulation. Labels which do not comply with state regulations are generally withdrawn rather than denied. In March of 2016, Monday Rufus & Co., P.C., the agency's contracted internal auditor, completed an audit of the marketing practices label approval program with no deficiencies detected.

Exhibit 67: Label Applications Processed



The state has seen a 154% growth in permits issued to in-state and out-of-state malt beverage producers. The growth in permits issued directly equates to more label approval applications submitted. As historically malt beverage applications have been processed by one full-time employee, this growth has presented a challenge in maintaining the average number of days to approve a malt beverage application.

Exhibit 68: In-State and Out-of-State Malt Beverage Producers



Self-Evaluation Report

During FY2016 the Marketing Practices Division reviewed 487 industry program proposals. Of those, 260 were approved. Rather than denying industry marketing practices proposals, the division first seeks to review the program and provide the requestor with the elements of the program which would not comply with state law. Requestors are then given the opportunity to amend the program. Amended program requests are not counted as additional proposals in the statistics provided. Review timelines vary depending on the required depth of review. Some reviews can take multiple days or longer depending on how long it takes the requestor to provide amended proposals based on the division's findings. In addition to these approved programs, hundreds of emails and phone calls regarding marketing compliance were fielded.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

In June 2015, the Excise Tax and Marketing Practices Division, along with the Innovation and Technology Division (ITD) rolled out the agency's online label approval program. The development of the service granted users the ability to file and make payments for label applications online rather than mailing paper applications and a check. Applicants now have ability to make payments using a credit card or bank draft. Paper applications have to be processed by mailroom staff and then sent to the Business Services Division (BSD) to process corresponding payments. Once processed, the paper applications are sent to the Excise Tax and Marketing Practices division for label content processing. With the implementation of the online label approval program, the process bypasses the mailroom and BSD staff as applications and payments are submitted electronically directly into the agency's cash processing software, Versa:Regulation, and Neubus storage software. Since implementation, marketing practices staff have been working to migrate customers to the online system. The division has set an internal goal to convert all label application customers to the online label approval service, thus eliminating the need to accept paper applications and process checks, by December 31, 2017.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The Excise Tax and Marketing Practices Division is responsible for responding to inquiries from the general public and all TABC permittees with regard to marketing practices and how to implement these practices in compliance with the Code and Rules. The division also engages with industry to foster voluntary compliance by developing and conducting marketing practices industry training sessions. The division reviews industry inquiries and activities as they relate to the manufacturing, importing, transporting, marketing, advertising, sale, distributing and possession of alcoholic beverages. The marketing of alcoholic beverages affects public safety and the marketing practices program educates the public and industry about laws intended to prevent overconsumption. The division is charged with the review and approval of labels for all alcoholic beverages sold in Texas. In addition to testing malt beverage products as part of the label approval process, the TABC laboratory also provides support to TABC Field Operations by

testing alcoholic beverages seized from licensed locations to ensure Texans are consuming safe and legal alcoholic beverages.

F. Describe how your program or function is administered, including a description of the processes involved in the program or function. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.

All paper and online label approval applications received by TABC for malt, distilled spirits, and wine are being reviewed and processed by the marketing practices label approval staff. Paper-based label approval applications, paper checks, and test sample products are received in the mailroom. The test sample products are sent to the TABC laboratory; paper applications and nonrefundable fee payment(s) are sent to the Business Services Division (BSD) for processing. After BSD processes the checks, the label applications and required supporting documents are sent to the Excise Tax and Marketing Practices Division's for approval processing. Online label applications are uploaded online by eligible permit holders. Application fees are also paid online. The Label Approval team performs the label approval process by accessing TABC computer systems such as Intranet, SSRS Reporting Services, Neubus System, Versa:Regulation, and other division systems to ensure each label application submitted meets all requirements before approval.

Marketing practices inquiries are received via telephone, email, in person, and occasionally fax. Inquiries are received in the form of questions and proposals from industry, other governmental bodies, the general public and agency staff. Inquiries are initially reviewed by the Marketing Practices Coordinator for compliance with the Code, Rules, and agency policies. Inquiries that require more in-depth review are elevated to the Division director. When promotion proposals or inquiries require input from the General Counsel's office, Audit and Investigations Division director, Licensing Division director, or Enforcement Division chief, the Excise Tax and Marketing Practices Director first researches the applicable regulations and policies and then meets with the appropriate internal stakeholder(s) to determine the legality of the proposal. Upon meeting, the Tax and Marketing Practices director then prepares a written response as appropriate for the requestor. For inquiries or proposals that require input from stakeholders external to the agency, the director may hold stakeholder meetings and release agency findings in a Marketing Practices Advisory in accordance with Section 5.57 of the Alcoholic Beverage Code and agency Policy Number: MR-1.0. Annually, the division reviews hundreds of inquiries and proposals.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

The Marketing Practices Program's funding source was 6% of the general revenue appropriated to the Compliance Monitoring Strategy in FY2016.

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.

The Alcohol and Tobacco Tax and Trade Bureau (TTB) of the U.S. Department of the Treasury is the federal agency responsible for approving formulas and label approval of alcoholic beverages sold in the U.S. Under the 21st amendment, each state was granted the authority to regulate alcoholic beverages as they deemed necessary. Like a majority of states, Texas sought to require some form of product label approval with additional requirements to those held by the TTB. The TTB product approval process requires importers and manufacturers to apply for a federal Certificate of Label Approval (COLA).

Sections 101.67 and 101.671 of the Alcoholic Beverage Code require importers and producers of alcoholic beverages to apply for and obtain a Texas COLA before they can sell their products in Texas. This ensures several things. First, before the product can be sold in Texas, it allows the agency to review and issue a COLA if a product meets all state regulations. Second, it allows the agency to maintain an online public inquiry database with images of all products approved for sale in Texas, linking them with the producer and/or importer. The database is searchable by the agency field operations staff, the public and industry and provides the user with product details including alcohol content, manufacturer and an image. This valuable information gives the wholesaler and distributor the ability to query a product of which they are considering purchasing and determine if it is the same product that actually was approved which assists in the curbing of counterfeit products. Finally, alcoholic beverage content of malt beverages is tested by the agency to ensure that seller properly classifies the product and that the appropriate tax rate is applied when selling the product.

In Texas, there are many communities which have voted via a local option election to select what types of beverages and alcohol contents they want sold in their community. Many communities have voted to allow for the sale of beer only (not more than 4% alcohol/weight). Testing by the agency of alcohol content ensures that products are properly labeled and that malt beverages sold in these communities are not ale products which contain more than 4% alcohol by weight.

Texas's label approval process as a whole provides the purchaser, seller and regulatory body the tools to determine if a product is legal for sale and what the alcohol content is.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

In 2007, the Texas Legislature, as a result of Sunset Advisory Commission recommendations, made changes to Section 101.671 of the Alcoholic Beverage Code regarding the label approval of distilled spirits and wine. The section was changed to allow applicants to submit a copy of their federal TTB COLA as part of their Texas COLA application to serve as constituting full

Self-Evaluation Report

compliance with the applicable standards adopted under Section 5.38 of the Code regarding quality, purity and identity of a distilled spirit or wine. This move accelerated the application process for wine and distilled spirits applications. In FY2016, wine applications make up nearly **65%** of all label applications processed by TABC. This change also created a gap with regard to the regulation of products defined as low wines, 7% alcohol by volume and less. Labels for these wines are not regulated by the TTB but instead by the U.S. Food and Drug Administration (FDA). The FDA guidelines regarding labeling of alcoholic beverages are not as thorough as those of TTB. Producers cannot obtain a TTB COLA for low wines. This leads to confusion in the market as those producers often do not know which regulations to follow when labeling their low wine products. The agency has sought to address this deficiency by requiring those entities to submit product samples for TABC testing because they cannot obtain a COLA from the TTB.

In 2007, the Texas Legislature chose not to make the same changes to Section 101.67 of the Code which regulates beer and ale/malt liquor. The decision to have the agency continue to review label applications for malt beverages was recommended for several reasons. One, many communities in Texas have voted in local option elections to prohibit the sale of ale/malt liquor in their communities. The continued alcohol content testing by TABC ensures that products are properly labeled so that they are not sold in those communities. Two, beer and ale/malt liquor products are taxed at two different tax rates. Continued testing ensures that proper taxes are paid on the products. Finally, Texas brewers, manufacturers and brewpubs are not required to seek a federal TTB COLA for products that they do not sell outside of Texas. By continuing the ability of TABC to review and test those products utilizing Texas regulations rather than those of the TTB, these producers do not have to first seek TTB COLA approval before applying for a Texas COLA like the producers and importers of wine and distilled spirits. This eliminates the need for many Texas-based manufacturers and brewers to spend time and money seeking federal approval in addition to state approval; it also gives them the ability to test their products in the Texas market before investing in markets outside of Texas.

J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.

The label approval staff works with federal TTB staff to determine if Texas applicants have authentic TTB COLAs and ensure state Rules do not conflict with federal label approval regulations, as appropriate. The latter is important so that entities that produce malt beverages in Texas are not required to make changes to the labels when they seek to sell their products outside of Texas and obtain a federal COLA.

K. If contracted expenditures are made through this program please provide:

- a short summary of the general purpose of those contracts overall;
- the amount of those expenditures in fiscal year 2016;
- the number of contracts accounting for those expenditures;
- the method used to procure contracts
- top five contracts by dollar amount, including contractor and purpose;
- the methods used to ensure accountability for funding and performance; and
- a short description of any current contracting problems.

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Neubus provides the digital file system for all label approval certificates and applications. Neubus also provides a searchable database hosted on the agency's website of which agency staff and the general public can search and view all alcoholic beverage labels approved for sale in the State of Texas. This program expended \$10,080.00 while utilizing the Government Code 2162.105 State Council on Competitive Government contracts. The division's director reviews and approves contracts and invoice to ensure services provided were met.

L. Provide information on any grants awarded by the program.

None.

M. Are there any barriers or challenges that impede the program's performance, including any outdated or ineffective state laws? Explain.

Versa:Regulation (VR) is used by many divisions in the agency including the marketing practices label approval program. VR is an off-the-shelf product which needs upgrades to allow for more functionality for both internal and external users.

The Alcoholic Beverage Code does not specify how low wines must meet state standards. Wines below 7% alcohol by volume are not regulated by the TTB, but rather by the FDA. .Section 101.671 of the Alcoholic Beverage Code states that the agency must utilize a TTB-issued COLA as constituting that the wine beverage meets all state standards. Wines below 7% alcohol by volume are not regulated by the TTB, but rather than by the FDA, so cannot receive a TTB COLA. This forces the agency to issue label approval for these products without clear definition as to what should be required on the label. Currently, the agency utilizes a similar process to malt beverages for label approvals. Section 45.45 of the Rules requires that a sample of the wine, along with a set of labels, is required if the alcohol content is below 7% alcohol by volume.

During the 2013 legislative session, the Alcoholic Beverage Code was changed to allow contract brewing and alternating brewery proprietorship similar to federal law but with very different statutory structuring. These arrangements allow for brewers who either have capacity issues at their current brewery to contract with another brewery, or a brewer who does not have a facility enter into an alternating brewery proprietorship arrangement with another brewery. Statute requires that all parties hold the required permit necessary to engage in these types of activities. These arrangements come with complicated business structures that are not fully discovered during the permitting phase and but rather than during the label approval process.

N. Provide any additional information needed to gain a preliminary understanding of the program or function.

In March 2016, internal auditor Monday Rufus & Co., P.C., completed an internal audit of the Label Approval Program (Report No: TABC 016-002). The audit scope included reviewing the effectiveness of the Excise Tax and Marketing Practices Division's Label/Product Approval Process for malt, distilled spirits, and wine beverages. The processing of label applications was

reviewed and tested for compliance with the Code, Rules, and Tax and Marketing Label Approval Manual (6/2015). There were no significant deficiencies detected in the audit.

O. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

The label approval program reviews and approves alcoholic beverage labels to ensure the products are classified appropriately for tax purposes and that label contents are compliant with the Code and Rules before they enter into the market place. When an alcoholic beverage is found in the marketplace that is illicit because it does not have label approval or is being manufactured in a way that is prohibited under state law, an investigation is conducted. The label approval staff will provide information and expertise regarding label regulations to an auditor in the Audit and Investigations Division.

Marketing practices responds to inquiries and complaints from the public on potential violations of the Code and Rules by permittees and the general public. The division works to foster voluntary compliance through marketing practices industry training, reviewing activities as they relate to the manufacturing, importing, transporting, marketing, advertising, sale, distribution and possession of alcoholic beverages. Illegal marketing of alcoholic beverages affects public safety and can lead to the violations of laws intended to prevent overconsumption. Marketing practices personnel also receive and field complaints. Staff researches the applicable statutes, rules and policies and provides that information along with the allegation if a possible violation is indicated to the Audit and Investigations Division.

The Audit and Investigations Division follows their standard procedures with regard to sanctions. If it is determined that the permittee needs marketing practices training, the tax and marketing practices division develops the appropriate training and either conducts or coordinates with field operations to provide the training.

P. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices. Please include a brief description of the methodology supporting each measure.

See *Complaints Against License or Permit Holders* in the introduction to Section VII for an explanation on how the agency handles complaints against license and permit holders. Exhibit 29 follows the explanation and summarizes the complaints against license or permit holders received by TABC over the last two full fiscal years.



Education and Prevention/Seller Server Training/Grants

A. Name of Program or Function: Education and Prevention/Seller Server Training/Grants

Location/Division: Education and Prevention Division; Austin headquarters

Contact Name: Mindy Carroll

Actual Expenditures, FY 2016: Seller Server Training - \$182,951.53; Education and Prevention - \$281,258.49

Number of Actual FTEs as of June 1, 2017: Seller Server Training – 4; Education and Prevention - 3

Statutory Citation for Program: Seller Server Training - Alcoholic Beverage Code Sec. 106.14 and Administrative Rules, Chapter 50

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Education and Prevention Division consists of three operating units – educational program development, seller server training, and grants. Program Development creates educational materials/campaigns and develops curriculum used by the agency for public education outside of TABC. The programs include various medium for delivery including videos, print materials, social media campaigns and other materials. The division manages all areas of the Seller Server Training program--approving training schools and trainers, writing the curriculum to be taught in those schools, providing customer service to trainers and students, and monitoring schools for compliance. Grants are found, secured, and managed by EPD to support educational funding programs as well as benefit initiatives of other divisions.

The division includes seven employees that have various assignments throughout the three operating units to assist in meeting the division's goals and objectives:

- Increase awareness and knowledge of alcoholic beverage laws intended to reduce public safety violations.
- Foster change from the citizens of Texas that facilitates public safety and prevents and reduces violations of the Alcoholic Beverage Code.
- Engage communities and promote responsible consumption and responsible sales and service of alcoholic beverages.
- Ensure compliance with regulations established in the Code and Rules related to TABC-approved Seller Server Training Programs, trainers and trainees.
- Facilitate and incorporate evidence-based strategies to reduce the unintended consequences related to alcohol throughout the state.

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- Assist agency-wide efforts related to education to assist with voluntary compliance efforts of citizens of Texas and those regulated by the TABC.
- Promote understanding of how laws/rules related to alcohol beverage consumption and sales promote public safety while taking into account environmental, ethnic, cultural, and gender differences.
- Consider population-based risk factors, best practices, individual- and environmental-level prevention strategies related to behavior and alcohol.
- Promote understanding and assist communities with efforts to gain support for enforcing laws which are proven to promote public safety and decrease irresponsible consumption or sale of alcohol.
- Regulate third-party seller server training programs and schools and maintain records of certifications for individuals meeting minimum standards for certification.
- Regulate third-party seller server training programs and schools and maintain records of certifications for individuals meeting minimum standards for certification.
- Research available funding to address funding deficits to support programs and equipment as instructed by Executive Management.
- Write proposals and manage grant-related funds received by the agency to ensure standards and restrictions of state, federal and funding sources are met.
- Report grant funding activities, as instructed, to management and the funding source.
- Assist as needed to support grant activities throughout the agency to ensure goals and objectives are met and information is reported correctly.

To meet these objectives, EPD must continue efforts in the following areas:

- Gain public support for enforcing these laws by working with stakeholders and educating stakeholders to ensure that all involved understand the benefits of regulation related to public safety.
 - Establish methods and education materials and medium to reach all markets of a growing Texas population, tourism industry and alcohol market.
 - Highly publicize TABC efforts related to the mission and core objectives and the benefits of these efforts through educational campaigns.
 - Represent the agency and efforts at community, state and national events related to the efforts of prevention and retailer education
- Work with others at the community, state, national and global levels to reduce consequences related to alcohol consumption or sale.
 - Communication related to educational items must be clearly written and culturally sensitive – which requires a high level of understanding of the industry, community and various groups within Texas.

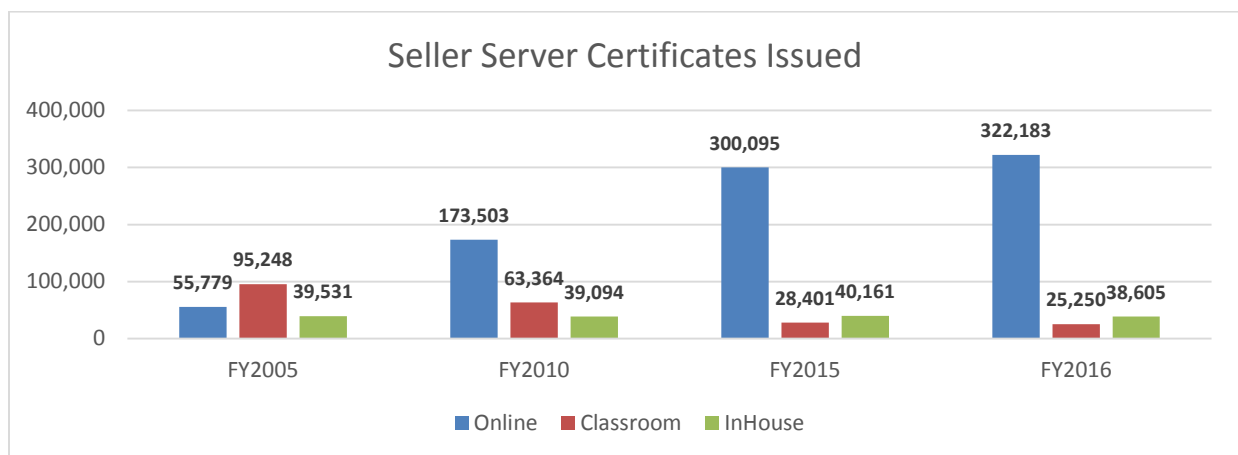
Self-Evaluation Report

- Provide appropriate educational material related to the Alcoholic Beverage Code to various audiences within the community to prevent public safety violations. These groups include coalitions, schools, parents, community groups, other government and state agencies and local law enforcement agencies.
- Support cost-effective technologies and marketing strategies to make educational items and information more accessible to citizens in Texas.
- Support retail education efforts through the creation of standardized educational programs and materials directly related to the responsible sale and service of alcoholic beverages and ensuring the information presented in seller server training schools meets the needs of the individual certified, alcoholic beverage industry and communities.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program. Also please provide a short description of the methodology behind each statistic or performance measure.

A majority of the division's resources are utilized to focus on two primary educational functions within the agency. The first is the regulation of Seller Server Training programs which are operated by third-party companies certified by the TABC and primarily regulated by Chapter 50 of the Rules. Data continue to show an increasing interest in completing the seller server training certification through an online school model instead of in a traditional classroom setting. In FY2005, less than 30% of attendees completing the course through a non-in-house provider (i.e., third-party training provider not operated by the student's employer) met the requirements online; 50% took the course in a classroom and slightly more than 20% took the course through an in-house provider. Today over 80% complete course requirements using an online course provider.

Exhibit 69: Seller Server Certificates Issued



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The Seller Server Training Program has doubled the number of certificates issued from FY2005 to FY2016. In efforts to address an increase in state cost to regulate the program, in 2009, the agency reviewed all rules and procedures related to the program. Rules were proposed to reflect the current adult training environment and procedures were changed to make the program operate more effectively. Technology was utilized to impact the efficiency within the reporting requirements of the program. Staff still process applications, write the curriculum, approve online program modifications, investigate complaints, monitor programs, provide customer support to approved programs and citizens taking the course, and provide training to stakeholders. The changes to the program allowed EPD to reallocate resources with seven employees instead of the 11 that existed in 2005 to operate a comprehensive educational program with a grant writing unit.

The second area of focus for EPD is to promote a comprehensive effort related to providing retailers, community leaders, youth and law enforcement with information related to the Texas laws currently in place to promote public safety. The focus includes laws related to driving while intoxicated or driving under the influence, intoxication, and underage drinking and addresses prevention efforts to reduce unintended consequences of illegal consumption of alcohol.

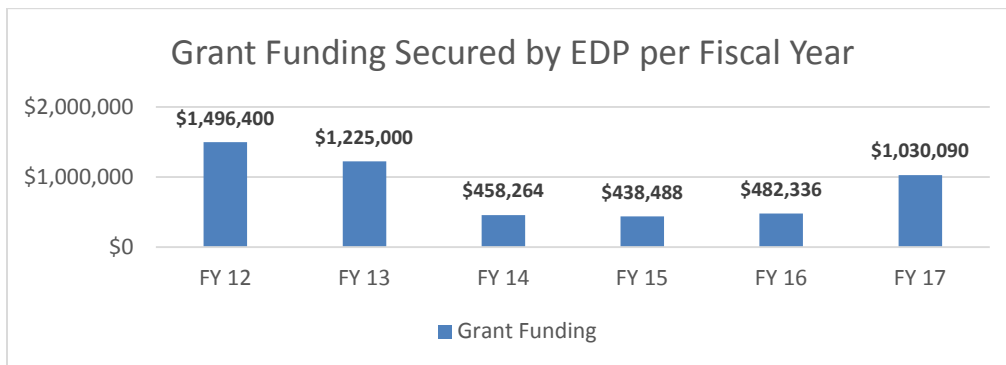
Current trends in prevention education require programming to have key competencies in order to be effective in the prevention of illegal alcohol consumption and sales. Campaigns must promote problem solving skills, challenge the individual or group related to the prevention messaging, include a high level of cooperation from those involved, and evoke a level of emotion, especially if a change in behavior is required. With a limited staff of seven FTEs in the entire division, which includes the seller training staff, it is critical to establish partnerships and determine ways to provide support to community efforts already in place. To meet these needs, EPD was established as a resource-based model related to educational programming not taught by TABC employees. This model is similar to many federal alcohol abuse or underage drinking prevention programs. EPD creates toolkits based on the laws found in the Alcoholic Beverage Code. These toolkits are provided free of charge to interested parties and are available to community members, colleges, schools, law enforcement and retailers usually with messaging specific to these groups about topics such as underage drinking, drinking and driving, sale/service or consumption to intoxication and others. Toolkits include social media efforts, videos, printed materials, curricula and other media to share the messaging.

A final medium to distribute information throughout the state is the use of social media sites such as Twitter and Facebook. These campaigns are completed to compliment events such as Spring Break or the start of university classes and are supported with educational materials available for download or ordered. In FY2016, EPD managed 16 campaigns and seven in FY2017.

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Without a direct program budget to create campaigns, the division depends on grant funding to implement programming. Prior to FY2013, TABC received a federal grant through the Office of Juvenile Justice and Delinquency Prevention to support the programming efforts; however, these funds were cut at the federal level. [EPD does not obtain grant funds solely for educational efforts. Grants are also secured for equipment and operations of other TABC divisions to provide funding or supplement appropriations.]

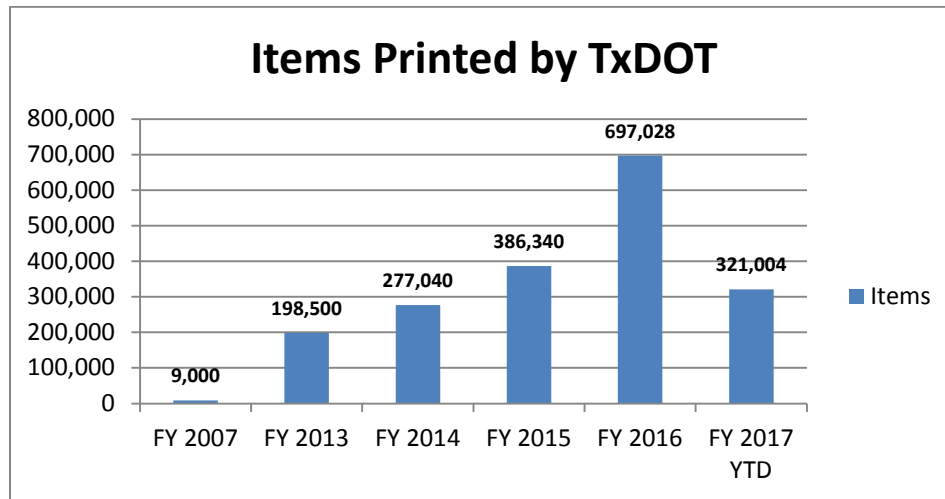
Exhibit 70: Grand Funding Secured by the Education and Prevention Division



To reach a wide array of audiences, it is critical to use different media and delivery methods, and have materials available for distribution both physically and online. Videos and public service announcements were first debuted in FY2010. The videos are shared through TABC's YouTube Channel and are available on different media upon request. Currently TABC has 32 professionally produced videos in a variety of topics for retailers, minors, parents, community members, and law enforcement on the channel. Altogether there are more than 120 minutes of video available. In addition, some specialized topics for law enforcement are available upon request.

EPD was able to secure additional funding with the Texas Department of Transportation (TxDOT) to cover the cost of printing materials for educational campaigns. In FY2015, TxDOT printed and assisted in the distribution of more than 286,000 items throughout Texas; in FY2016, 697,028 items were distributed, worth almost \$265,000. In FY2016, partners ordered and distributed almost as many of the TABC educational items as TABC employees. As part of the agreement, in FY2015 and FY2016, other sub-grantees could order the materials created by TABC directly from TxDOT to distribute. By working with TxDOT to provide printing services, EPD has been able to allocate funds to provide additional services. For example, through a grant in FY2007, EPD was able to create and distribute 9,000 pieces of TxDOT-printed educational items that were used to train the Manager's Awareness Program. By FY2016, through the use of partnerships, TABC was able to print and distribute close to 700,000 items statewide to a variety of audiences reaching more people with a similar message related to public safety.

Exhibit 71: Items Printed by the Texas Department of Transportation for TABC



D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

The Sunset Advisory Commission Report of October 2004 required TABC in Management Item 1.4 to evaluate alternate approaches for administering educational programs to better support the agency’s mission and goals. The agency was instructed to consolidate duties and dedicate staff who specialized in educational programs. The staff would develop educational programs and materials for specific groups, including school-aged children, collage-aged adults, community groups, regulated businesses, and others; seek out grants to fund the agency’s educational programs; administer the agency’s existing grant program in which the agency gives money to community groups for their own programs; administer the seller server training program and seek opportunities to enhance TABC’s outreach through its educational program. Consequently, the Education and Prevention Division was organized in 2006.

A massive revision of the Rules for seller server training started in 2009 and became effective in January 2011. Some of the changes included a standardized curriculum, making it more efficient to regulate and approve programs. A significant change in the Rules no longer allowed schools to send reports to TABC for TABC employees to input the more than 300,000 names into the database, but rather schools were required to log into the database and input the information themselves, thus making the process more efficient.

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As TABC field offices and Enforcement and Audit personnel were undergoing organizational changes in 2008, an assessment of employees' time spent providing education to schools and at community events was conducted. EPD was directed to reduce the amount of time directly used by Enforcement agents for educational efforts and move retailer education to an Auditing function. Although a positive change for the agency, it required EPD to rethink educational programming and resulted in a shift from creating programs and materials for TABC employees to teach at the community and school-based level to creating programs and materials that partners could use to enhance their programs in the area of responsible consumption, prevention of underage drinking, and other topics. Agents and auditors continue to teach retailer educational programs, but the audience has shifted, respectively, to primarily law enforcement and communities organizations, including schools.

EPD also experienced some funding issues in FY2012-2013. The Enforcement of Underage Drinking Laws (EUDL) Grant, which was the primary source of educational program funding for the division, was cut by the federal government and never replaced at the federal level. This and other changes in funding necessitated the formation of more partnerships at the state, federal and local levels as well as the development of new practices designed to increase efficiency by division employees.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

Educational programs are available statewide and materials created by the division are available to local, county and state jurisdictions throughout Texas.

A limited number of materials are available in both English and Spanish. Through a recent partnership with TxDOT, some materials are translated at no cost. Demographic information is gathered through survey data conducted by other agencies such as the *Texas School Survey of Drug and Alcohol Use* prepared by The Public Policy Research Institute at Texas A&M University for the Texas Health and Human Services Commission.

Seller Server Training oversees the activities of more than 70 third party seller server training schools. While a majority of training sessions are now conducted online, some providers, particularly those located in urban areas, offer classroom-based instruction. The training is available to all Texans in both English and Spanish. These schools provide agency-approved instruction to retailer clerks and servers. In FY2016, the program issued 384,311 certificates to trainees and generated \$809,913 in revenue.

Grants are secured by the division that impact the agency both internally and externally. The grants benefit other divisions within the agency to provide equipment or programming funds to meet needs outlined by the Executive Management team and approved for third party funding. When possible and appropriate, equipment secured as a result of a grant may be utilized by other law enforcement agencies. For example in FY2017, TABC secured funding for new Use of Force Simulators for the TABC Training Division. Five systems were ordered and distributed statewide. Upon request and if available, TABC will allow other agencies to participate in the training or use the equipment to meet their training needs. Grant funds also make current educational programming possible because the educational materials—both print materials and videos—are available to all citizens at no charge thanks to grant funds.

F. Describe how your program or function is administered, including a description of the processes involved in the program or function. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.

The division has three primary functions: regulation of Seller Server Training program, creation of educational materials and programs to promote public safety, and write and manage the programmatic components of grant funding secured by the agency through competitive processes.

Seller Server Training Program

The Seller Server Training program is made possible in the Alcoholic Beverage Code, Sec. 106.14 and specific requirements and guidelines are outlined in Chapter 50 of the Rules. Individual seller server training programs are administered by third party providers. EPD staff process applications for schools and trainers and give approval. Staff also review all programming to ensure that standards outlined in the Rules are met. Staff update and write the seller server curriculum which must be taught by all approved programs. TABC provides curriculum updates to schools regarding any required changes e.g., new driver's license issued by the State of Texas. EPD provides training to program owners and trainers at the end of each legislative session to ensure changes that impact the program are understood by those responsible for conveying the information to thousands of seller servers each year.

The small team of FTEs maintains all records and handles all complaints and concerns related to violations of the Rules for the program. EPD staff may compel field auditors to conduct audits on seller server training programs to ensure that minimum standards are being met. When necessary TABC may take action, from issuing citations to cancelling certification and closing a school.

Although schools upload their data into the TABC Versa:Regulation system for trainees that complete the course, EPD assist with any errors in the data. EPD work very closely with schools to ensure that data is entered correctly because once the data is entered, only TABC staff can make changes.

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EPD also provides customer service by securing proof of certification for those who have completed the course and finding an approved program in the area for those interested in taking the course.

Upon successful completion of a seller server training course, a certificate is issued to the applicant. This certification is not required by the state to sell or serve alcohol, but licensed locations are encouraged to participate in the program for public safety concerns. The regulation of the programs ensure that minimum standards are met to issue a seller server certificate.

Having employees take the class and meet the standards strengthens their ability to ensure public safety in the course of their work. An additional benefit for the employer is if certain criteria have been met (Rule 34.4) when a violation occurs, then the action of the employee is not attributable to the permit holder per Code Sec. 106.14(a).

The program also maintains a public database of all seller server certificates issued by approved programs. Through TABC's [Public Inquiry](#), certificate holders can check the status of their certificate and print proof of certification by accessing the TABC website. This ability helps minimize the possibility of fraudulent certificates being used to qualify for reduced sanctions.

Educational Materials and Programs

Educational programming consists of creating numerous materials to reach specific audiences throughout the state to encourage voluntary compliance with the Alcoholic Beverage Code and promote public safety related to the consumption and sale/service of alcoholic beverages.

EPD creates numerous materials to address common topics such as underage drinking, drinking and driving, selling to intoxicated persons and minors, social host and dram shop, 9-1-1 Lifeline Law requirements and other topics. The programs include various media for delivery including videos, print materials, social media campaigns and other materials. Some of these items, when possible through grant funding, are translated into Spanish. Some of these products include curriculum and student guides that can be taught by third parties; others are self-explanatory and address certain issues or concerns. Printed items are reproduced through grant funds and are available at no cost to any person or organization in Texas.

EPD manages and creates all of the videos on the TABC You Tube Channel. Most of the videos include specialized materials to support the messaging in the videos. TABC also has law enforcement videos that support training topics; these videos are not available on the channel for security reasons. Again, all of the videos are available at no charge to anyone in the state requesting copies.

Every year the division creates social media campaigns to enhance the educational effort and reach a more diverse audience. Social media campaigns currently are limited to Twitter and Facebook and are influenced by special events throughout the year such as football season, Spring Break, etc.

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In FY2017 the division established a committee of auditors and Enforcement agents to assist with developing a new training program for Texas retailers. EPD wrote the Retailers Education and Awareness Program (REAP) which replaces older programs such as the Manager's Awareness Program (MAP) and Service Education to Reduce Violations by Employees (SERVE) Program. The REAP program is taught by agents and auditors and educates retailers and their employees about identifying minors and checking IDs, identifying and preventing intoxication, what to expect during a TABC inspection, acceptable marketing and promotions, breaches of the peace and dram shop liability. In addition to securing grant funding to print materials, EPD created an Instructor's Guide, Student Manual and a brochure to promote the REAP program. All components are provided free of charge to retailers and are distributed to TABC regional offices statewide. This training can be requested at any time by retailers and is often required of retailers when TABC settles an administrative case for a public safety offense by a permit holder. REAP does not qualify an attendee to receive a seller server certificate. Certification can only be obtained from third party schools approved by TABC's seller server training program.

With the introduction of new products on the market and new laws, EPD generates educational products. For example, EPD developed numerous materials educating the public about the danger of alcoholic energy drinks that were later removed from the market through federal efforts.

EPD works closely with organizations with common goals to share messaging, distribute materials, answer questions, and fulfill requests for educational programming. The division works effortlessly to assist local community organizations and other state agencies in their efforts to promote healthy choices and understand a proactive approach to preventing the unintended negative consequences of the sale, service and consumption of alcoholic beverages. Most educational programming is designed for third parties to present due to limited agency resources; the only exception is the TABC Retailer Education Program.

In 2011 the Texas Education Agency (TEA) included requirements in the Texas Essential Knowledge and Skills (TEKS) for the Texas High School Criminal Justice Law Enforcement II course. The teacher must include instructions to students as outlined in the TEKS Sec. 130.294(9) and Sec. 130.294(10)(A)(D) to meet minimum standards for the course. TABC, in response to questions from teachers of this course, created the *Teacher Guide Book*. It includes information about the TABC and four modules that meet minimum requirements set by TEA. The modules are specific to TEKS and include lesson plans, extension activities, notes and student worksheet along with a knowledge test. To assist in teaching this curriculum and promoting it to the appropriate teachers, EPD presents to high school law enforcement teachers throughout the state at the Texas Industrial Vocational Association professional development conferences. In 2017, the program is being updated to include videos. The program and training are provided at no charge to educators.

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Reference guides (Industry Guide, Peace Officer's Guide et al) are produced, distributed, and updated by EPD. Staff organizes internal committees to provide updates, manages the meeting, incorporates all changes and design elements related to the project, secures funding to print the materials, manages all aspects of the printing process, and ensures delivery to the field and storage in the TABC warehouse. Many of the projects were created within the division to meet needs determined through the strategic planning process and from input from other divisions, field offices, community and industry members, and other law enforcement agencies.

All materials created and educational programs provided are currently done so at no charge to requesting parties. This is made possible through grant funding. Without this method of financing, materials would still be created and available online or in person, but requesting parties would have to print the materials themselves.

Grants

EPD finds, secures and manages grant funding for the entire agency. Staff researches the grants, conducts meetings to ensure the funding will meet the needs of the agency, writes the grant, and submits the application. If awarded, EPD maintains and writes all progress reports related to agency efforts regardless of the division completing the task. EPD attends all required trainings and meetings to ensure that circulars are followed and staff is kept up-to-date on expectations and requirements. When necessary management is notified of any issues or concerns and is given recommendations to address those concerns. EPD staff also ensures that all goals and objectives are met and provides support to all divisions receiving any of the funds.

In FY2016 \$482,336 was secured in grants and \$1,030,090 in FY2017. Grants may include funding for equipment (typically for Enforcement Division) or programmatic grants. Programmatic grants in 2016 included funds for overtime to allow Enforcement agents to conduct additional inspections during certain times of the year across the state. Grants also included funds for Enforcement agents and auditors to travel for special events and training. Grant funding also supported the roll out and implementation of the new Retailers Education and Awareness Program and training of all auditors statewide about the program. The grant also covered continuing education for current Certified Fraud Examiners and the course and testing for 15 additional employees to become certified. EPD used the funds to support all educational programming and materials completed by the division for the state.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

The Education and Prevention Division's funding source was 4% of the general revenue appropriated to the Compliance Monitoring Strategy in FY2016.

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Education and Prevention receives some of the grant funding, but it is integrated with other divisions to create a more comprehensive approach to preventing violations to the Alcoholic Beverage Code and reduce unintended consequences of misuse of alcoholic beverages or sell/service of alcohol at the community level. This approach is supported by various research and reports primarily written by federal agencies such as the Department of Justice and the U.S. Department of Health and Human Services.

Educational programming initiatives are covered by grants from the National Highway Traffic Safety Administration (U.S. Department of Transportation) awarded by TxDOT in a competitive grant process. These funds allow TABC to print educational materials and promote educational messages statewide as well as conduct additional Enforcement operations and training of Enforcement personnel to promote public safety at the community level.

In FY2016 the Education and Prevention Division established a training committee of TCOLE-certified instructors to determine the critical problems to be addressed with law enforcement training. As a result the committee assisted in developing content for a series of videos specifically aimed at law enforcement officers on those issues. Approximately \$140,000.00 of the grant funding was used to contract with a local video production company to produce four videos that focus on breaches of the peace, after hours sales and service of alcohol, inspections of licensed locations, and DWI source investigations.

Approximately \$52,200.00 was used for educational toolkits for law enforcement, licensed retailers, and community members such as parents, educators, teens and young adults. The division has four Program Specialists that design and create toolkit materials. Materials created in FY2016 included the peace officer's guide and guide for investigation and report writing, booklets explaining laws about alcoholic beverages, and calendars and flyers with information about alcoholic beverage laws and drinking and driving. The toolkits also included online materials created by EPD and posted via Facebook and Twitter regarding alcoholic beverage laws, drinking and driving laws and how to file a complaint against a TABC-licensed location. The Division put toolkit materials on flash drives for distribution to law enforcement, licensed retailers and community members. As an addition to the toolkits, grant funding was used to purchase the I.D. Checking Guide to assist with verifying out-of-state identification.

Materials created in FY2017 included Super Bowl 2017 stickers for retailers; pocket notebooks for law enforcement; notebooks for high school students, retailers and college students; planners and calendars for educators and community members; and booklets for community members to be distributed by Ports of Entry staff.

Toolkit materials are distributed by approximately 250+ agents and 54 auditors across the state. Through a partnership with TxDOT over the FY2016-2017 alone, TABC has obtained approximately \$500,000 worth of printing for toolkit materials at no charge to TABC. TxDOT offers TABC-created materials to other entities such as TxDOT sub-grantees, TxDOT Transportation Safety Specialists and Regional Education Service Centers for distribution to their communities. For the biennium TxDOT has reproduced 528,462 educational pieces for distribution by TABC and 530,495 for distribution by other entities. This distribution network greatly increases TABC's ability to promote its educational campaigns without using valuable TABC resources.

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.

Although there are programs which assist in identifying the dangers of alcohol consumption at other state agencies and community organizations, TABC Education and Prevention Division is the only program which provides education specific to the Alcoholic Beverage Code. TABC is able to provide educational materials to all levels of the alcoholic beverage industry, specific training for retailers that sell and serve alcohol, community organizations, school, and law enforcement. This allows consistent messaging specific to the Code and restrictions specific to Texas.

EPD also regulates third-party schools which provide training to those who sell, serve or deliver alcohol. Although the message for responsible service is similar for most national programs, TABC-approved schools are required to use a curriculum written by TABC' the national programs do not include information specific to Texas. This distinction is critical since state law holds the person selling to a minor, intoxicated person or nonmember of a private club responsible. A violation is a Class A Misdemeanor which can include up to a year in jail and/or a \$4,000 fine. Special restrictions such as private clubs and other topics specific to Texas are covered as well.

EPD depends on Audit and Enforcement staff to train standardized materials that are only taught by TABC. EPD is responsible for updating the curriculum for these trainings and creating supporting materials to reinforce the messaging. Other divisions distribute materials, but all accessible materials are available to the public on TABC social media pages, the www.2young2drink.com website, TABC website, and through strategic partnerships.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

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Texas has various organizations that support specialized topics such as underage drinking prevention. TABC has established itself as a resource to receive materials related to laws specific to the topic area and for various audiences. Many organizations throughout the state request materials created by EPD to be printed with grant funds to be distributed at community events. This ensures that messaging related to underage drinking and other topics is specific to laws as written in the Code. These materials, which include printed items, videos, training materials, and curricula are available to anyone in Texas at no charge. This allows multiple organizations to distribute materials and share messaging related to Texas laws.

EPD also partners with other organizations with similar messaging to share information. This allows the partnership to include information related to alcohol in multiple presentations. Topics vary and can include multiple media to reach the desired audience.

J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.

The director of the division, as a condition of the TxDOT grant, represents TABC on the Impaired Driving Task Force. At TxDOT's request the EPD director is also part of the Impaired Driving Workgroup which has an emphasis on driving while intoxicated. The workgroup is composed of other state agencies, city governments, local law enforcement and community leaders to assist in writing the Texas Impaired Driving Plan that is submitted to the National Traffic Highway Safety Administration (NHTSA) each year to address traffic issues throughout the state. This plan supports Texas' efforts to reduce highway safety deaths through various strategies that are approved by NHTSA and impact federal funding awarded to the state. The EPD director and representatives from the Enforcement Division have provided testimony in hearings with NHTSA's review panel on TABC's efforts to reduce and prevent over service and underage drinking which contribute to highway crashes. TABC's Seller Server Training program, EPD's educational efforts, and Enforcement activities are highlighted in the Impaired Driving Plan submitted annually by TxDOT's Traffic Safety Section.

EPD staff are members of various coalition groups in the Austin area, including the Travis County Underage Drinking Prevention Program and TxDOT's Crossroad Coalition hosted by the Austin Regional Traffic Safety Division. Staff present at these events and assist in educational efforts where appropriate.

K. If contracted expenditures are made through this program please provide:

- a short summary of the general purpose of those contracts overall;
- the amount of those expenditures in fiscal year 2016;
- the number of contracts accounting for those expenditures;
- the method used to procure contracts
- top five contracts by dollar amount, including contractor and purpose;
- the methods used to ensure accountability for funding and performance; and
- a short description of any current contracting problems.

Not applicable.

L. Provide information on any grants awarded by the program.

None.

M. Are there any barriers or challenges that impede the program's performance, including any outdated or ineffective state laws? Explain.

The largest barrier to educational programming is that programs can only be planned for one year at a time. When the division was established, multiple-year grants were available but this is not an option for educational programming at this time. As a result, grants can only fund these programs on a year-by-year basis. This has had an impact on implementing programs that can establish baseline data and through a specific programming budget determine the effectiveness of the efforts in pilot locations.

N. Provide any additional information needed to gain a preliminary understanding of the program or function.

Seller Server Training data is stored using the Versa:Regulation; however, the system is not meeting all of the needs of the division nor end user.

Customer Service

Individuals can use the Public Inquiry system on the TABC website to determine if an individual has a seller server certificate. However, the Certificate Inquiry page is not compatible with mobile devices and the user receives an error message when trying to access the certificate. On a previous page, users are often confused because next to the Certificate Inquiry link is a login page. Even though text on the page makes it clear that an account is wholly unnecessary for seller server certificates, individuals often create an account. This always results in phone calls and emails to TABC but the unnecessary accounts take up space in the database, impacting costs and efficiency of the system.

Since 2011, approved schools are required to input information into the Versa:Regulation system on individuals who have met minimum standards for certification as outlined in Chapter 50 of the Rules. However, Versa:Regulation requires a school to access multiple pages in order to input the data. These courses can include up to 50 individuals and each individual requires multiple pages to secure the required information. The system is extremely slow and can take minutes to move to the next page once the individual entering the data hits the enter button. This delay causes the session to time out and forces the individual to start the process over.

Functionality

The database does not currently allow EPD staff to remove records as outlined in the agency's Records Retention Policy. This inability is not only a policy issue, but it increases storage costs and impacts efficiency. One concern for certificate holders is that it stores their personally identifiable information in a database, which is not required by statute or Rule.

Similar to other TABC functions, seller server trainers and program owners (schools) could apply and submit payment for original certification and renewal online. This would reduce paperwork, eliminate postage fees, increase efficiencies, reduce workloads, and minimize errors, benefitting both the agency and the applicants. EPD would no longer have to accept physical checks for fees. Workload is reduced for employee who scans paper applications into the Neubus system so auditors can view the records when conducting audits.

O. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Seller server certification is not mandated by the state, but having employees trained on alcoholic beverage laws is one of the criteria outlined for a permit holder to qualify for relief from administrative sanctions in the Code. The Seller Server Training Program ensures an appropriate curriculum is taught and minimum standards outlined in Chapter 50 of the Rules are met by trainers and schools. The seller server training program has written procedures in place related to regulating approved schools. EPD will also randomly select programs or attend courses in an open or undercover capacity to monitor for compliance. Information submitted by schools and trainers are reviewed on a regular basis. However, the primary source for confirming compliance or identifying issues are complaints. Based on the nature of the complaint, EPD will investigate and report to the Audit Unit and/or Enforcement division if additional assistance is needed. Complaints often result in the school receiving an audit by Audit Unit field staff to investigate records. If necessary auditors will attend the courses undercover to determine if reports of violations are valid. If a violation occurs, the school or trainer is issued a warning or penalty. A subsequent audit or additional scrutiny to ensure changes have been made is likely. If violations continue or are severe in nature, the agency may recommend closing the school for cause.

P. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices. Please include a brief description of the methodology supporting each measure.

See *Complaints Against License or Permit Holders* in the introduction to Section VII for an explanation on how the agency handles complaints against license and permit holders. Exhibit 29 follows the explanation and summarizes the complaints against license or permit holders received by TABC over the last two full fiscal years.



Fiscal Services and General Services

A. Name of Program or Function: Fiscal Services and General Services

Location/Division: /Business Services Division; Austin headquarters

Contact Name: Vanessa Mayo

Actual Expenditures, FY 2016: \$957,148.63 in Fiscal Services, \$545,914.43 in General Services

Number of Actual FTEs as of June 1, 2017: 14.5 in Fiscal Services, 6.5 in General Services

Statutory Citation for Program: Alcoholic Beverage Code, Sec. 5.10 for Fiscal Services and General Services; Sec. 5.101 for Fiscal Services

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Fiscal Services (FSD) program includes all financial functions in the agency: payroll, accounting, budget, time and leave, accounts payable, revenue, Centralized Accounting & Payroll/Personnel System (CAPPS) maintenance and travel reimbursement. FSD is responsible for completing the Legislative Appropriations Request (LAR), Annual Financial Report (AFR) and submitting fiscal note analysis. This program is also responsible for all financial and performance measure reporting. FSD manages the CAPPS deployment and maintenance for the agency.

The General Services (GSD) program is a support program including records retention, research and planning, purchasing, contract management, mail operations, asset management and office space leasing. Research and planning is responsible for assisting all agency management with trend and market analysis along with completing the Non-Financial Annual Report (NFAR). GSD is also responsible for the agency's Historical Underutilized Business (HUB) program and reporting.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program. Also please provide a short description of the methodology behind each statistic or performance measure.

As support programs, neither FSD nor GSD have performance measures. Effectiveness is measured by the accuracy and timeliness of external report submission to oversight agencies such as the LBB, CPA and SAO. Examples include the LAR, AFR, performance measure reporting, contract reporting and other miscellaneous required budget and expenditure

Self-Evaluation Report

reporting. Effectiveness is also measured by audits conducted on these programs by oversight agencies or the internal auditor.

In FY2017, the State Auditor's Office conducted an audit on the agency's financial processes. This audit included areas such as revenue, payroll actions, asset management, accounts payable, travel reimbursement and information technology controls. No major findings were noted.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

None.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

As support programs, all TABC employees are affected by these programs. Vendors, contractors and landlords doing business with TABC are also serviced through FSD and GSD. Most oversight agencies, LBB, CPA and SAO, do business solely with FSD and GSD.

F. Describe how your program or function is administered, including a description of the processes involved in the program or function. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.

The Business Services Division administers financial functions in accordance with State Comptroller policies and guidelines, the Texas Government Code and Texas Administrative Rules. Additionally, the Division completes Legislative Budget Board, Comptroller and State Office of Risk Management reporting in accordance to the General Appropriations Act Article IX and instructions provided by the respective entities.

Business Services performed a variety of financial activities for fiscal year 2016 in support of agency programs:

- Processed 45 agency payrolls, which included processing 1,767 internal personnel action forms.
- Processed 9,722 payment vouchers, totaling \$23,062,344.19.
- Processed 3,050 travel vouchers, totaling \$869,355.24.
- Issued 1,459 purchase orders.
- Managed and inventoried 2,982 reportable assets.
- Processed 64,762 check deposits.
- Received and distributed 115,426 mail pieces for the agency.

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TABC is unique in that the agency generates revenue for the State of Texas, which totaled \$306,266,318 for fiscal year 2016. This revenue processing is completed by the Revenue Team within the Business Services Division and supports the revenue functions of several TABC divisions, including Licensing, Tax and Marketing Practices, and Ports of Entry. Revenue processed by Business Services for fiscal year 2016 was:

- 3,430 Electronic Fund Transfers (EFT), totaling \$210,709,764
- 64,762 deposits, totaling \$80,589,747.01
- 12,507 online transactions, totaling \$14,314,807.99
- \$652,000 in credit card revenue from Ports of Entry transactions

An additional operation unique to the agency is the Replicon Timekeeping system. This automated timesheet system was granted approval by the State Comptroller as a timesheet recordkeeping system until the CAPPs HR system could be implemented for the agency. This cloud web-based system is supported by an outside vendor and administered by Business Services and Innovation and Technology Division personnel. The system uploads leave balances into the Comptroller Uniform Statewide Payroll System (USPS) and is configured to support the special overtime calculation of the agency's Salary Schedule C employees (commissioned peace officers), in addition to the 24 hour schedule of Enforcement agents and Ports of Entry personnel. All agency staff, including field staff, utilize this automated timekeeping system.

Business Services has also transitioned to a Comptroller Reporting Agency with the launch of the Comptroller Centralized Payment Personnel System (CAPPs) Financials at the beginning of FY2017. Effective FY2017, agency financial transactions are now interfaced daily to the Uniform Statewide Accounting System (USAS) and agency budget is tracked within the CAPPs system, in addition to all purchase requisitions and approvals, purchasing and payment processing. All agency staff who performs purchasing requests and approvals, including field staff, utilizes the CAPPs Financials system.

Lastly, all travel requests for agency employees, including field staff, are processed within the Lotus Notes Travel Database. This database captures all necessary approvals for employee travel requests and travel reimbursements. This database is supported by the Innovation and Technology Division and interfaces daily to the CAPPs Financials database. Once approved within the system by an employee supervisor, required management, and Business Services staff, employee travel reimbursements are interfaced and processed for payment by Business Services Accounts Payable staff.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

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The Fiscal Services Division funding source was 34% of the general revenue appropriated to the Central Administration Strategy in FY2016. Included in the Fiscal Services Division funding, CAPPs was appropriated in GAA Rider Article IX, §18.03(b) in the amount of \$105,967.00.

The General Services Division was appropriated \$571,051.00 in general revenue for FY2016. In addition, a small portion of funding was designated as appropriated receipts which was from payments for publications.

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.

FSD currently handles time and leave accounting and payroll for all employees. The agency's Human Resources division handles FMLA, workers' compensation and all personnel actions. These separate but codependent processes are similar and reside in both program areas.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Currently FSD's payroll officer and budget analyst work closely with HR staff to ensure payroll deadlines are met. The payroll officer is also the agency's timekeeper working closely with the agency's benefits coordinator on FMLA, workers' compensation and sick pool donations. Without effective communication between these employees, work and effort may be duplicated in both programs. The agency may benefit from combining these processes into one division.

J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.

Not applicable.

K. If contracted expenditures are made through this program please provide:

- a short summary of the general purpose of those contracts overall;
- the amount of those expenditures in fiscal year 2016;
- the number of contracts accounting for those expenditures;
- the method used to procure contracts
- top five contracts by dollar amount, including contractor and purpose;
- the methods used to ensure accountability for funding and performance; and
- a short description of any current contracting problems.

Not applicable.

L. Provide information on any grants awarded by the program.

None.

M. Are there any barriers or challenges that impede the program's performance, including any outdated or ineffective state laws? Explain.

Restrictions placed on TABC as a result of capital budget limitations inhibit the agency from utilizing funds received through grants, federal funds or gifts without seeking approval from the Legislative Budget Board and the Governor's Office. This approval can be challenging to obtain in a timely manner. For example, in FY2012, the agency received \$500,000 in federal grant funding to purchase radios for the agency's commissioned peace officers. Approval to exceed capital authority was not received and the funding had to be returned.

N. Provide any additional information needed to gain a preliminary understanding of the program or function.

None.

O. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- why the regulation is needed;
- the scope of, and procedures for, inspections or audits of regulated entities;
- follow-up activities conducted when non-compliance is identified;
- sanctions available to the agency to ensure compliance; and
- procedures for handling consumer/public complaints against regulated entities.

Not applicable.

P. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices. Please include a brief description of the methodology supporting each measure.

Not applicable.



Information Technology

A. Name of Program or Function: Information Technology

Location/Division: Innovation and Technology Division (ITD); Austin headquarters

Contact Name: Jay Webster

Actual Expenditures, FY 2016: \$2,538,885.16

Number of Actual FTEs as of June 1, 2017: 19

Statutory Citation for Program: n/a

B. What is the objective of this program or function? Describe the major activities performed under this program.

TABC operates an information technology infrastructure to directly support its mission. This function supports the baseline operations of the agency and includes the installation, configuration, operation, maintenance, and management of computer hardware, operating systems, applications software, voice networks, network security, and voice/data networks. The Innovation and Technology Division is responsible for developing and maintaining the core technology applications for the agency, which includes licensing, enforcement, compliance, legal, tax, and business services. In addition, the agency supports multiple client/server, internet, and e-mail applications made available over a Wide Area Network (WAN). TABC maintains the network connectivity and security for about 85 field offices throughout the Texas, including; TCP/IP based WAN, Virtual Private Network, DSL, cable modem, mobile routers, wireless LAN, and mobile hotspots. Lastly, ITD maintains multiple public- and industry-facing systems such as online renewal transactions, Public Inquiry, and TABC:Mobile.

TABC contracts with the Texas Department of Information Resources (DIR) for consolidated data center services including service-level management, service desk support, project management, IT security, business continuity, disaster recovery and financial management.

ITD also maintains a **Project Management Office (PMO)** whose purpose is to:

- Manage the project governance process (project prioritization).
- Provide monthly status to the executive team on all priority projects.
- Manage all ITD projects.
- Provide project management support to non-ITD projects.
- Manage the enterprise, agency-wide project portfolio including change requests.
- Maintain TABC's project management standards, methods, tools, and policies.
- Advance TABC's project management maturity through repeatable processes and mentorship.

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ITD also maintains a cybersecurity function to protect confidential data including personally identifiable information, criminal violation history, legal data, corporate data (including ownership and revenue), sales data, and the like. Statutorily TABC is the custodian of this data and must prevent unauthorized access, unauthorized intrusion, and unauthorized use. Without the existence of this function, TABC's risk exposure to cybersecurity threats increases significantly.

Security and privacy programs are not investments resulting in payback or measurable benefit. Rather, they are tools to prevent and mitigate risks resulting from cybersecurity threats. In short, failure to adequately protect information and technology assets places the state at risk of unauthorized use or unintentional disclosure of private data. The number, types, and complexity of cybersecurity threats are increasing at a rate at which most state agencies are unable to adapt. Unfortunately, state agencies must advance their IT Security Programs to simply keep pace with advances in cybersecurity threats, much less get ahead of those threats to remove the risk entirely.

The consequence of not pursuing these projects is a greater likelihood of unauthorized use, unauthorized intrusion, and/or unauthorized disclosure of state information and technology, or malicious intent to disrupt agency business.

ITD, as the custodian of TABC's information system, supports public information requests. ITD often electronically scans TABC's databases, storage networks, and email (correspondence). The results of the electronic scans accompany manual searches to make sure responses to public information requests are comprehensive and accurate. ITD performs similar scans upon request of the General Counsel as part of the discovery process in legal suits.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program. Also please provide a short description of the methodology behind each statistic or performance measure.

Exhibit 72 is an example of the metrics ITD provides to TABC leadership on a monthly basis. ITD developed these key metrics and began reporting them in 2015 to strengthen the Division's visibility into its priorities.

Services: Following Information Technology Infrastructure Library (ITIL) standards, the Information Resources Services represents the services that in the ITD Service Catalog (available services for use by TABC employees and other constituents). The categories are: Level 1 End-User Support; Email, Messaging, Conferencing; Voice; Desktop Support; Access Management; Application Development & Support; Data Management; Security & Risk Management; Infrastructure; Project Management Office; Public-Facing Services; Audio/Visual; Printing & Copying; IT Service Management; and Other.

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Network: This metric shows the average network availability during a given month. Many factors contribute to this metric, but the most common are circuit outages (which is the responsibility of the carrier) and router/switch failures (which ITD prevents and repairs as necessary). ITD manages the local area networks (LAN) for each of the 85 TABC locations as well as the wide area network (WAN) across those 85 locations.

Help Desk Tickets: ITD tracks the requests for support using a ticketing system (Zendesk). ITD tracks each ticket through to completion. ITD leadership, through measurement of the ticket load, monitors the backlog, help desk coverage, and effectiveness of the IT support.

Enterprise Software: ITD manages or oversees 29 information systems and hundreds of technologies to make those information systems operate as intended. Of those information systems, four are considered mission-critical: ARTS, CrisNET, Versa (both Versa:Regulation and Versa:Online), and Neubus. If these systems are unavailable, the agency is disrupted in its mission.

Projects: The Project Management Office is responsible for providing project management expertise to projects, both in the form of qualified Project Managers and through effective management of the agency's Governance Process. Though not all projects are technology-related, ITD is responsible for reporting non-technology processes and establishing the priorities of all agency projects. The Governance Committee meets on a monthly basis to approve/deny/defer project requests, formally close completed projects, and re-prioritize active projects. The PMO maintains the portfolio of projects, including pending projects (projects that have been solutioned and estimated) and horizon projects (projects still in the conceptual phase that have not yet been solutioned or estimated).

Security: The Information Security Officer is required to report these specific metrics to the Department of Information Resources on a monthly basis. These metrics provide insight into the malicious attempts to infiltrate TABC's networks and information systems – and, therefore; the attempts that have been disallowed.

Exhibit 72: Metrics for ITD Priorities

	July 2016	August 2016	Sept 2016	Goal
Information Resources Services				
Service Categories	15	15	15	-----
Total Services	131	131	131	-----
Network				
Average Network Availability	97.20	97.19	98.75	98.90%
Help Desk Tickets				
Tickets Resolved	888	967	770	-----
Average Open Tickets (Backlog)	235	275	313	150
Urgent Tickets Unassigned within 1 hr.	0	0	0	0
Urgent Tickets Unresolved within 48 hrs.	0	0	0	0
Enterprise Software				
Number of Information Systems	29	29	29	-----
Number of Mission-Critical Info Systems	4	4	4	-----
Number of Software Failures	0	0	0	0
Number of Software Defects	0	0	0	0
Projects				
Number of Active Projects	28	27	29	-----
Number of Pending Projects	34	47	46	-----
Number of Horizon Projects	63	63	68	-----
Security				
Blocked Connections	482,422	519,498	1,032,729	-----
Blocked Spam	12,678	13,629	13,543	-----
Quarantined Spam	68,209	65,197	66,763	-----
Viruses	1,274	1,403	3,169	-----
Allowed E-mail (incl. outbound email)	171,284	226,367	172,647	-----
SPX Encrypted	94	97	125	-----
Blocked by Web Filter	7	26	8	-----
Blocked by Anti-Virus Software	1	4	1	-----
Blocked by IP Security	11	N/A	N/A	-----
Blocked by Office365	1	11	4	-----

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

In June 2005, the agency converted from the mainframe through the implementation of LicenseEase for licensing, enforcement and compliance functions. In 2006 TABC launched the Public Inquiry system available on the agency's website. This system enables users to make inquiries and run reports regarding TABC-issued permits by several methods. Public Inquiry marked the point at which ITD began providing technology services to constituents beyond agency employees i.e., the public and the alcoholic beverage industry.

In recent years ITD has improved its maturity with the implementation of the Project Management Office, creating the Assistant Director position, following ITIL practices, formalizing the Information Security Officer position, and establishing formal imperatives and priorities. ITD has also strengthened its processes to comply with the Data Center Services program, DIR oversight, and

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industry standards. In 2017 the agency changed the title of the division from the Information Resources Division to the Innovation and Technology Division to reflect the division's contribution through continuous improvement and the application of technology.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

ITD's activities affect all TABC employees as well as TABC permit holders on behalf of TABC programs. First, ITD supports the approximately 650 employees of the agency through the provision and support of end-user technologies and systems. Second, ITD provides 13 technology services directly to the public and the alcoholic beverage industry, including:

- Inquiry Systems: TABC.texas.gov website; Public Inquiry; Delinquent List; Approved Labels/Products Inquiry
- Mobile App: TABC:Mobile (including public inquiry and ability to submit complaints)
- Transaction Systems: Online renewals for all permit types; online original applications for four permit types (A, BK, T, & DK); online ordering of Seller Server Certificates; online label approvals; online Identification Stamp ordering; and NeoGov applicant tracking
- Constituent Reporting: Online submission of complaints against permit holders, TABC personnel, and seller server schools; and breaches of peace
- Education: 2Young2Drink.com and Legal2drink.com education websites; Licensing topic files
- Public Wi-Fi available at headquarters and regional offices

F. Describe how your program or function is administered, including a description of the processes involved in the program or function. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.

The program is administered through the deployment of information technology equipment, applications, and services throughout the organization. ITD has 21 full-time equivalent employees:

- One Director directly supervises six employees: Assistant Director, PMO Team Lead, two Project Managers, Information Security Officer and Administrative Assistant. The Director also serves as the Information Resources Manager, a formal designation required by the Texas Department of Information Resources.
- One Assistant Director supervises 14 employees: seven individuals on the Applications Team and seven individuals on the Operations Team. Both teams have a Team Lead.
- The Information Security Officer and Administrative Assistant have no direct reports.
- The Team Leads have responsibility to set priorities and guidance for their teams, but do not have formal supervisory responsibility.

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All ITD employees are located at headquarters in Austin; however, staff occasionally travel to field offices to deploy end-user technologies, resolve voice communication issues, and upgrade or repair networking equipment.

Help Desk

The ITD Help Desk is available in-person Monday to Friday 7am to 6pm. The ITD Help Desk is available on-call 24x7x365. Calls are returned within one hour on evenings, weekends and holidays. On-call personnel have authority to contact any and all ITD staff to assist with the resolution of a technical issue, especially if it is time-sensitive. On-call responsibility is rotated among the seven staff on the Operations Team.

Help Tickets can be created through a simple email to itdhelpdesk@tabc.texas.gov, a telephone call to 512-206-3450 (an unanswered telephone call will automatically create a ticket and forward the call to the on-call person), or in-person in Suite 120 at Headquarters.

Project Management Office

The PMO maintains TABC's Project Governance Process, sets Project Management standards, and often directly manages projects.

- Project Portfolio Management (Governance) – Reporting on active and pending projects to the Executive team for strategic decisions on what projects to begin, continue, defer, or cancel.
- Project Management – Initiating, Planning, Executing, Controlling and Closing individual projects and demonstrating successful outcomes through effective planning and control of scope, quality, effort, budget, risk and schedule. A qualified project manager should be assigned to all significant projects.
- Project Management Oversight – Selecting or acquiring appropriate personnel to manage projects, ensuring projects comply with the established standards and methodology, rescuing projects in jeopardy, and providing tools to assist Project Managers.
- Standards and Methodology – Developing, maintaining and enforcing consistent processes and tools (e.g., templates), performance metrics and measuring techniques leading to successful project completion. TABC uses the Texas Project Delivery Framework and companion methodologies. However, the Framework is often customized based on the size of the project.
- Project Documentation – Maintain a central repository for project artifacts and archives, including deliverables, work plans, status reports, change requests, and lessons learned. Encourage reuse of project management knowledge, experiences and best practices.

Application Development and Maintenance

The Applications Team is responsible for the software assets of the agency (as opposed to the infrastructure assets managed by the Operations Team). The Applications Team has previously developed software; however, with the advent of sophisticated software engineering and the need to implement advanced security protections, application development has become a practice too advanced for TABC staff. In recent years, TABC has acquired turnkey or Software-as-a-Service solutions.

The Applications Team continues to manage, support, configure, test, integrate, and deploy software upgrades and patches, often working with third-party vendors. The Applications Team also validates software for compliance with State of Texas Electronic and Information Resources (EIR) Accessibility, as defined in the Texas Administrative Codes 1 TAC 206 and 1 TAC 213 and ADA 508 Compliance Standards.

Directors

The Director and Assistant Director oversee the daily operations of the division through budget management, asset management and employee supervision. They ensure reporting to and compliance with DIR, approve requisitions and invoices, and develop the Technology Roadmap which becomes part of the agency Strategic Plan.

The directors have established the priorities for ITD:

- ITD Imperatives
 - Protect the environment (security, outages, & data)
 - Provide good customer service
 - Improve agency efficiency through automation
- ITD Priorities
 - Break-Fix – reactive maintenance (tickets, outages)
 - Maintain – preventive maintenance (Tickets, Upgrades)
 - Projects – as defined by the Governance process
 - Process Improvement - documentation and cross-training
 - Celebrate successes

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

The Innovation and Technology Division was appropriated \$2,692,635.00 in general revenue for FY2016.

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.

Information technology is a support function each agency operates. While the function may be duplicative of other state agencies, the functions supported by ITD have specific technologies to support their functions. ITD supports a unique array of law enforcement, licensing, regulatory, tax collection, and other functions specific to TABC's day-to-day operations.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

ITD ensures against duplication with other related agencies by exploiting functions provided by other agencies where available and appropriate:

- Cooperative contracts through DIR
- Data Center Services through DIR
- Online tax collection through the Comptroller's Office
- Online permit renewal through the Texas.gov arrangement
- Payment processing services through a cooperative contract operated by the Comptroller's Office
- Centralized Accounting and Payroll/Personnel System (CAPPS) through the Comptroller's Office

J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.

Not applicable.

K. If contracted expenditures are made through this program please provide:

- a short summary of the general purpose of those contracts overall;
- the amount of those expenditures in fiscal year 2016;
- the number of contracts accounting for those expenditures;
- the method used to procure contracts
- top five contracts by dollar amount, including contractor and purpose;
- the methods used to ensure accountability for funding and performance; and
- a short description of any current contracting problems.

Five contracts procured through ITD totaled \$841,119.97 for FY2016 via pre-established contracts at the Department of Information Resources (DIR). TABC took advantage of such contracts for the portion of the statewide Data Center Services contract with primary vendors, ATOS and CapGemini, totaling \$542,235.28. TABC contracted with Iron Data Solutions LLC. for

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\$161,497.79 for the annual software maintenance and licensing fees for the agency's regulatory licensing system (Versa:Regulation and Versa:Online). Another contract was with Presidio Networked Solutions for annual hardware/software maintenance on the enterprise network equipment of routers, switches, and firewalls for \$55,873.00. ITD utilized Teksystems Inc. for various consulting work under the DIR ITSAC contract vehicle for assistance with SharePoint development, Microsoft Deployment Tool kit (MDT) consulting and engineering, and Microsoft's Software Center Configuration Manager (SCCM) consulting and engineering for image management for \$53,987.50. Finally, contracted with SHI Government Solutions Inc. for \$27,526.40 in acquiring the annual software maintenance of the agency's Microsoft Enterprise Agreement of products such as Sharepoint, Office Professional Suite, and Windows OS.

The agency uses multiple methods to ensure accountability for funding and performance. First, TABC has a formal Project Governance program to review, approve, defer, cancel, change and close projects, including funding for those projects. Second, all TABC technology projects follow the Project Delivery Framework methodology defined by DIR. Third, multiple procedural and financial controls are in place to review and approve funding, including the CAPPS requisition process, routine budget management and control, formal authorization by agency executives, and competitive acquisitions where applicable. Finally, TABC has undergone multiple internal and state audits in recent years to validate the controls in place. There have been no significant deficiencies and all recommendations have been implemented. Since the agency exclusively uses statewide cooperative contracts administered by DIR, TABC experiences very few contracting problems.

L. Provide information on any grants awarded by the program.

None.

M. Are there any barriers or challenges that impede the program's performance, including any outdated or ineffective state laws? Explain.

Available funding is the primary barrier to implementing technology that optimizes employee productivity. The agency has identified several technology initiatives that would improve service directly to permit holders and to all Texans, but is able to do little beyond maintaining the status quo.

For example, TABC has determined that the productivity of field personnel could improve up to 15 percent with the implementation of a centralized, modern, mobile Case Management System. Also, a 2013 statewide review of agency information security practices resulted in 28 recommendations to strengthen TABC's information security maturity. Requests for both of these initiatives were rejected by the Texas Legislature.

N. Provide any additional information needed to gain a preliminary understanding of the program.

During FY2015, internal auditor Monday Rufus & CO., P.C. conducted an internal audit of the Information Technology System Development function (**Report No: TABC 015-003**). The objectives were to determine compliance with policies, procedures, laws, and regulations; safeguarding of assets; and efficiency and effectiveness of operating procedures. There were four findings, all of which have been fully implemented.

- Finding #1: Ensure TABC Consistently Follow Project Charter Guidelines for its Information Technology projects.
- Finding #2: Strengthen the System Development Process.
- Finding #3: Establish a Process that Supports Documenting All Information Technology Training and Lessons Learned.
- Finding #4: Establish Policies and Procedures for Tailoring Projects.

During FY2016, the same internal auditor conducted an internal audit of the Information Systems – Security function (**Report No. TABC-016-003**). The objectives were the same as the audit mentioned previously. There were two findings, both of which have been fully implemented.

- Finding #1: Ensure TABC Complies with the Information Security Standards.
- Finding #2: Design and Implement Periodic Review of User Access to Agency Systems.

O. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not applicable.

P. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices. Please include a brief description of the methodology supporting each measure.

Not applicable.



Office of General Counsel

A. Name of Program or Function: Office of General Counsel

Location/Division: Office of General Counsel; Austin headquarters

Contact Name: Julie Allen, Interim General Counsel

Actual Expenditures, FY 2016: \$438,262.69

Number of Actual FTEs as of June 1, 2017: 3

Statutory Citation for Program: Alcoholic Beverage Code §5.10(a)

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Office of General Counsel (OGC) contributes to the commission's objectives through legal opinions and advice that is consistent and fair with regard to state law and specifically with regard to the alcoholic beverage industry and employees. OGC supports transparency to its constituents and agency employees by advising on the standards of the Open Meetings Act, Administrative Procedures Act, Public Information Act, agency policy, and state and federal statutes.

Major Activities

1) Processes and provides information pursuant to the Public Information Act (PIA) and responds to subpoenas for agency information. This process involves locating potentially responsive records and then determining if a request for an Attorney General's opinion is needed to be submitted to the Open Records Division of the Office of the Attorney General (OAG). Depending on the scope of the original information request, a request for an opinion can be straightforward or take several hours or days to research and write. In addition, possible responsive records have to be reviewed by an attorney for compliance with confidentiality statutes and/or the OAG opinion and redacted if necessary prior to release. Each request is tracked and eventually closed upon final release of all responsive, disclosable, public information. Subpoenas also vary in complexity. Some are resolved with an agreement; others require an Assistant Attorney General (Asst. Atty. Gen.) to file a Motion For a Protective Order requesting the court for permission to keep confidential information from release or a Motion to Quash improperly issued subpoenas.

2) Represents the commission as prosecution in contested administrative hearings for the Marketing Investigations Unit (MIU) and Field Operations (Enforcement, Audit & Investigations, and Ports of Entry divisions).

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- The Marketing Investigations Unit (MIU) is assigned a staff attorney (an Attorney III position of which 50% of the FTE is dedicated to prosecution of violations submitted by the Marketing Investigation Unit (MIU) and 50% of the FTE is dedicated to working on litigation or complex legal issues involving the PIA) to advise the MIU auditors on the legal aspects of their investigation. Also, if the case goes to hearing before the State Office of Administrative Hearings (SOAH), the MIU staff attorney will assist in prosecuting the case before an Administrative Law Judge (ALJ). One staff attorney was assigned to be MIU's staff attorney for consistency because the MIU investigates complaints related to prohibited relationships between the three tiers of the alcoholic beverage industry. These investigations are complex in nature; involve voluminous amounts of financial records that must be obtained, reviewed and interpreted; and often take months, if not years, to complete.
- The Legal Services Division under the OGC engages in the prosecution of contested administrative cases submitted by Field Operations before SOAH and advises TABC Enforcement agents on the legal aspects of their investigations.

3) Reviews and proposes rules to the commission pursuant to statutory authority and the Texas Administrative Procedure Act (APA) and ensures adoption of rules pursuant to the APA. The Rules give notice to the public concerning how the commission implements its statutory authority pursuant to the Alcoholic Beverage Code. The rulemaking process also allows the OGC opportunities to meet with industry members and other stakeholders to receive comments, resolve issues, and engage in open dialogue on potential rules under consideration by the commission. The process--with its stakeholder meetings, public hearing, and review and approval by the commissioners--provides not only opportunities for the commission to give insight concerning the commission's expectations for compliance but also, in return, receive insight from external stakeholders (e.g., industry members, professional organizations and industry members and other state regulators, consumers, etc.). Once an agency rule is adopted by the commission, published in the *Texas Register*, and becomes final, it is then posted on the agency's website.

4) Drafts Orders as directed by the Executive Director or designee based on Proposals For Decisions (PFD) issued by ALJs, pursuant to Alcoholic Beverage Code § 5.43, and processes the delivery of the Orders. This process is time consuming as it requires the assigned staff attorney to review the SOAH record to ensure the record reflects the text of the PFD and justifies any order signed by the Executive Director or designee. Issues that arise in the review process occur when the law is not properly applied to the facts or there is no evidence of a finding of fact or other procedural issues that require the matter to be remanded to the ALJ for further deliberation. This process also involves reviewing with and advising the Executive Director or designee on Motions for Rehearing and drafting the appropriate order based on the substance of the Motion.

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5) Serves as liaison to the Office of the Attorney General by coordinating the prosecution or defense of civil lawsuits filed against TABC in State and Federal court. This is a constant process and requires a good working relationship with the Asst. Atty. Gen. assigned to a particular case. This function requires coordination with other departments on the subject of the lawsuit to:

- find and provide, pursuant to discovery requests, responsive information and documents;
- determine who should testify about relevant issues in the lawsuit;
- work with agency staff to prepare them for deposition and ensure they sign errata sheets if necessary; and
- support the OAG with statutory and agency rule interpretations to ensure litigation objectives are consistent with legal precedence and in alignment with agency goals.

6) Liaises with the OAG when the OAG is representing the agency in Open Records litigation. With regard to open records litigation, there are four pending PIA lawsuits at various stages in the litigation process:

- one is anticipated to be dismissed after additional filings with the court;
- one is pending a Petition For Review to the Texas Supreme Court from a decision by the 3rd Court of Appeals sustaining TABC's Plea to the Jurisdiction;
- one is in state court pending various motions; and
- the fourth one is pending with no action taken on it by either party.

7) Reviews legal form of all agency contracts and legal agreements for goods and services (e.g., lease agreements, master service agreements, software licensing agreements, interagency memoranda of understanding, etc.) to ensure compliance with state law, and otherwise support the Business Services Division (BSD) with legal issues related to state procurement.

8) Provides legal support to the agency's records management program to ensure records retention and destruction occur in compliance with laws of the state and rules of the Texas State Library and Archives Commission (TSLAC).

9) Advises on the development of internal agency policies and guidelines to ensure consistency with state and federal laws.

10) In coordination with the Human Resources Division, reviews and/or responds to charges filed by employees through the Equal Employment Opportunity Commission (EEOC) or Texas Human Rights Commission (THRC) and represents the TABC in contested unemployment phone hearings before the Texas Workforce Commission;

11) Advises on employee disciplinary matters and reviews all major disciplinary actions.

12) Reviews bills and responds to inquiries from legislators and legislative agencies.

13) Provides general and specific legal opinions and gives advice concerning provisions of the Code or Rules and any other legal issues that arise from the operations of a major state agency and an agency that employs commissioned peace officers.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program. Also please provide a short description of the methodology behind each statistic or performance measure.

Key statistics for each function:

- **Litigation:** From FY2016 through July 2017, there were 13 lawsuits supported by the OGC in coordination with the Office of the Attorney General. *See also, General Counsel's Update to the Commissioners, May 2017 and July 2017.*
- **Public Information Unit (PIU):** During FY2016, the PIU processed a total of 909 requests for information, of which approximately 63 involved submitting a request for an opinion from the OAG – Open Records Division concerning requested agency records. For FY2017 (through June 30, 2017), the PIU processed a total of 807 requests for information, of which approximately 64 involved submitting a request for an opinion from the OAG – Open Records Division.
- The PIU maintains a Microsoft Access database to track and categorize requests and subpoenas. Based on FY2016 and FY2017 (through June 30), the PIU is processing an average of approximately 97 PIA requests and six subpoenas per month. In addition there are two full-time staff attorneys that do nothing but process PIA requests made from one requestor which has resulted in the release of more than 111,000 pages of public information in the last two years.
- The total number of requests does not reflect the broad or comprehensive scope of particular requests or the voluminous production of records that are responsive to particular requests. Beginning January 2017, the PIU began designating a complexity level (Level of Complexity or “LOC”) and capturing approximate page or item counts produced to the public to attempt to capture additional performance statistics; however, these statistics do not capture all of the statutorily required actions or administrative tasking that cannot be charged to the public.
- **Proposals for Decision (PFDs):** A total of 37 PFDs were reviewed and required Orders were drafted by the OGC during FY2016, and 30 for FY2017 (through June 30, 2017).
- **Motions For Rehearing:** A total of 11 motions for rehearing were reviewed and required Orders were drafted by OGC during FY2016, and 7 for FY2017 (through June 30, 2017).
- **Personnel Matters:** The agency has only one lawsuit involving a personnel matter. It was filed in FY2016 and involves a failure to promote based on age discrimination and is pending in Travis County State District Court. There were approximately 13 legal reviews of discipline for HR during FY2016 and for FY2017 (through June 2017).

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- In FY2016, all EEOC complaints filed by TABC employees were issued a Dismissal and Notice of Rights letter. The OGC reviewed approximately 5 EEOC complaints where a response was required by the agency.
- **Internal Investigations:** The OGC has reviewed for legal sufficiency approximately 43 Office of Professional Responsibility investigations during FY2016 and for FY2017 through June 2017.
- **Rulemaking:** The OGC is responsible for ensuring that Rules are properly submitted to the *Texas Register*. In FY2016 TABC published in the *Texas Register* for **proposal** 33 rules, and 14 rules were published for **proposal** in FY2017 through June 2017. The OGC published in the *Texas Register* for **adoption** 26 rules in FY2016 and 19 rules for **adoption** in FY2017. The OGC published in the *Texas Register* for **review with no changes** three rules in FY2016, and five rules for FY2017.
- **Litigation:** TABC has 12 lawsuits open or pending during FY2016 and FY2017 through June 30, 2017. Each lawsuit requires extensive review of voluminous litigation-related court filings, records submitted for discovery, and coordination with the assistant attorneys general handling the cases and witnesses.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

The Public Information Unit (PIU) of the OGC responds to all requests for information subject to the Public Information Act (PIA). Up until 2015 the PIU was one full-time paralegal. The creation and expansion of the PIU resulted from an increase between 2015 and 2016 in the complexity of the requests, the volume of documents requested, the volume of documents that had to be reviewed for responsiveness and disclosure/redactions, and related open records litigation that ensued. The OGC added an Assistant General Counsel who supervises the PIU in addition to general legal support, and reports directly to the GC. The PIU also added an attorney to serve as the Public Information Coordinator (PIC), a legal secretary to support the PIC, and two additional staff attorneys (one permanent, one temporary) who work exclusively on document review in response to information requests made by a single requestor.

The OGC also shares with the Legal Services Division an Attorney III position (MIU/PIA Attorney), of which 50% of the FTE is dedicated to prosecution of violations submitted by the Marketing Investigations Unit (MIU) and 50% of the FTE is dedicated to working on litigation or complex legal issues involving the PIA. With regard to the MIU, the unit was created in 2015 and is a specialized unit dealing with complex audit and marketing issues within Field Operations. MIU cases involve a variety of complex marketing practice violations related to prohibited relationships within the three tier system of the alcoholic beverage industry. With regard to PIA issues or litigation, it involves contesting costs notices or the agency's appeal of an open records decision issued by the OAG – Open Records Division, or litigation filed against the agency under § 551.321 of the PIA.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The OGC affects all TABC divisions and employees and provides advice and counsel to the commissioners, executive management staff, and all TABC employees.

F. Describe how your program or function is administered, including a description of the processes involved in the program or function. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.

The GC is directly responsible for managing litigation against the agency and is TABC's liaison with the Assistant Attorneys General/Assistant Solicitor General that represent the agency. This involves the initial request to the OAG for representation, working with the Asst. Atty. Gen. on discovery requests and trial preparation (witnesses, documents, response to interim rulings by the court), reviewing information, attending trials, and reviewing trial-related legal filings.

The GC also reviews contracts and leases; advises on personnel matters, policy initiatives, internal investigations, and complaints against the agency; gives legal advice and opinions to other divisions; is responsible to the commissioners on legal matters; meets regularly with outside industry members and their attorneys on regulatory issues; and responds daily to inquiries or issues from employees and the public. *See also* Item B above.

Furthermore, the GC directly supervises and oversees the following:

- The General Counsel (GC) oversees the Legal Services Division through the direct supervision of the Deputy General Counsel who is the immediate supervisor of six Staff Attorneys, two paralegals, and two legal secretaries. The Legal Services Division is responsible for all contested administrative cases and considered the Legal enforcement arm of the OGC.
- The GC oversees the Public Information Unit (PIU) through the direct supervision of an Assistant General Counsel who is the immediate supervisor of the Public Information Coordinator, a Legal Secretary, and two full-time Staff Attorneys (one permanent; one temporary) who do nothing but document review in response to public information requests from a single requestor. The PIU is responsible for all requests for public information and subpoenas for agency records. This Assistant GC also serves to support the recertification of the agency's records management program as required by law, which requires that the TABC's current Records Retention Schedule is updated to reflect required changes in the State Agency Records Retention Schedule disseminated by the Texas State Library and Archives Commission (TSLAC), while reviewing and approving retention schedules for records unique to the TABC. This Assistant GC also previews

legal contracts and agreements, policies, and otherwise provides secondary support as deputy general counsel for administrative duties unrelated to Legal enforcement.

- The GC oversees and is the direct supervisor of an executive assistant who is also a paralegal for all of the OGC staff.
- The GC directly supervises a second Assistant General Counsel responsible for the agency's rules that are finalized in the Texas Administrative Code, published in the *Texas Register*, and for Orders and final decisions issued by the Executive Director or designee in contested cases. This Assistant GC is a member of the Rules Committee, which includes key directors and supervisors. The Rules Committee meets twice a month to consider possible rules and amendments. The commission has been engaged in a multi-year effort to review of all of the agency's rules under Government Code §2001.039, which requires an agency to review each of its rules four years after the rule's effective date and every four years thereafter. Once the Rules Committee has approved a project, the Assistant GC circulates a discussion draft of the rule to persons who have indicated that they would like to be involved in the rulemaking process and convenes a stakeholder meeting to receive input. Based on that input, staff may revise the draft before recommending a version to the commissioners for publication in the *Texas Register* to receive public comment, or may withdraw the rule for more substantial revision, or abandon that rulemaking project. The Assistant GC prepares the preamble to the proposed rule, presents it to the commissioners in an open meeting of the commission, and upon approval by the commissioners submits it to the *Texas Register*. During the public comment period following publication in the *Texas Register*, the Assistant GC convenes a public hearing to receive oral comments on the proposal. At the end of the comment period, the Assistant GC coordinates and prepares the agency's response to the comments, drafts the adoption preamble, presents it to the commissioners in their open meeting, and upon adoption by the commission submits it to the *Texas Register* for inclusion in the Texas Administrative Code.

In contested cases, this Assistant GC reviews the record prepared by the SOAH Administrative Law Judge (including briefs, the Proposal for Decision, exceptions and replies, and the ALJ's response to those exceptions), conducts legal research on disputed issues of law, reviews prior PFDs involving similar issues to assure consistency or to explain differences, and drafts a recommended order for the decision-maker, who has historically been the Executive Director (ED) or the Deputy Executive Director (as the ED's designee). Neither the decision-maker nor this Assistant GC have been involved in the case, and both avoid *ex parte* contacts concerning the case. After discussion with the decision-maker, this Assistant GC revises the draft order as appropriate, has it signed by the decision-maker, and distributes it to the parties and to SOAH. In the event a Motion for Rehearing is filed, this Assistant GC also reviews it and any responses

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thereto and drafts an order for the decision-maker's review and approval, as with the original order in the case.

- The GC also directly supervises the MIU/PIA attorney (Attorney III) who spends 50% of his time on advising and prosecuting MIU administrative cases and 50% of his time supporting litigation involving public information requests.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

The Office of General Counsel's funding source was 16% of the general revenue appropriated to the Central Administration Strategy in FY2016. In addition, a small portion of funding was designated as appropriated receipts which was from payments for open record requests.

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.

Not applicable.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Not applicable.

J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.

The General Counsel is the liaison between TABC and the Office of the Attorney General (OAG) and Office of the Solicitor General (OSG) involved in litigation against the agency. These relationships are critical, time sensitive and time intensive. Information needs to be provided to the OAG in discovery, and documents generated by the OAG and the OSG need to be reviewed by TABC before filing. Determining which person in the agency has the needed information and/or will make a good witness for deposition or trial testimony and/or if an expert can be obtained is vital to the success of a trial. Strategic and tactical decisions about the litigation are constant. It is also important to keep commissioners, the Executive Director, and divisional staff informed of litigation relevant to their program.

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The Public Information Unit (PIU) also works with the public information units of other governmental entities, including various local, state, and federal law enforcement entities, to verify proper legal authority to release non-TABC information in compliance with the PIA. This coordination is also critical to compliance with the PIA, and both time sensitive as well as time intensive.

K. If contracted expenditures are made through this program please provide:

- a short summary of the general purpose of those contracts overall;
- the amount of those expenditures in fiscal year 2016;
- the number of contracts accounting for those expenditures;
- the method used to procure contracts
- top five contracts by dollar amount, including contractor and purpose;
- the methods used to ensure accountability for funding and performance; and
- a short description of any current contracting problems.

Due to the lack of resources by the Office of the Attorney General (OAG) to handle a particular type of lawsuit at the time that TABC needed representation in early 2016, and due to the fact that the OAG was concurrently handling a similar PIA request for TABC involving the same requestor, the OAG recommended TABC look for outside counsel.

The OAG recommended several possible outside counsel firms to represent TABC that were familiar with PIA litigation. TABC requested and was approved for a waiver from the Outside Counsel Contract department of the Office of the Attorney General – General Counsel Division.

TABC was able to secure an OAG-approved contract for outside counsel with Jackson Walker L.L.P. for \$250,000 in FY2016. In addition to the OGC reviewing the invoices, they must also be reviewed and approved by the Office of the Attorney General – General Counsel Division before TABC has permission to pay the invoice. TABC expended \$228,498.02 in FY2016 and, with approval from the OAG, increased the contract for FY2017.

In FY2016, TABC expended \$129,867.78 for expert witnesses to represent the agency in lawsuits challenging the Code and Rules or in a contested administrative hearing prosecuted by the Legal Services Division. These six contracts were procured using sole source procurement or were professional services contracts. General Counsel or the prosecuting attorney reviewed the billing for all contracts and is aware of the actions that were billed.

TABC requested and was approved for a waiver from the Outside Counsel Contract department of the Office of the Attorney General – General Counsel Division to secure a contract for outside counsel with Flaherty & O'Hara to provide advice and legal counsel in subject matters outside of the agency's and OAG's expertise. After the General Counsel reviewed the invoices, they were forwarded to the Outside Counsel Contract department of the Office of the Attorney General – General Counsel Division for permission to pay the invoice. Once approved, TABC expended \$13,572.00 in FY2016.

Self-Evaluation Report

Lexis Nexis is a legal research tool for all staff attorneys and some paralegals in support of litigation and administrative hearing duties, and it is renewed annually under an umbrella contract for other state agencies, including the OAG. This contract was procured through the Council on Competitive Government (CCG), and provides approximately 12 licenses at the TABC. The TABC expended \$16,529.50 in FY2016.

L. Provide information on any grants awarded by the program.

None.

M. Are there any barriers or challenges that impede the program's performance, including any outdated or ineffective state laws? Explain.

None.

N. Provide any additional information needed to gain a preliminary understanding of the program or function.

The Office of the General Counsel (OGC) is dedicated to supporting the commission's objectives by providing efficient and effective legal services that offer legal opinions and advice consistent and fair to all stakeholders while remaining in compliance with state law, specifically with regard to the alcoholic beverage industry and all three of its tiers. By advising on the standards of the Open Meetings Act, Administrative Procedures Act, Public Information Act, the Alcoholic Beverage Code, other state and federal statutes, and TABC agency policy, the OGC ensures the agency remains in legal compliance – which directly supports transparency, accountability, and service to its constituents, agency employees, and the people of the State of Texas.

O. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- why the regulation is needed;
- the scope of, and procedures for, inspections or audits of regulated entities;
- follow-up activities conducted when non-compliance is identified;
- sanctions available to the agency to ensure compliance; and
- procedures for handling consumer/public complaints against regulated entities.

Not applicable.

P. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices. Please include a brief description of the methodology supporting each measure.

Not applicable.

Legal Services

A. Name of Program or Function: Legal Services

Location/Division: Legal Services Division; Austin headquarters, Houston and Arlington

Contact Name: Julie Allen, Interim General Counsel; Judith Kennison, Deputy General Counsel

Actual Expenditures, FY 2016: \$1,599,788.67

Number of Actual FTEs as of June 1, 2017: 16

Statutory Citation for Program: Alco. Bev. Code, Sections 11.41, 11.612, 61.31, and 61.39

B. What is the objective of this program or function? Describe the major activities performed under this program.

Under supervision of the Office of General Counsel (OGC), the key function of the Legal Services Division (Legal) is to prosecute violations of the Code and Rules and protest applications at the State Office of Administrative Hearings (SOAH) and in county courts. In addition, at the request of local governments or the State Comptroller, Legal brings administrative actions for cancellation or denial of a renewal application due to permit holders' non-payment of local fees, ad valorem taxes, mixed beverage or sales taxes.

Legal also provides legal training to its employees regarding administrative hearings, provides legal advice to the other divisions, facilitates settlements of citizen protests, and answers general questions from the public at large regarding the Code and Rules.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program. Also please provide a short description of the methodology behind each statistic or performance measure.

Exhibit 73 shows the activities that Legal Services performed regarding its case management. There were 453 cases assigned to the division. These included cases with multiple allegations within them, 1496 total. Of the 453 cases assigned during the year, 283 cases were closed. They were closed by settlement or from hearing results. There were 386 notices of violations sent to license holders; however, only 137 notices of hearing were issued. This means 249 cases were settled before there was a need to issue notices of hearing. Of the 137 notices of hearing, only 38 hearings were held at SOAH and eight hearings held in county courts. Rather than serving suspensions, license holders paid \$430,000 in administrative penalties. At the end of FY2016, 381 cases remained pending; however, one case against a permit holder accounted for 163 of the total. The majority of the cases are handled by six attorneys who closed between

Self-Evaluation Report

30-40 cases on average over the year. Although the number of closed cases has decreased over the years, the complexity and long-term cases have increased thereby reducing the closure rate. Due to a vacancy, the majority of the FY2016 work was handled by six attorneys instead of seven attorneys previously.

Exhibit 73: Summary of Legal Activities in FY2016

<u>Description</u>	<u>Total</u>
Cases Assigned	453
Violations Alleged	1496
Closed Cases	283
Notice of Hearing Issued	137
Notice of Violation Issued	386
Hearing Held - SOAH	38
Civil Penalty Cases Paid	60
Suspension Days Assessed	723
Hearing Held - County Judge	8
Pending Cases	381
Civil Penalty Amount Paid	\$430,000

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

The original intent of prosecuting Code violations has not changed; however, around 2008 or 2009 the Legislature approved funding for additional attorneys which eliminated a significant backlog of cases and continues to allow Legal to prosecute its present docket in a timely manner.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The Legal Services Division affects the employees of most TABC divisions because it represents each of the divisions in hearings and county courts. Legal Services also potentially affects all permit holders in the state because Legal prosecutes all violations. It also affects the general public because Legal acts as a resource for all regulatory questions related to the Texas alcoholic beverage industry.

From the Licensing division, Legal receives tax protests from the Comptroller and cases for cancellation or denial of renewal due to statutory ineligibility. From the Enforcement Division and Audit & Investigations Division, including the Special Investigations Unit, Legal receives cases for suspension or cancellation that allege violations of the Code and/or Rules. These cases are either resolved by settlement for a cancellation/suspension or they proceed to a hearing for a proposal for decision from an administrative law judge. That proposal is either

accepted, rejected or modified by the Executive Director or designee and an appropriate Order is issued in accordance with the Texas Administrative Procedures Act, Chapter 2001 of the Government Code.

F. Describe how your program or function is administered, including a description of the processes involved in the program or function. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.

Legal receives administrative cases from Licensing, Enforcement, and Audit & Investigations divisions throughout the state with a request for attorney assignment. These cases are reviewed by the Deputy General Counsel who determines if the case is legally sufficient to be assigned to a staff attorney for prosecution. If a case is not legally sufficient, it is returned to the originating division for further investigation. TABC attorneys are located in Arlington, Austin and Houston; case assignments are based on the geographic location of the permit. These attorneys then develop the case and either settle, dismiss or schedule the case for hearing. The attorneys litigate the matter from the discovery period until the matter is ultimately sent to the Executive Director or designee for a final decision.

Legal also receives requests for attorney assignment to protests against original and renewal applications filed by citizens, local officials and TABC's other divisions after an investigation is completed. Once the investigation is received, the Deputy General Counsel has ten business days to determine a legal recommendation, such as:

- an allegation warrants a hearing, if further investigation is needed,
- if the commission should also protest, or
- whether the protest should be dismissed due to lack of legal sufficiency.

If the Deputy General Counsel approves the field request for a hearing, in consultation with the Executive Director or designee, the case is assigned to a TABC attorney for representation at SOAH or the county judge's court based on the geographic location of the premise.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

The Legal Services Division's funding source was 6% of the general revenue appropriated to the Enforcement Strategy in FY2016. However, fiscal year expenditures are allocated between the Enforcement, Licensing and Investigation, and Compliance Monitoring Strategies.

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H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.

None.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Not applicable.

J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.

Upon request of local prosecutors, with approval by the Executive Director or designee, Legal will join with them on nuisance actions against licensed premises or act as a resource concerning the Alcoholic Beverage Code and Rules. Additionally, when provided with notice and information regarding delinquent taxes from a county or the State Comptroller and with approval by the Executive Director or designee, Legal will pursue administrative sanctions against a license holder.

K. If contracted expenditures are made through this program please provide:

- a short summary of the general purpose of those contracts overall;
- the amount of those expenditures in fiscal year 2016;
- the number of contracts accounting for those expenditures;
- the method used to procure contracts
- top five contracts by dollar amount, including contractor and purpose;
- the methods used to ensure accountability for funding and performance; and
- a short description of any current contracting problems.

Contracts expended through this program are reflected in Item K, Section VII, for the Office of General Counsel.

L. Provide information on any grants awarded by the program.

None.

M. Are there any barriers or challenges that impede the program's performance, including any outdated or ineffective state laws? Explain.

None.

N. Provide any additional information needed to gain a preliminary understanding of the program or function.

Self-Evaluation Report

None.

- O. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:**
- **why the regulation is needed;**
 - **the scope of, and procedures for, inspections or audits of regulated entities;**
 - **follow-up activities conducted when non-compliance is identified;**
 - **sanctions available to the agency to ensure compliance; and**
 - **procedures for handling consumer/public complaints against regulated entities.**

Not applicable.

- P. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices. Please include a brief description of the methodology supporting each measure.**

Not applicable.



Training

A. *Name of Program or Function:* Training

Location/Division: Training Division; Austin headquarters

Contact Name: Albert Rodriguez, Training Director

Actual Expenditures, FY 2016: \$576,485.98

Number of Actual FTEs as of June 1, 2017: 8

Statutory Citation for Program: N/A

B. *What is the objective of this program or function? Describe the major activities performed under this program.*

TABC's Training Division develops and promotes contemporary training opportunities relevant to job functions, focusing on the Alcoholic Beverage Code, customer service, and regulatory and enforcement functions. The objective of all developed and implemented training programs is to assist employees in performing their duties to better serve Texas citizens. The agency subscribes to a Learning Management System (LMS) service that assists the Training Division in managing over four thousand (4,000) online training courses annually.

Training provided to commissioned peace officers (CPOs) is in compliance with the Texas Commission on Law Enforcement training standards with an extensive focus on enforcement and application of the Alcoholic Beverage Code. The overall objective directly and/or indirectly impacts and supports the five core constituencies.

The Training Division provides staff support to all agency divisions by identifying training needs and opportunities, providing and facilitating training, developing and recommending policies and procedures, conducting fleet collision analyses, reviewing, evaluating and analyzing critical/use of force incidents, and collaborating with the Office of Professional Responsibility in reference to public and employee complaints for the purpose of identifying trends that may require additional training.

The division develops, facilitates, and provides training to all agency personnel; emphasizing professionalism, customer service, and public safety throughout all training programs.

The Training Director is on call to respond to major use-of-force incidents and/or a supervisor request assistance for the same. The Training Director may respond for the purposes of assisting and/or overseeing investigations of major use-of-force incidents.

- C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program. Also please provide a short description of the methodology behind each statistic or performance measure.**

Instructor and course content evaluations are completed for every completed training class, with the information analyzed to determine appropriate action if deemed necessary.

The overall number of training contact hours are evaluated for the purpose of ensuring employees are receiving sufficient opportunity to improve their skillsets, thus improving the quality of service provided to those served by the agency. Training contact hours are tabulated by the number of students attending a class multiplied by the number of training hours for that class.

The Training Division also analyses trends identified through instructor evaluations, course evaluations, internal complaints, and citizen complaints. These trends better inform agency and division leadership on issues where further or refined training is needed.

- D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.**

The original intent has not dramatically changed, however in the past, the major emphasis was placed on commissioned peace officer training, which was limited in scope and execution. Since 2014, there has been an equal amount of importance placed on training the agency's civilian personnel and on more comprehensive training for all employees in general. In addition, prior to 2010, the training for commissioned personnel was outdated and not consistent with modern policing. The training now provided to all agency personnel revolves around the principles of professionalism, customer service, and public safety.

- E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.**

The Training Division's responsibilities affect all agency employees, who in turn interact and serve all Texans. TABC's commissioned peace officers (CPOs) are required to be licensed through the Texas Commission on Law Enforcement (TCOLE). CPOs are required to attend and complete 40 hours of continuing education training every 24 months in order to maintain their license pursuant to TCOLE requirements. CPOs and auditors are required to complete a TABC Academy Program as a condition of agency employment.

F. Describe how your program or function is administered, including a description of the processes involved in the program or function. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.

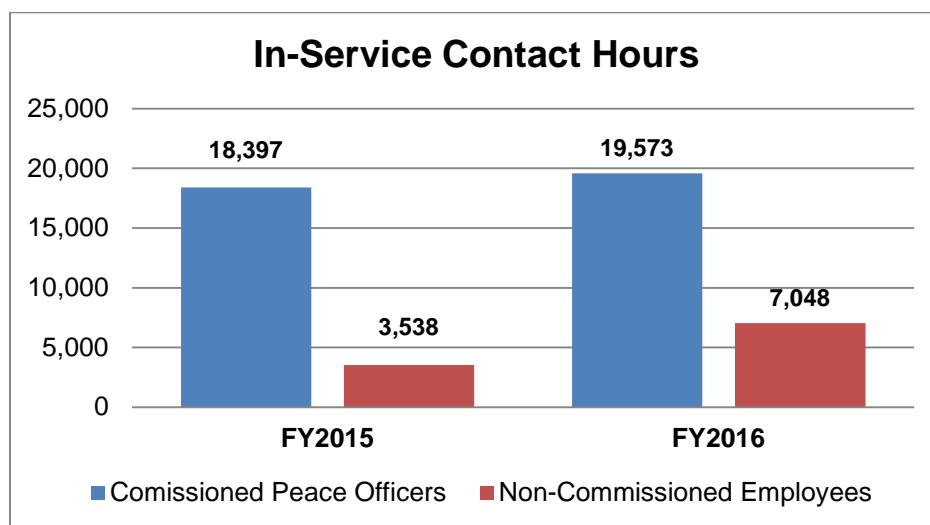
The division conducts statistical vehicle fleet collision analyses in regards to the number and type of fleet vehicle collisions to determine trends and/or any necessary alterations to the driving program. The division also reports on critical or use-of-force incidents in reference to the number and type incidents to determine trends and/or any additional training needs.

The Training Division is divided into four different sub-training programs.

The **Academy Program** is designed to train agent trainees and the agency’s recently hired auditors. The agent trainee academy consists of approximately 518 training hours which are conducted over an 11-week time period. The auditor academy consists of approximately 160 training hours conducted over a four-week period. The curricula for both programs focuses on the Code and Rules and regulatory functions, the evolving alcoholic beverage industry, and the principles of professionalism, customer service, and public safety. There were no Agent Trainee or Auditor Academies held in FY2016.

The **In-Service program** is what is commonly referred to as “continuing education.” All non-commissioned personnel are required by the agency to attend training on a biannual basis. The training is designed to expand the knowledge base regarding all of the agency’s regulatory and enforcement functions with the major focus on the Code, Rules, customer service, professionalism, public safety, 21st century policing, and specific agency needs. The agency’s commissioned personnel are required by TCOLE to attend and complete 40 hours of continuing education training every fiscal biennium.

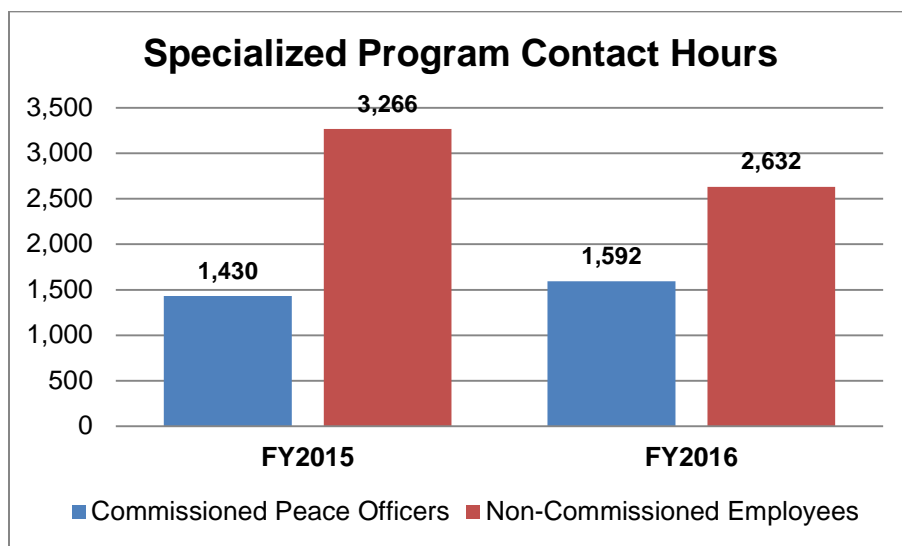
Exhibit 74: In-Service Training, FY2015-FY2016



The **Specialized Training Program** is designed to address any training need identified during any time period that was not recognized and/or scheduled during the planning phase of in-service training such as the firearms instructors course, administrative assistants, basic instructor course, time management, customer service, report writing, first-line supervisor course. The specialized class may be identified and requested by any supervisor within the agency. The specialized training program addresses training needs for commissioned and non-commissioned personnel.

Exhibit 75 shows the Specialized Training Program contact hours for commissioned and non-commissioned personnel for FY2016 relative to FY2015.

Exhibit 75: Specialized Training, FY2015-FY2016



The agency subscribes to a **Learning Management System (LMS)** service that assists the Training Division in managing more than 4,000 online training courses taken annually. In addition to the on-training, the Training Division utilizes the LMS for distribution of policies and procedures, management of training records and certifications, and scheduling of live training courses. The system allows for agency’s personnel to register and enroll in courses that are offered either live and/or online. There are numerous courses that employees are required to complete and recertify by specific a specific date. The LMS assists in notifying an employee and the employee’s supervisor of the pending required course and due date.

Through the Learning Management System, the Training Division managed 4,537 courses taken in FY2015 and 4,142 courses in FY2016. Through LMS there were 26 policies and policy updates distributed to agency employees in FY2015 and 31 in FY2016.

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The LMS system is a major cost-saving measure as result of the online training courses offered. Examples of online courses offered are: Defensive driving, equal employment opportunities, information technology security awareness, new employee orientation, legislative updates, cash handling for Ports of Entry, counselor notification, cultural diversity, and many more topic areas.

Policy and procedure distribution and testing is also conducted through the LMS system. The system allows for the employee to acknowledge the receipt of a particular policy and/or procedure and actually be tested on said policy and/or procedure.

The Training Division also reviews and evaluates critical/use of force incidents in reference to the number and type of incidents to determine trends and/or any additional training needs. In 2016, 16 critical incidents were reported, which is an average amount based on recent years. TABC agents neutralized eleven incidents involving resistance/threats with the lowest level of physical control available. In two incidents agents deployed Oleoresin Capsicum (aka pepper spray) and in three incidents agents were witnesses to the use of force by other agencies and/or agents exhibiting a weapon, but not using it. Included in the 16 incidents in 2016 were one officer injury involving a broken finger and one subject transported by EMS as a result of being under the influence of drugs. There were no identifiable patterns requiring additional personnel evaluation, policy amendments, and/or training.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

The Training Division's funding source was 2% of the general revenue appropriated to the Enforcement Strategy in FY2016.

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.

The majority of the target population for Training Division is internal with a small percentage being external. The Training Division develops, facilitates, and provides training to the agency's internal customers which for the purpose of providing fair, consistent and timely customer service. The Training Division on a limited basis provides training for other law enforcement agencies such as the Texas Rangers. Additionally, outside agencies at times attend the agency firearm instructors' course.

Because of the complexities of the Alcoholic Beverage Code there are no other programs which address the particular law enforcement and regulatory procedures specific to TABC agents. Furthermore, no other training programs utilizes training committees for the purpose of identifying specific training needs.

- I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.**

The Training Division develops, coordinates, and implements all training activities in coordination with the agency's division directors or designee to avoid duplication, conflict, and most importantly to address the desired specific divisional needs.

- J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.**

The Training Division works very closed with the Texas Military Department's Adjutant General, more specifically the Texas Army National Guard. Through a memorandum of understanding, TABC receives lodging and training facilities at the department's posts in return for training their security personnel on a variety of topics.

- K. If contracted expenditures are made through this program please provide:**

- a short summary of the general purpose of those contracts overall;
- the amount of those expenditures in fiscal year 2016;
- the number of contracts accounting for those expenditures;
- the method used to procure contracts
- top five contracts by dollar amount, including contractor and purpose;
- the methods used to ensure accountability for funding and performance; and
- a short description of any current contracting problems.

None.

- L. Provide information on any grants awarded by the program.**

None.

- M. Are there any barriers or challenges that impede the program's performance, including any outdated or ineffective state laws? Explain.**

There is no monetary incentive for training officer candidates, therefore when vacancies exists within the Training Division it is extremely difficult to recruit the expertise needed to serve within the division.

Additionally, an increase in manpower would allow for the Training Staff to have to travel throughout the state to provide training to agency personnel on a more frequent and consistent basis.

The division has also recognized a lack of training facilities such as classrooms and gymnasiums needed for a full-featured training academy program.

Self-Evaluation Report

N. Provide any additional information needed to gain a preliminary understanding of the program or function.

No additional information.

O. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- why the regulation is needed;
- the scope of, and procedures for, inspections or audits of regulated entities;
- follow-up activities conducted when non-compliance is identified;
- sanctions available to the agency to ensure compliance; and
- procedures for handling consumer/public complaints against regulated entities.

Not applicable.

P. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices. Please include a brief description of the methodology supporting each measure.

Not applicable.



Human Resources

A. Name of Program or Function: Human Resources Division

Location/Division: Human Resources Division; Austin headquarters

Contact Name: Donn Rupp

Actual Expenditures, FY 2016: \$486,350.92

Number of Actual FTEs as of June 1, 2017: 7

Statutory Citation for Program: Alcoholic Beverage Code, §§5.10, 5.101, 5.102 and 5.103

B. What is the objective of this program or function? Describe the major activities performed under this program.

The objective for the Human Resources Division is to provide oversight, governance, and cross-divisional support in the areas of recruiting, staff development, staff training, and leadership support with regard to retaining valued staff. The division also provides training and guidance for TABC leadership with the focus of empowering employees as represented in Exhibit 76.

Exhibit 76: Pillars of Human Resources Engagement

People Operations	Recruiting	Training	Safety	Benefits and Leave
<p>Employee Relations</p> <ul style="list-style-type: none"> • Performance Management • Behavior Management • HR Business Partners for employees and leaders • Policy Guidance • Partnership Approach to Employee-related Issues • Mediation • Unemployment Management • Industry Networking 	<p>HR Partner Approach</p> <ul style="list-style-type: none"> • Continuous communication with new hire supervisor to include pre posting reviews, mid posting updates and post hire overview • HR participation and guidance on interviews for critical leadership roles • Job Shadowing • Ride Alongs • Interview Training 	<p>Organizational Development</p> <ul style="list-style-type: none"> • Develop and conduct employee Organizational Development Training. • Develop and implement an Employee and Leadership Training Requirement Model • Training addressing Employee Behavioral Concerns • Provide Communication Training 	<p>Risk Management</p> <ul style="list-style-type: none"> • Risk Avoidance • Root Cause and solutions • Catastrophic / Emergency Planning • Emergency Response Team • COOP Plan – OSHA • Safety Policy Review • Risk Management Action Team 	<p>Benefit Management</p> <ul style="list-style-type: none"> • Agency-wide Communication • Provide state benefits training • Provide guidance and support <p>Leave Management</p> <ul style="list-style-type: none"> • Management process for compliance • Utilize RMIS System • Provide Leave Management Training • Provide guidance and support <p>Wellness Management</p> <ul style="list-style-type: none"> • Agency Wellness Initiative • Agency Wellness Committee

Self-Evaluation Report

The division performs multiple activities categorized in three broad categories.

Recruiting

- Participate in statewide recruiting events
- Engage in divisional meetings to ensure alignment of HR role as it relates to the agency's needs
- Conduct division reviews for role understanding once a quarter
- Review and develop a recruiting plan annually to focus on underrepresented groups

People (Employee) Operations

- Work with the agency's overall mission to ensure employee engagement, development (training), and collaborative support across all aspects of employee initiatives
- Help streamline performance management systems (such as annual performance reviews) in order to ensure efficiency in process as well as provide a more meaningful and committed feedback session for employees and leaders
- Provide governance and consistent guidance on all TABC HR policies and procedures

Benefit and Leave Management

- Provide timely and impactful communications and training related to benefit needs and changes
- Manage all aspects of employee leave requests and ensure consistent, legal, and fair practices

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program. Also please provide a short description of the methodology behind each statistic or performance measure.

The impact of new programs introduced in FY2017 cannot yet be evaluated. Details of these programs and other concepts and approaches instituted by new leadership in FY2017 are found throughout the HR Division's responses in Items B, D and F in Section VII.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

In May 2017 the HR Division launched two new employee engagement programs:

1) HR World Café gives agency employees the opportunity to share issues or concerns. Human Resources then shares valued information with leadership and recommends training as appropriate. Since inception in May, the division has conducted 11 cafés, interfacing with more than 200 TABC employees.

2) Civil Treatment for Employees Training provides best practices for positive employee-to-employee at-work relationships. HR has trained 57 agency employees in four separate training sessions. Employee feedback indicates the training has helped the employees to think differently about their work environment and how they behave toward co-workers. Due to the relatively new nature of the training, HR anticipates an overall reduction in the number of employee complaints.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

Recruiting

In FY2016 the agency had 124 open roles: 17 internal positions, 11 temporary positions, and 96 external positions. The HR Division has reviewed more than 7,000 online applications for these roles. Out of these applicants, gender and race demographics are:

- Race -- White: 2,001; African-American: 1,411; Hispanic: 3,039; Asian/Pacific Islander: 226; Other/unknown (not indicated or identified as multi-racial): 429.
- Gender -- Female: 3,106; Male: 3,898; Unknown or not indicated: 313.

The agency, will continue to focus on attracting qualified female and African-American applicants.

Workforce

All divisions at TABC are affected by the programs, training, and support the HR Division provides.

- Total employee population – 671
- Race -- White: 300; African-American: 90; Hispanic: 269; Other: 12
- Gender -- Female: 291; Male: 380

People Operations Strategy

In January 2017, a new HR Support Model was developed. Each TABC Division was assigned a designated H.R. point of contact for employee relations issues and a designated point of contact for employment and recruiting needs. Through training, engaged consultation and consistency in guidance regarding H.R. related concerns, it is anticipated the agency will continue to see a positive impact and operational successes.

HR rolled out the *Civil Treatment for Employees* training in late June 2017 which has been attended by 60 employees. The agency hopes to see an overall reduction in employee-related behavior issues and a better sense of team development by providing employees and leaders the tools to manage their work environments more effectivity and fairly. The division also intends to build new training programs focusing on supervisor / leadership development.

Employment Action Numbers (January through July 2017)

HR has worked with agency leadership on **21** separations (for cause and at-will) to ensure compliance to law and policy.

HR has processed **14** retirement requests and **10** transfers to other state agencies.

HR has processed **14** exit interviews for employees who have resigned their roles.

HR has helped with **13** coordination efforts with the Office of General Counsel for Equal Employment Opportunity Commission (EEOC) charges.

HR has collaborated on **20** employee performance concerns with leadership teams.

HR has conducted **3** mediation sessions. These sessions are conducted by certified mediators within the HR Division.

Overall Workforce Summary for TABC

Turnover rate for TABC for FY2016 was 8.1% which is lower than the statewide turnover rate of 17.6%, and lower than the turnover rate for other Article V agencies.

Demographic Information – TABC's female to male demographic is nearly balanced with females at 56.6% and males at 57.7% of the workforce. The agency's ethnic demographic focus is to increase African-American and Asian populations, which are under-represented.

Tenure with the agency – 16% of the agency's workforce has more than 15 years of service; 22.7% of the workforce has 10 to 14 years of service; 24% of the workforce has five to nine years of service; 17.5% of the workforce has two to four years of service; 19.8% of the workforce have fewer than two years of service.

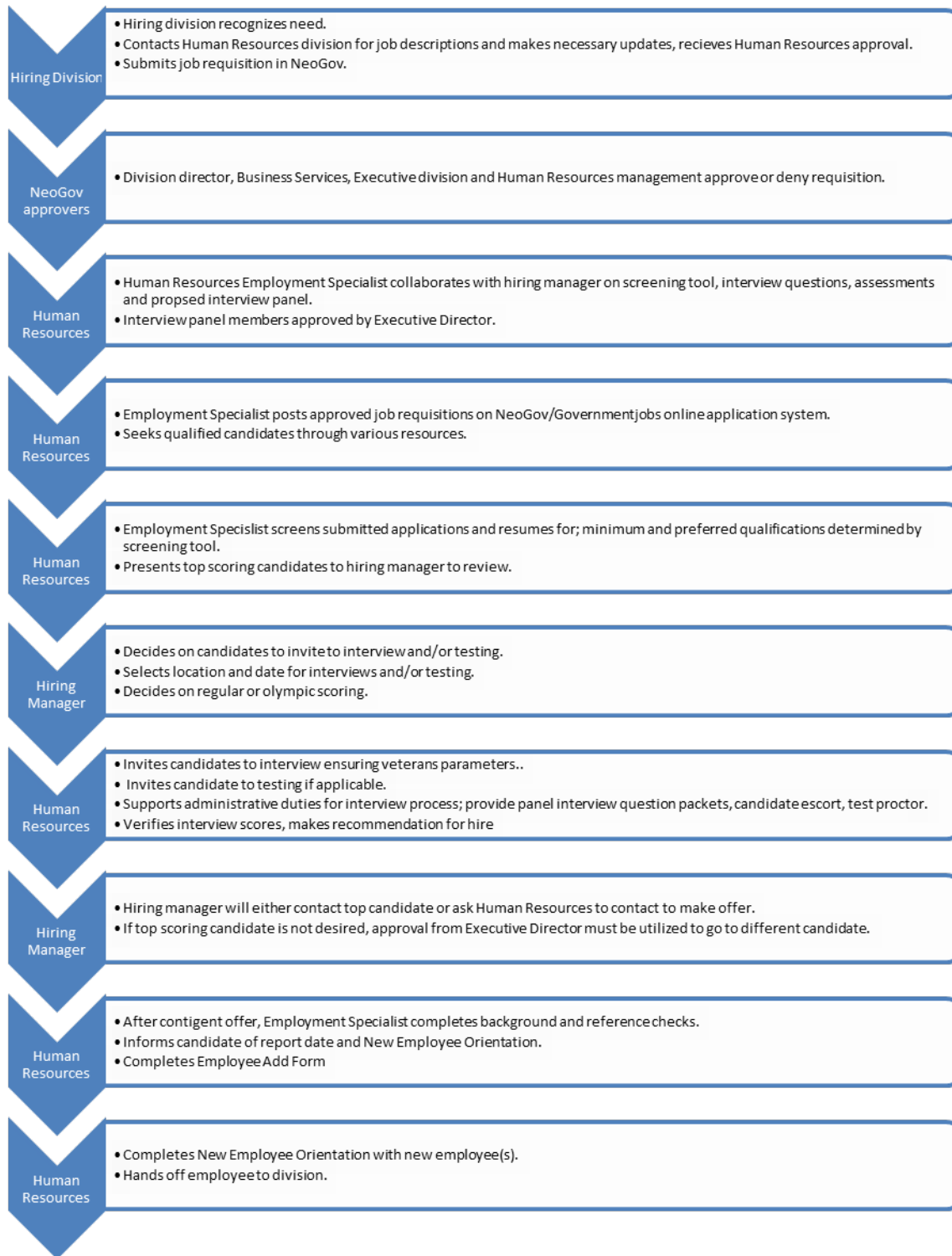
- F. Describe how your program or function is administered, including a description of the processes involved in the program or function. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.**

Leave Management includes management of employee sick leave usage, Family Medical Leave Act (FMLA) leave and workers' compensation claims. The leave management program includes state and federal requirements for employee benefits and is managed by TABC Human Resources Division. Leave management ensures consistent and fair practice for employees utilizing various leave options. HR coordinates on-the-job injuries with the State Office of Risk Management. The coordinated effort ensures HR is complying with workers' compensation laws and regulations.

People Operations includes division assessments and employee relations concerns. The division assessment evaluates a workgroup or division to determine employee development and training needs. HR reviews assessed concerns with division leadership to determine if the issues are specific to an employee, a team or the division. The employee relations program focuses on identifying employee-related performance or disciplinary issues or concerns. HR coaches and trains leadership in the utilization of tools and techniques to ensure efficient, timely and effective resolution of issues and concerns. HR will also provide employee mediation if appropriate.

Recruiting – The primary function of the HR Recruiting team is to attract and employ individuals who add value to the agency and engage and support a division while performing the duties and responsibilities of the position. Exhibit 77 outlines the work process for hiring an employee.

Exhibit 77: Recruitment Flow Chart



- G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).**

The Human Resource Division's funding source was 17% of the general revenue appropriated to the Central Administration Strategy in FY2016.

- H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.**

The TABC Human Resources Division is the sole provider of all human resource programs and service for TABC employees.

- I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.**

Not applicable.

- J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.**

The HR Division works with other state agencies, however does not work directly with any local, regional or federal units of government.

- K. If contracted expenditures are made through this program please provide:**

- a short summary of the general purpose of those contracts overall;
- the amount of those expenditures in fiscal year 2016;
- the number of contracts accounting for those expenditures;
- the method used to procure contracts
- top five contracts by dollar amount, including contractor and purpose;
- the methods used to ensure accountability for funding and performance; and
- a short description of any current contracting problems.

None.

- L. Provide information on any grants awarded by the program.**

None.

M. Are there any barriers or challenges that impede the program's performance, including any outdated or ineffective state laws? Explain.

The first challenge of the HR Division is keeping HR employees up-to-date on employment law. Good training is expensive and lack of funding poses a potential risk. Ensuring the division stays current on the ever-changing landscape of employment and leave laws is paramount.

Second, Government Code Sec. 661.202(g) requires that the agency's executive director receive a doctor's certificate showing the cause or nature of the condition, when an employee is out for more than 3 days due to being sick. It is standard acceptable practice for medical certificates or documentation from a medical provider be reviewed only by Human Resources. Maintaining medical documentation as confidential in Human Resources, separate and apart from Management, ensures employment decisions are not based on medical documentation.

Third, the HR Division relies exclusively on the Comptroller's Office for all employee workforce related reports i.e., total employee population, attrition, turnover, salary review, etc. Reliance on another agency makes it difficult to obtain real-time reports quickly in order to provide the agency with HR analytical and strategic information. To help the agency become more effective and efficient, TABC should have access to directly run these reports.

N. Provide any additional information needed to gain a preliminary understanding of the program or function.

None.

O. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- why the regulation is needed;
- the scope of, and procedures for, inspections or audits of regulated entities;
- follow-up activities conducted when non-compliance is identified;
- sanctions available to the agency to ensure compliance; and
- procedures for handling consumer/public complaints against regulated entities.

Not applicable.

P. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices. Please include a brief description of the methodology supporting each measure.

Not applicable.



Office of Professional Responsibility (Internal Affairs)

A. Name of Program or Function: Office of Professional Responsibility (Internal Affairs)

Location/Division: Office of Professional Responsibility; Austin headquarters

Contact Name: Vacant

Actual Expenditures, FY 2016: \$305,107.06

Number of Actual FTEs as of June 1, 2017: 3

Statutory Citation for Program: Alcoholic Beverage Code, Section 5.58

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Office of Professional Responsibility (OPR), reporting directly to the Executive Director, was established to ensure TABC employees perform their duties in accordance with the highest professional standards expected of a leading regulatory and law enforcement agency.

OPR's primary objective is to perform an internal affairs function, promoting accountability and integrity in government, by conducting a thorough, fair, efficient and objective investigation of allegations of misconduct involving TABC employees in order to protect the public, the employee and the agency.

OPR accomplishes its objectives through both reactive and proactive investigative efforts based on the authority specified in the Code. OPR has departmental jurisdiction to investigate allegations of professional misconduct against TABC employees, including its law enforcement personnel. The OPR identifies deficiencies in agency policy and procedures that may have contributed to an issue requiring investigation. By reporting these evaluations to the executive management team, the agency has the opportunity to address the complaint and reduce the likelihood of future occurrence.

The OPR staff coordinates and is the central reporting point for all employee misconduct investigations; however, the OPR may also initiate an investigation on an employee with approval of the appropriate division director or higher-level executive management when no complaint has been made.

The majority of complaints referred to OPR are received telephonically, via email, and through the online complaint reporting processes available to agency employees and the public. Individuals may also file a complaint by facsimile, standard mail, or in person. These reporting options ensure that no complainant is deterred from voicing their concerns.

Self-Evaluation Report

Each complaint received by OPR is thoroughly vetted to identify allegations of misconduct. Complaints are referred to the appropriate division director for handling or retained by OPR for investigation. Evaluating and categorizing each complaint enables the OPR to evaluate and provide comment to the Executive Director regarding possible public miscommunication, policy failure, or poor performance within the agency's division.

The OPR Director reports regularly to the Executive Director about the nature and status of each complaint investigated by the OPR. In addition, the OPR Director submits a monthly report to the Executive Director and commissioners on pending complaint investigations.

The OPR Director submits a quarterly/annual report to the Executive Director and commissioners. The report contains a summary of information relating to investigations conducted, including an analysis of the number, type, and outcome of investigations; trends in the investigations; and recommendations to avoid future complaints.

Supplemental Activities of OPR

- Provides training to new agent cadets. OPR educates employees on the role of the OPR, the laws governing the OPR, and the types of complaints accepted by the office.
- Serves as a member of the Policy Review team that reviews and amends current policies and develops new policy for the agency.
- Coordinates and conducts background investigations, which includes checking credit reports, and reviewing driver's license and criminal history reports of individuals who are seeking employment as a commissioned new agent.
- Conducts Inter-Agency referrals by forwarding complaints received from other state agencies to the appropriate division director or applicable external department for review and response to the complainant.
- Communicates with Training Director on critical incidents (use of force) reports submitted by field agents to ensure proper compliance with training standards, agency policy, and state and federal law.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program. Also please provide a short description of the methodology behind each statistic or performance measure.

In order to achieve its objective, OPR utilizes a *qualitative standards* approach:

- Quality Control - The OPR ensures a quality and expedited investigation with proper supervision exercised from acceptance to disposition of a complaint. Upon receipt of a complaint, the OPR Director reviews and assesses whether a management review, preliminary inquiry, or a formal investigation is warranted.

Self-Evaluation Report

- Planning - Based on investigative judgement, the OPR Director creates an investigative plan specific to the complaint to include consideration of the nature, scope, trends, vulnerabilities, special problems, and risk to agency programs and operations.
- Data Collection and Analysis -OPR gathers information and data during the investigation relative to case objectives.
- Evidence - OPR obtains sufficient, competent, and relevant evidence to afford a reasonable basis for the investigative findings and conclusions.
 - Sufficient-there is enough to support the report's findings;
 - Competent- It is consistent with fact [valid];
 - Relevant- is has logical, sensible, relationships to those findings.
- Timeliness - OPR conducts investigations in a timely manner.
- Reporting - OPR's investigative activity results in a timely referral of a written report. All reports present factual data accurately, fairly, and objectively, and present the results of the investigation in a persuasive manner. OPR informs appropriate officials of findings, recommendations, and accomplishments based on its mission, legal authority, organizational placement, and confidentiality.
- Confidentiality - OPR follows procedures for safeguarding the identity of confidential (anonymous) sources and for protecting privileged and confidential information.
- Follow-up - OPR follows up on administrative or systemic issues identified by investigators to assure that any recommendations made to appropriate officials are adequately considered and properly addressed.

OPR applies a number of *quantitative analyses* to assist in determining whether the OPR objective is being accomplished.

OPR monitors the number of days for a complaint investigation to be resolved. Completion of internal affairs investigations should occur as rapidly as reasonably necessary to fulfill the investigation mission. OPR requires their investigators complete an investigation in 28 days. An extension for additional time can be requested by an investigator to the OPR Director. A representative sample of mid to large size police agencies throughout the country indicated the range for conducting and completing an investigation was from 28-180 days. The Texas Department of Public Safety utilizes a 28 day model to conduct an investigation and the U.S. Department of Justice-Office of Community Oriented Policing Services (DOJ-COPS) concludes their investigations in 180 days.

OPR's median average number of days to close an investigation increased from (FY2015) 35 days to (FY2016) 61 days. During this period of time OPR experienced a reduction in personnel assisting with investigations contributing to a greater number of days in FY2016 to close an investigation. OPR was staffed with one supervisor and two investigators, but lost one investigator to a promotion and the position was not refilled.

Self-Evaluation Report

OPR utilizes three investigative methods to resolve personnel complaints:

- Formal Investigation – a full and comprehensive examination. Allegations are classified as:
 - Sustained-allegation happened and violated policy,
 - Not sustained - allegation couldn't be proven either way,
 - Unfounded - allegation didn't happen, or
 - Exonerated - allegation happened but it wasn't against policy.
- Preliminary Review – an inquiry to determine if there is a reasonable objective basis for the complaint. Allegations are classified as:
 - Merit – a claim that has a valid basis for investigation, or
 - No Merit - without support or proof.

NOTE: Starting in FY2018, Preliminary Reviews will be classified similar to Formal Investigations.

- Management Issue Review – an inquiry by a field supervisor of a complaint regarding a job performance matter, a procedural issue and/or a minor policy violation that does not warrant a full investigation. Allegations are classified as Administratively Closed i.e., allegations are addressed and handled at division management's discretion.

OPR follows the source of the complaints (internal or external).

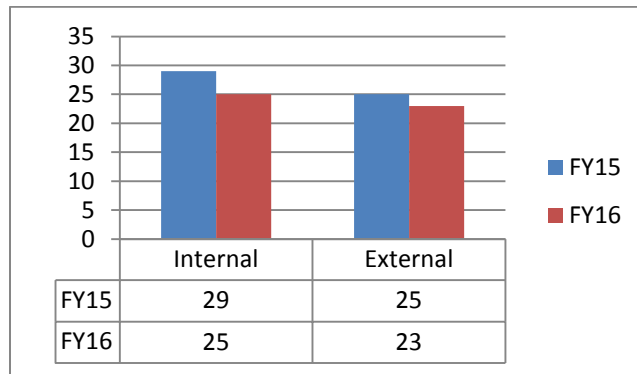
In **FY2015**, OPR opened 54 investigations:

- Formal Investigations: 4
- Preliminary Reviews: 31
- Management Issue Reviews: 19

In **FY2016**, OPR opened 48 investigations:

- Formal Investigations: 13
- Preliminary Reviews: 13
- Management Issue Reviews: 22

Exhibit 78: Number of Internal and External Complaints



The Office of Professional Responsibility determined that for FY2015, as a result of OPR investigations, 84 allegations of employee misconduct were handled with 53 allegations unfounded or with no merit. For FY2016, 61 allegations of employee misconduct were uncovered with 25 allegations unfounded or with no merit.

OPR also serves as a liaison to the State Auditor’s Office when they are notified of improprieties at TABC which can include personnel matters or bar complaints. Not all referrals from the State Auditor’s Office generated a complaint investigation (bar complaints are sent to the Enforcement Division to handle). Complaints referred to TABC from the State Auditor’s Office for FY2015 were 31 and 30 in FY2016.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

Created in the late 1980’s to combat widespread allegations of corruption among officers for exchanging favors with the regulated industry, TABC raised the profile of its internal affairs function and renamed it to the Office of Professional Responsibility in 2004. Due to the law enforcement nature of its work and a high level of interaction with the public, TABC must maintain high standards of conduct and responds quickly and effectively to any complaints against its employees.

The following represents examples of how the OPR function has changed over the years:

OPR has created multiple avenues available for employees and the public to file complaints against TABC personnel (telephonically, via agency internet site, mobile application, standard mail, electronic mail, fax, anonymously).

Division directors determine the appropriate disciplinary action for all complaints of a more serious nature, while an employee’s supervisor may resolve other complaints. Human Resources and the agency’s General Counsel review all recommended disciplinary actions resulting from internal investigations, to include involuntary terminations, before the agency

Self-Evaluation Report

notifies the employee. Employees may appeal disciplinary decisions recommending termination to the Executive Director and all others forms of discipline to the Deputy Director.

In 2005, TABC adopted internal affairs policies. The policies included timeframes for the complaint process from receipt through appeal and a schedule of sanctions. The policies are provided to all employees and included in the agency's human resources manual. Policies and complaint forms are available on the agency's intranet website.

On September 1, 2007, the internal affairs function gained statutory existence in the Texas Alcoholic Beverage Code, Section 5.58. Placing this requirement in law ensured the complaint reporting process would continue under new administrators.

In January 2008, all complaints processed by OPR began to be tracked in the IAPro database monitored and maintained by OPR.

On April 4, 2008, TABC revised the employee misconduct policy to create a more formal and consistent approach to investigating and resolving complaints against its employees. In June 2017, an amended version of the policy was prepared and submitted to Human Resources and is pending approval by the Policy Review Team.

OPR established a use of force training curriculum for its law enforcement personnel and a critical incident form to report force-related encounters with the public. OPR evaluated each critical incident form to identify trends, and to ensure employees were following proper training and policy guidelines. This function has been transferred to the Training Division.

OPR Director is a member of the Policy Review Team that is responsible for developing, reviewing and approving agency policies.

OPR Director is responsible for coordinating and overseeing the process of conducting background investigations for applicants seeking law enforcement positions at TABC. The OPR Director forwards the investigative reports to Human Resources.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

TABC created and maintains an internal affairs function to provide a mechanism to address identified employee misconduct through internal processes that encourage professional behavior throughout the agency.

The internal affairs function at TABC ensures the consistent, fair and impartial treatment of the public, the employee and the agency.

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This function affects the

- Public. The public has a right to receive fair, efficient and impartial service. Any misconduct by commission personnel must be identified, thoroughly investigated and properly resolved to maintain the public's confidence.
- Commission. TABC is often evaluated and judged by the conduct of its employees. Therefore, the agency must be free from public censure because of the misconduct by a few. The public must have confidence that the commission investigates and resolves all allegations of misconduct against its employees fairly and honestly.
- Employee. A thorough, fair and impartial investigation protects employees by ascertaining the truth when they have been falsely accused.

F. Describe how your program or function is administered, including a description of the processes involved in the program or function. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.

OPR is staffed by a Captain, a Lieutenant and an Executive Assistant. All Internal Affairs personnel are stationed at Headquarters in Austin. However, some personnel investigations may be investigated by field supervisors located throughout the state. When a field supervisor receives a complaint on one of their employees, they contact Internal Affairs for a tracking number and must consult with the Internal Affairs Director during the investigation if needed. If a supervisor conducts the investigation, upon completion it is forwarded to the OPR Director for review.

In the case of a firearms discharge, OPR responds statewide to interview participants and witnesses, gathers evidence, reviews any criminal investigation conducted, and prepares a comprehensive report for review.

Internal Affairs process

- The commission outlines general guidelines to inform the public and employees of how to file a complaint and what steps the agency will take to address the complaint. The steps to filing a complaint can be found on the agency internet site, the agency intranet site and in the OPR Policy and Procedures – HR 3.06 Employee Misconduct Complaints & Investigations. The complainant can file a complaint in person, in writing, via telephone, through a mobile application process and anonymously.
- TABC employees will receive complaints in a courteous and professional manner, and report them to their supervisor or OPR as soon as reasonably possible.
- Written notification will be sent to the appropriate parties involved in the complaint investigation prior to, during and at the conclusion of the investigation.
- OPR utilizes three investigative methods to resolving personnel complaints; Formal Investigations, Preliminary Reviews, Management Issue Reviews.

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- Investigators have 28 days to complete the investigation. An extension request is sent to the OPR Director to approve for additional time when circumstances dictate.
- Formal and Preliminary Investigations will be reviewed by the OPR Director, the General Counsel and the Human Resources Director (if disciplinary action is recommended). Management Issue Reviews are conducted by a field supervisors and the investigation is approved by the OPR Director.
- The accused employee may appeal the investigative findings/disciplinary action to the HR Director within five business days from receipt of the Notice of Final Disposition.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

The Office of Professional Responsibility's funding source was 1% of the general revenue appropriated to the Enforcement Strategy in FY2016.

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.

The Department of Public Safety (Texas Rangers) is contacted when a TABC law enforcement officer is involved in an officer-involved shooting incident involving serious bodily injury or death to any involved party. When occurring within their jurisdiction, local police and sheriff's departments and investigators of the District Attorney's Office will conduct their own investigation of the incident.

The Texas Rangers or local police investigators will be contacted when a TABC employee is accused of an offense that is criminal in nature that should be handled by their agency.

The similarities include:

- An on-site investigation will be conducted
- All involved parties (TABC employee, the person of interest, and all witnesses) will be interviewed and a written statement obtained
- Physical evidence will be collected and evaluated
- Forensic tools (video, bullet trajectory test, scene reconstruction)
- Crime Laboratory (bullet identification, functionality of weapon, DNA, blood and drug analysis)
- Investigative report detailing the incident and the findings will be prepared

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Some of the differences between TABC and the Texas Rangers and local law enforcement are:

- TABC conducts administrative investigations as opposed to criminal investigations.
- Legal standard for administrative cases is preponderance of the evidence whereas the legal standard for criminal cases is beyond a reasonable doubt.
- Reviewed by the General Counsel's Office and Division Director rather than the District Attorney's Office.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Upon notification of a TABC law enforcement officer's involvement in a critical incident (shooting incident) or a criminal allegation requiring outside agency investigation, contact will be made with a local Texas Ranger for their assistance in conducting a criminal investigation of the incident. The assistance by the Texas Rangers in this type matter has been a longstanding interagency agreement and best practice for these types of incidents.

J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.

When a TABC law enforcement officer is involved in a critical incident (shooting) involving serious bodily injury or death, is accused of an offense that is criminal in nature that warrants outside assistance, or an independent review is necessary, the Office of Professional Responsibility will work with the local police and sheriff department, the local district attorney's office, the Texas Rangers or any other investigative entity with the ability and resources to assist.

These entities are responsible for conducting a criminal or civil investigation of the matter and will forward a copy of their findings to the Office of Professional Responsibility upon request in order to assist in the administrative investigation of the incident.

K. If contracted expenditures are made through this program please provide:

- a short summary of the general purpose of those contracts overall;
- the amount of those expenditures in fiscal year 2016;
- the number of contracts accounting for those expenditures;
- the method used to procure contracts
- top five contracts by dollar amount, including contractor and purpose;
- the methods used to ensure accountability for funding and performance; and
- a short description of any current contracting problems.

None.

L. Provide information on any grants awarded by the program.

None.

M. Are there any barriers or challenges that impede the program's performance, including any outdated or ineffective state laws? Explain.

Parallel Investigations: When a police agency is conducting a criminal investigation of a TABC employee, there is a long longstanding practice of contacting the investigating agency to determine if parallel investigations between agencies can proceed. Generally, the police agency with criminal jurisdiction will request that the Office of Professional Responsibility suspend its administrative investigation until the criminal matter has been addressed so as to proceed without interference, duplication of work or de-confliction issues. This suspension of the administration case causes a delay to the agency resolution of the matter.

Independence: The Office of Professional Responsibility can be viewed as lacking independence through its organizational makeup and its appearance. Both real and perceived independence are important so that opinions and conclusions will be impartial and will be viewed as impartial by informed third parties. The Director of the Office of Professional Responsibility reports to the agency's Executive Director and this has raised independence concerns when investigations involved the Executive Director. The Executive Director is ultimately responsible for the employees and resources of the agency, and the matters under the Executive Director's purview are the types of issues investigated by OPR and reviewed by the agency's legal division.

N. Provide any additional information needed to gain a preliminary understanding of the program or function.

None.

O. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- why the regulation is needed;
- the scope of, and procedures for, inspections or audits of regulated entities;
- follow-up activities conducted when non-compliance is identified;
- sanctions available to the agency to ensure compliance; and
- procedures for handling consumer/public complaints against regulated entities.

Not applicable.

P. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices. Please include a brief description of the methodology supporting each measure.

Not applicable.

VIII. Statutory Authority and Recent Legislation

- A. Fill in the following charts, listing citations for all state and federal statutes that grant authority to or otherwise significantly impact your agency. Do not include general state statutes that apply to all agencies, such as the Public Information Act, the Open Meetings Act, or the Administrative Procedure Act. Provide information on Attorney General opinions from FY 2011–2015, or earlier significant Attorney General opinions, that affect your agency’s operations.

Exhibit 79: Statutes / Attorney General Opinions

Statutes

Citation / Title	Authority / Impact on Agency
Agriculture Code, Sec. 12.039	describes Texas Wine Marketing Assistance Program, recipient of funds appropriated to TABC in Sec. 5.56, AB Code
Alcoholic Beverage Code (AB Code)	provides the authority and structure of the agency
Civil Practice and Remedies Code, Ch. 125	provides definition of common nuisance as referenced in AB Code
Code of Criminal Procedure, Ch. 18	refers to search warrants utilized by TABC commissioned peace officers
Code of Criminal Procedure, Sec. 59.01	refers to forfeiture of contraband as utilized by TABC commissioned peace officers
Education Code, Sec. 38.007	describes alcohol-free school zones as referenced in Sec. 109.33, AB Code
Education Code, Sec. 5.001(6-a)	defines private school as applicable to Sec. 101.75, AB Code
Election Code, Ch. 501	outlines local option election provisions as applied in AB Code
Government Code, Ch. 573	defines relationships of consanguinity for licensing provisions in AB Code
Government Code, Sec. 411.204	requires a handgun notice sign (aka red sign) for certain TABC-licensed businesses
Human Resources Code, Sec. 42.002	defines child-care facility as applicable to Sec. 109.331, AB Code
Occupations Code, Ch. 2001	regulates bingo as applicable to Sec. 101.74, AB Code
Penal Code, Ch. 20A	defines trafficking of persons as applicable to references in AB Code
Penal Code, Ch. 46	defines legal and illegal weapons
Penal Code, Ch. 49	outlines intoxication and alcoholic beverage offenses
Penal Code, Ch. 71	defines organized criminal activity as applicable to TABC performance measures and activities
Penal Code, Ch.12	provides punishments for offenses in AB Code
Penal Code, Sec. 1.07	provides definitions for many terms in AB Code
Penal Code, Sec. 6.03	defines culpable mental state for criminal offenses in AB Code
Penal Code, Sections 30.06-30.07	allows for trespassing signs to be posted for person with a License to Carry; language conflicts with signs required in Sections 11.041 and 61.11, AB Code
Tax Code, Ch. 151	outlines sales tax and excise tax as referenced in AB Code
Tax Code, Ch. 154	outlines cigarette tax as collected by TABC for CPA
Tax Code, Ch. 183	outlines mixed beverage taxes collected by CPA but the

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Citation / Title	Authority / Impact on Agency
	business is permitted by TABC
Tax Code, Sec. 111.006	refers to confidentiality of info as it pertains to info collected by TABC
Tax Code, Sec. 171.0001	defines controlling interest and lending institution as applicable to AB Code
Transportation Code, Ch. 521	affects driver's licenses and is applicable to verifying age and other provisions of AB Code
Vernon's Civil Statutes 179e	refers to the Texas Racing Act as referenced in Sec. 102.07(f), AB Code

Attorney General Opinions

Attorney General Opinion No.	Impact on Agency
None.	

B. Provide a summary of recent legislation regarding your agency by filling in the charts below or attaching information already available in an agency-developed format. Briefly summarize the key provisions. For bills that did not pass, briefly explain the key provisions and issues that resulted in failure of the bill to pass (e.g., opposition to a new fee, or high cost of implementation). Place an asterisk next to bills that could have a major impact on the agency.

Exhibit 80: 85th Legislature, Regular Session

Legislation Enacted

Bill	Author	Summary of Key Provisions
HB 256	Hernandez	Allows cities (in addition to counties and OAG) to seek an injunction to abate a common nuisance under the Alcoholic Beverage Code. Gives cities another tool to combat BYOBs.
HB 1555	Kuempel	Creates an exemption to allow sale of lottery tickets on the premise of a Wine & Beer Retailer's Permit holder that derives 30% or less of its gross receipts from the sale of alcohol. i.e., allows lottery sales in BGs that operate as small restaurants or amusement centers where the majority of the gross receipts are generated from games or the sale of non-alcoholic beverages items. Example: grocery store w/a BG, bowling alley, golf course, some restaurants (Chuck E. Cheese's). --Lottery Commission determines if business fails to meet (or exceeds) 30% threshold; TABC would verify only upon a complaint or audit.
HB 1612	Romero	Adds "controlled substances or drugs" to list of offenses for which the agency is not required to offer a civil penalty in lieu of suspension of license.
HB 2059	Phillips	Allows an individual who was arrested for no more than one alcohol-related offense as a minor and who was not convicted to apply to have the record of the arrest expunged. If a court found that the applicant had not been arrested for any other alcohol-related offense while a minor, the court would issue an order of expunction for complaints, verdicts, prosecutorial and law enforcement records, and other documents relating to the violation. Includes prosecutorial and law enforcement records among the records to be expunged for minors who were convicted and eligible for an expunction under current law.

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Bill	Author	Summary of Key Provisions
HB 2097	Geren	Affirms that a brewpub with a Wine & Beer Retailer's Permit whose sale of beer and ale/malt liquor consists only of beer and ale/malt liquor manufactured on the brewpub's premises and who self-distributes may also sell wine on the premises. The bill conforms to current practice and eliminates confusion in Code.
HB 2101	Frullo	Changes criteria for and provides consistency in calculation among retailers for obtaining a food and beverage certificate. Increases the threshold to qualify for a food and beverage certificate from no more than 50% of gross receipts attributed to alcohol to no more than 60%. Removes comptroller's role in certification process for Mixed Beverage Permits (MB, RM) and Private Club Permits (N, NB). Changes the calculation for on-premise retailers to compare total receipts from the sale of alcoholic beverages with the total receipts for the location (which is practical application employed by Licensing now for beer and wine retailers (BGs and BEs). Establishes consistency regarding cancellation, denials, etc.
HB 2299	Thompson, S.	Expands options for producers of malt beverages to use their own lab--meeting certain certifications--to test their products, in addition to sending sample to TABC to test or using an independent laboratory for testing. Requires a producer's laboratory be certified by TTB.
HB 3003	Kuempel	Allows for the prize awarded in a sweepstakes by a brewer (added in bill), manufacturer or nonresident manufacturer may include food, beverages, entertainment, recreation, gifts, or attendance at private event at a licensed premise for the sweepstakes winners and guests of the event sponsor. The upper tier member conducting/sponsoring event must pay retailer fair market value for use of premises. The retailer must retain control of the sale and service of alcoholic beverages at the event.
HB 3101	Kuempel	Creates a Passenger Bus Beverage Permit with \$500 annual fee. Eligibility restricted to a bus used for regularly scheduled trips between cities and has passenger deck over baggage compartment; seats 16-36 passengers; has a separate gallery area; is at least 35 feet long; and has an attendant who is not the driver and has taken seller server training.
HB 3287	Goldman	Defines limits on the breweries entitled to the retail tap room and self-distribution privileges that were part of the 2013 craft beer bill package. Counts the production at all affiliated and subsidiary breweries in determining when the production limit is reached before those privileges are surrendered. Provides a grandfathering exception and exceptions based on the sale to or purchase by a larger brewery. To qualify for the sale or purchase exceptions, certain restrictions on the ownership interest must be met. If any of these exceptions apply, retail sales are allowed in the taproom but the brewery must have a territorial agreement, purchase the malt beverages sold in the taproom from a distributor, and comply with cash law and other requirements applicable to dealings between retailers and distributors. Adjusts production and self-distribution limits. Grandfathers Karbach, Revolver and Independence breweries under the law that existed before this bill became law, and allows but limits expansion by those three breweries subject to certain restrictions in the bill
HB 4042	Paddie	Modifies temporary auction permit by removing "charitable" in name, eliminating surcharge, removing limitation of one per year, and expanding it to political action committees subject to Chapter 254 of the Texas Elections Code.

Self-Evaluation Report

Bill	Author	Summary of Key Provisions
SB 341	Perry	Adds offenses involving synthetic cannabinoids to the list of offenses for which a license can be denied for all retail licenses and adds possession of or allowing a person to have possession of synthetic cannabinoid on retail premises to list of prohibited activities. This definition will make it easier to prove synthetic cannabinoid offenses at TABC hearings.
SB 371	Watson	Eliminates inconsistencies in Code so there is no longer any requirements for an on-premise retailers to have running water or a toilet. This bill also aligns beer and wine licenses/permits with mixed beverage permits for this topic.
SB 1176	Campbell	Creates a water park permit for Schlitterbahn in New Braunfels that allows alcoholic beverages to be transferred between the water park permit locations as needed.
SB 1519	Hancock	Changes definition of Public Entertainment Facility to include a facility that's part of an approved venue project, including the venue and related infrastructure, as defined by Section 334.001, Local Government Code. Allows the referenced facility to receive upper tier sponsorship regarding the promotion or advertising of an entertainment event or an alcoholic beverage brand or product. The understanding is that the bill was written for Texas Live! which is part of the \$1.25 billion Texas Rangers Stadium and family-friendly mixed-use district featuring dining, entertainment, hotels, and convention facilities being developed in Arlington.

How TABC is implementing changes as a result of these bills is available by visiting http://www.tabc.texas.gov/laws/code_and_rules.asp

Legislation Not Passed

Bill *Major Impact	Author	Summary of Key Provisions
HB 47	Guillen	Regulates powdered alcohol. Identical to SB 896 and HB 133. Reported out of committee in house of origin but never heard by full House.
*HB 109	White	Allows package stores owned by same entity to get a new cartage permit and transfer product between stores across county lines. Never received a hearing in house of origin.
HB 133	Alvarado	Regulates powdered alcohol. Identical to HB 47 and SB 896. Reported out of committee in house of origin but never heard by full House.
HB 327	Canales	Allows holders of wine and beer retailer's permits for one- and off-premises to sell alcohol before noon. Never received a hearing in house of origin.
HB 408	Springer	Creates a distillery festival permit, which creates a conflict with local option elections because not all jurisdictions are legal for distilleries and on-premise sales. Never received a hearing in house of origin.
HB 437	Hernandez	Prohibits an applicant that has been refused a license three or more times to be granted a license for the same premise and same type of license. Never received a hearing in house of origin.
*HB 560	Springer	Repeals red sign (required in Government Code §411.204 for on-premise businesses that derive 51% or more of income from sale of alcoholic beverages) and mandates blue sign (described in §§11.041 & 61.11, AB Code) be posted for all TABC-licensed premises. Thus, individuals with License to Carry can carry handgun on any TABC-licensed premise with some exceptions. Never received a hearing in house of origin.
HB 649	Hernandez	Allows a person to anonymously protest the application for a mixed beverage permit. Never received a hearing in house of origin.

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Bill *Major Impact	Author	Summary of Key Provisions
*HB 908	Romero	Clarifies that a wine and beer retailer's permit or retail (beer) dealer's on-premise license holders may sell malt beverages in containers (commonly referred to as growlers and crowlers) to consumers for off-premise consumption. Never received a hearing in house of origin.
HB 1074	Springer	Allows distilleries to sell up to 6 bottles (2 per brand) per customer per month, which is an expansion of current allowance of two 750ml bottles per consumer per month. Companion to SB 734 and HB 2660. Never received a hearing in house of origin.
HB 1429	Isaac	Authorizes a specific retailer (Salt Lick) to engage in manufacturing activities. Companion to SB 590. Hearing held in house of origin but no further action taken.
HB 1514	Isaac	Entitles the appellation of origin indicating a wine's origin as being from the state of Texas only if 100 percent of the wine is derived from grapes grown in the state and if the wine is fully produced and finished in the state. Companion to SB 1833. Hearing held in house of origin but no further action taken.
HB 1637	Schaefer	Repeals blue sign (Sec. 11.041 & 61.11) and removes agency's ability to cancel if license holder allows firearm on premises resulting in no penalty for long guns on premises of a TABC-licensed business. Never received a hearing in house of origin.
HB 1715	Phillips	Removes the limit on the amount of wine that a winery can sell to ultimate consumers for off-premises consumption or an out-of-state winery direct shipper's permit holder may sell to ultimate consumers. Companion to HB 3748. Never received a hearing in house of origin.
HB 1872	King, Phil	Removes ownership restrictions (5 per person) and consanguinity verbiage for package stores. Companion to SB 750. Never received a hearing in house of origin.
HB 1911	White	CSHB repeals blue sign (Sec. 11.041 & 61.11) and removes agency's ability to cancel if license holder allows firearm on premises resulting in no penalty for long guns on premises of a TABC-licensed business. Reported out of committee in house of origin but never heard by full House.
HB 1999	Israel	Reforms the law regarding the purchase, possession, or consumption of alcoholic beverages by a minor or the misrepresentation of age by a minor. The bill passed the House and set for a hearing in Senate but never laid out.
*HB 2022	Goldman	Repeals blue sign (Sec. 11.041 & 61.11). This issue was listed in the Redundancies and Impediments section of TABC's FY2017-2021 Strategic Plan. Identical to SB 953. Posted for hearing in house of origin but was never laid out.
HB 2098	Geren	Allows brewpubs to sell the ale they produce to all three types of wholesalers (rather than only a Local Class B Wholesaler as currently allowed) and authorizes all three types of wholesalers to purchase product from a brewpub (rather than only a General Class B Wholesaler as currently allowed). SB 515 (83rd Legislature, Regular Session) did not align to whom a brewpub could sell to with whom a wholesaler could buy from. Current practice allows brewpubs to sell malt beverages to all wholesalers and distributors and allows all wholesalers and distributors to purchase malt beverages from brewpubs. Similar to actions in 84th Legislature, the House did not concur in Senate amendments that allows brewpubs to sell out of state.
HB 2186	Kuempel	Lower tax on ale/malt liquor so same rate as beer tax. Never received a hearing in house of origin.
HB 2188	Kuempel	Raises the current threshold for low wine taxes from 14% to 16%. Companion to SB 956. Never received a hearing in house of origin.
HB 2278	Phillips	Allows an in-state distiller's agent to solicit business from a mixed beverage permittee or private club without the presence of wholesaler. Reported out of

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Bill *Major Impact	Author	Summary of Key Provisions
		committee in house of origin but never heard by full House.
*HB 2291	Rinaldi	Authorizes all permit and license holders in the manufacturing and retail tiers that currently have the ability to sell to consumers to direct ship, via a common carrier, alcoholic beverages to consumers. Removes all restrictions for out-of-state wineries as to how much wine and how often they can ship wine to Texas consumers. Gives producers of beer and ale the authority to direct ship their products to Texas consumers without any gallonage limitations. Authorizes out-of-state retailers (both on and off premise) to sell to Texas consumers through the Internet. Hearing held in house of origin but no further action taken.
HB 2344	Guillen	Creates a water park permit for Schlitterbahn in New Braunfels that allows alcoholic beverages to be transferred between the water park permit locations as needed. Companion to SB 1176 that became law.
HB 2506	Hernandez	Ensures all communications from applicant or agency regarding protest (of a license) indicate information provided by protestants is subject to public information laws. Agency addressed legislator's concern by updating forms. Never received a hearing in house of origin.
HB 2555	Isaac	Allows brewers of ale/malt liquor and manufacturers of beer that produce less than 225,000 barrels annually to sell product to go. Companion to SB 1217. Issue is related to current litigation filed by Deep Ellum et al. Never received a hearing in house of origin.
HB 2660	Phillips	Allows distilleries to sell up to 6 bottles (2 per brand) per customer per month, which is an expansion of current allowance of two 750ml bottles per consumer per month. Companion to SB 734 and HB 1074. Never received a hearing in house of origin.
*HB 2754	Geren	Authorizes non-resident sellers to act as the primary source of malt beverages to Texas (similar to distilled spirits and wine). Never received a hearing in house of origin.
HB 2844	Burrows	Creates a Grower's Permit and repeals the Wine Bottler's Permit. Companion to SB 951. Never received a hearing in house of origin.
HB 2847	Villalba	Changes the hours of day for when liquor can be sold from start time of 10am to 9am. Never received a hearing in house of origin.
HB 2953	Geren	Changes definition of Public Entertainment Facility to include a facility that's part of an approved venue project, including the venue and related infrastructure, as defined by Section 334.001, Local Government Code. Companion to SB 1519 which was passed into law.
HB 2966	Raymond	Allows a customer to dispense alcoholic beverages from certain automated dispensing machines on a licensed premise through the use of a payment card. Never received a hearing in house of origin.
HB 3005	Kuempel	Authorizes manufacturers of beer, both in and out-of-state, to give away a prize awarded as part of a sweepstakes on a retailer's premises. The bill included same language as in HB 3003 which was passed into law.
HB 3067	Kacal	Authorizes distilleries and their employees to provide free tastings at more locations, use product in their own inventory, and more. Companion to SB 1760. Hearing held in house of origin but no further action taken.
*HB 3089	Morrison	Allows an entity that holds more than one production permit (manufacturer, brewer, winery, distillery) and two or more of the premises are at the same address or contiguous address to designate a common tasting area in which products can be transferred to/from, sold and consumed. Set on calendar in house of origin but no further action taken.
HB 3315	Dale	Allows holders of a Brewer's Permit, Temporary Wine and Beer Retailer's Permit,

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Bill *Major Impact	Author	Summary of Key Provisions
		Special Three-Day Wine and Beer Permit, Manufacturer’s License, and a Brewpub License to hold tasting competitions on their licensed premises for product produced under the authority of Sec. 109.21, which allows for the head of a family or an unmarried adult to produce for the use of his/her family or himself/herself not more than 200 gallons of product per year. Each license/permit holder listed who holds a tasting competition must file a \$500 surety bond. Bill was voted favorably on in committee of house of origin but never reported.
*HB 3344	Isaac	Creates a new Temporary Charitable Festival Permit for certain organizations with no fee, fewer restrictions and greater privileges than similar permits. Estimated a significant fiscal note. Companion to SB 1832. Never received a hearing in house of origin.
HB 3400	Canales	Allows a brewpub to sell malt beverages to certain qualified persons outside the state. Companion to SB 1642 which advanced further than HB 3400.
*HB 3660	Goldman	Removes the restraints placed on proceeding with administrative cases while there is a pending criminal case. The restraints were the effect of the state District Court's ruling in a case regarding Code §11.641(c). On 5/25/17 the 3rd Court of Appeals reversed the trial court’s Order and found that §11.641(c) does not prohibit TABC from imposing administrative penalties based on facts that could also support a criminal prosecution. This essentially achieves the result that this bill would have achieved by removing the restraints that had been imposed by the District Court's order. This issue was listed in the Redundancies and Impediments section of TABC's FY2017-2021 Strategic Plan. Identical to SB 1595. HB 3660 received a hearing in house of origin but no further action was taken.
HB 3748	Wilson	Removes the limit on the amount of wine that a winery can sell to ultimate consumers for off-premises consumption or an out-of-state winery direct shipper's permit holder may sell to ultimate consumers. Companion to HB 1715. Never received a hearing in house of origin.
HB 3863	Rodriguez, Eddie	Extends the privilege currently given to wineries to brewers to obtain a storage permit for a location inside or outside the county in which the brewer's business is located. Never received a hearing in house of origin.
HB 3869	Anderson, Rodney	Establishes the Drunk Driver Liability Act relating to civil liability for damages caused by a person while intoxicated or otherwise related to the person's intoxication. Companion to SB 875. Never received a hearing in house of origin.
HB 4015	Neave	Establishes that the offenses of consumption or possession of alcohol by a minor do not apply to a minor who reports that the minor or another person was sexually assaulted or by a minor who was the victim of a sexual assault as reported by another person. The report must be made to certain authorities. To claim the defense, the minor had to have been consuming or in possession of alcohol at the time the reported sexual assault took place. <i>(911 lifeline)</i> Companion to SB 966 that passed into law.
HB 4233	Isaac	Removes prohibition of publicly traded companies from owning a package store restriction prohibiting an individual from owning more than five liquor stores. Companion to SB 2209. Never received a hearing in house of origin.
*HB 4242	Kacal	Creates a Package Store Carrier Permit for digital-based alcohol delivery services and distinguishes the eligibility requirements of both the Carrier Permit and the new Package Store Carrier Permit. Never received a hearing in house of origin.
*SB 171	Huffines	Required the Internet broadcast of open meetings of the Texas Alcoholic Beverage Commission. Never received a hearing in house of origin.
SB 449	Burton	Allows concealed carry in red sign businesses and adds an alternative red sign.

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Bill *Major Impact	Author	Summary of Key Provisions
		(Red sign is weapons sign defined in Government Code, Sec. 411.204.) Never received a hearing in house of origin.
SB 590	Campbell	Authorizes a specific retailer (Salt Lick) to engage in manufacturing activities. Companion to HB 1429. Never received a hearing in house of origin.
SB 734	Hancock	Allows distilleries to sell up to 6 bottles (2 per brand) per customer per month, which is an expansion of current allowance of two 750ml bottles per consumer per month. Companion to HB1074 and HB 2660. Hearing held in house of origin but no further action taken.
SB 750	Birdwell	Removes ownership restrictions (5 per person) and consanguinity verbiage for package stores. Companion to HB 1872. SB 750 passed Senate and was referred to House committee but never received a hearing.
SB 875	Hancock	Establishes the Drunk Driver Liability Act relating to civil liability for damages caused by a person while intoxicated or otherwise related to the person's intoxication. Companion to HB 3869. Never received a hearing in house of origin.
SB 888	Seliger	Creates an exemption to allow sale of lottery tickets on the premise of a Wine & Beer Retailer's Permit holder that derives 30% or less of its gross receipts from the sale of alcohol. Companion to HB 1555 that became law.
SB 896	Seliger	Regulates powdered alcohol. Identical to HB 47 and HB 133. Set on calendar in house of origin but no further action taken.
SB 951	Hancock	Creates a Grower's Permit and repeals the Wine Bottler's Permit. Companion to HB 2844. SB 951 passed the Senate, but voted failed in House committee.
*SB 953	Hancock	Repeals blue sign (Sec. 11.041 & 61.11). This issue was listed in the Redundancies and Impediments section of TABC's FY2017-2021 Strategic Plan. Identical to HB 2022. Posted for hearing in house of origin but was never laid out.
SB 954	Hancock	Adds "controlled substances or drugs" to list of offenses for which TABC is not required to offer a civil penalty in lieu of suspension of license. Companion to HB 1612 which passed into law.
SB 955	Hancock	Lowers tax on ale/malt liquor so same rate as beer tax. Never received a hearing in house of origin.
SB 956	Hancock	Raises the current threshold for low wine taxes from 14% to 16%. Companion to HB 2188. Never received a hearing in house of origin.
SB 1217	Buckingham	Allows brewers of ale/malt liquor and manufacturers of beer that produce less 225,000 barrels annually to sell product to go. Companion to HB 2555. Issue is related to current litigation filed by Deep Ellum et al. Hearing held in house of origin but no further action taken.
SB 1301	Creighton	Expands options for producers of malt beverages to use a lab meeting certain certifications to test their products, in addition to sending sample to TABC to test or using an independent laboratory for testing. Companion to HB 2299 that became law.
*SB 1391	Hinojosa	Amends Section 11.641(c). A different version was filed as SB 1595, which was a companion to HB 3660. Never received a hearing in house of origin.
SB 1411	Menendez	Creates a new On-Premise Consumption Permit which would allow for the on-premise consumption of alcoholic beverage at premises commonly referred to as BYOB. Never received a hearing in house of origin.
*SB 1595	Hinojosa	Removes the restraints placed on proceeding with administrative cases while there is a pending criminal case. The restraints are the effect of the state District Court's ruling in a case regarding Code §11.641(c). On 5/25/17 the 3rd Court of Appeals reversed the trial court's Order and found that §11.641(c) does not prohibit TABC from imposing penalties based on facts that could also support a criminal prosecution. This essentially achieves the result that this bill would have

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Bill *Major Impact	Author	Summary of Key Provisions
		<p>achieved by removing the restraints that had been imposed by the District Court's order. This issue was listed in the Redundancies and Impediments section of TABC's FY2017-2021 Strategic Plan. Updated version of SB 1391. Identical to HB3660. Never received a hearing in house of origin.</p>
*SB 1603	Estes	<p>Allows someone under investigation to object to or assert a privilege in response to a request for information, forcing the agency to get an order by a court or file an administrative case. Several agencies, including TABC, are impacted. Never received a hearing in house of origin.</p>
SB 1639	Watson	<p>Allows brewpubs to sell the ale they produce to all three types of wholesalers (rather than only a Local Class B Wholesaler as currently allowed) and authorizes all three types of wholesalers to purchase product from a brewpub (rather than only a General Class B Wholesaler as currently allowed). Reported out of committee in house of origin but never heard by full Senate.</p>
SB 1642	Watson	<p>Allows a brewpub to sell malt beverages to certain qualified persons outside the state. Companion to HB 3400. SB 1642 passed the Senate, but voted failed in House committee.</p>
SB 1760	Creighton	<p>Authorizes distilleries and their employees to provide free tastings at more locations, use product in their own inventory, and more. Companion to HB 3067. SB 1760 passed Senate and was reported out of House committee but never heard by full House.</p>
*SB 1832	Buckingham	<p>Creates a new Temporary Charitable Festival Permit for certain organizations with no fee, fewer restrictions and greater privileges than similar permits. Estimated a significant fiscal note. Companion to HB 3344. Never received a hearing in house of origin.</p>
SB 1833	Buckingham	<p>Entitles the appellation of origin indicating a wine's origin as being from the state of Texas only if 100 percent of the wine is derived from grapes grown in the state and if the wine is fully produced and finished in the state. Companion to HB 1514. Never received a hearing in house of origin.</p>
SB 1974	Whitmire	<p>Amends Temporary Charitable Auction Permit to include raffles and expands eligible entities to political action committees and makes other changes. Sponsored passage of HB 4042 instead.</p>
SB 2036	Zaffirini	<p>Requires a person who applies for or holds a license on or after January 1, 2016 to sell alcoholic beverages for on-premise consumption only if that person establishes financial responsibility by maintaining liability insurance or a bond in lieu of insurance that meets certain criteria and does not hold a food and beverage certificate. Never received a hearing in house of origin.</p>
SB 2083	Seliger	<p>Specifies that the retail tap room and self-distribution privileges extended in the 2013 craft beer bill package are available only to brewers that produce less than 225,0000 gallons per year at all affiliated breweries. Other qualifications and exceptions are included in the bill. Companion to HB 3287 which was significantly amended and passed into law.</p>
*SB 2169	Huffines	<p>Treats ale/malt liquor the same as beer for purposes of alcoholic beverage regulation. Significant fiscal note. Hearing held in house of origin but no further action taken.</p>
SB 2209	Hancock	<p>Removes prohibition of publicly traded companies from owning a package store restriction prohibiting an individual from owning more than five liquor stores. Companion to HB 4233. Never received a hearing in house of origin.</p>

IX. Major Issues

ISSUE 1: Definition of "engaged in the business"

Description of Issue: There are laws that need clarification due to industry changes and corporate structures that have occurred over time. For example, tied house provisions prohibit anyone "engaged" in the alcohol beverage industry from having an interest in multiple tiers to prevent unfair competition and unlawful trade practices in the marketplace. When the Licensing Division receives an application, it reviews owners, shareholders, officers and directors to determine whether they have an interest in any license in a different tier. In conducting its review, it excludes those not engaged in the alcoholic beverage industry. There are questions, currently the subject of litigation and administrative cases, about who is considered to be engaged in the business.

Discussion: Modern day investment strategies have brought about the concern and growing conversation regarding cross-tier interest through mutual funds and similar investment vehicles. Because investment options look much different than they did when the tied house provisions were written in the Alcoholic Beverage Code, it would help to define "engaged in the business". The agency is currently dealing with lawsuits on this issue and existing permits are being protested at renewal based on the current statute. This ties up valuable agency resources, delays permit renewals, and will continue to result in court challenges to the agency's licensing procedures and the enforcement of tied house provisions of the Code.

Solution: Solution would be to define "engaged" in the alcoholic beverage industry by adding language in the statute that directs the commission to adopt rules in order to clarify the phrase "engaged in the alcoholic beverage industry" or simply defining "engaged" in the statute itself in Sec 102.01 of the Code.

Impact: This solution provides the agency, especially the Licensing Division, a sound legal basis for determining if a license should be issued and /or renewed. It provides the Audit Unit and Marketing Investigations Unit guidance in an investigation to determine if there is a cross-tier violation.

ISSUE 2: Non-licensed, direct-to-consumer delivery services

Description of Issue: The TABC is charged with regulating every phase (manufacturing, storage, distribution, transportation, and sale) of alcoholic beverages. Even sales, promotion and delivery staff at the upper and middle tier levels are licensed and regulated by the agency. The industry now has unlicensed digital-based companies which have entered the marketplace and do not fit into any of the existing license descriptions. In some cases the agency has found that these companies are actually collecting funds from the consumer (i.e., sale without a permit). TABC has a traditional Carrier Permit that is being used for in-city deliveries by drivers and companies that are not licensed and are in many cases contract employees (such as Uber or Lyft). TABC recognizes possible public safety issues with the delivery services providing the delivery of alcohol to minors. Minor sting operations conducted jointly by the Enforcement Division and the Audit Unit resulted in a 22% failure rate.

Discussion: A large number of mobile phone digital application companies have developed applications which provide digital portals to consumers for the selection and purchase of alcoholic beverage and non-alcoholic beverage products. Some of the companies simply provide a portal to the alcoholic beverage permit holder's website, some provide payment processing services, while others provide full service to include the actual shopping for and delivery of the product to the customer. A large number of package stores (both holders of a Package Store Permit and a Wine Only Package Store Permit) have begun contracting with these companies to facilitate the sale and delivery of alcohol on behalf of the package store. These companies contract with the retailers to offer a digital consumer interface such as a mobile application and/or webpage to take and process alcoholic beverage orders for delivery. A package store has the ability to self-deliver the sale of its product under a beverage cartage permit issued to the package store. Deliveries to consumers under this transport permit are limited to the city limits or two-mile radius of the city limits in which the package store is located. The package store may also elect to contract with the holder of a TABC-issued Carrier Permit to deliver alcohol to consumers within the delivery area authorized under the Local Cartage Permit.

Before the advent of these mobile application service delivery companies, a Carrier Permit was issued by TABC to interstate delivery companies such as Central Freight, Federal Express and UPS. In recent years, several of these mobile application alcohol service delivery companies have obtained a Carrier Permit so that they can make the actual deliveries in addition to providing the digital interface and payment processing services. Deliveries by the carrier are limited to the county in which the package store is located; however, the delivery companies need only hold one carrier permit for the entire state. Vehicles under a traditional carrier permit are not required to be marked with the state-issued Carrier Permit number since they are plainly marked with their company name e.g., UPS, FedEx, Central Freight. There was no question these vehicles were actively engaged in daily commerce. Under this new business model, personal passenger vehicles of contract workers (Uber, Lyft) which are not marked in any way are used to transport liquor to the consumer. TABC has concerns as to the entity (the company, the person, the vehicle) making the delivery, the level of responsibility of and

accountability for the entity making the delivery, and the application of punishment for a violation of the Alcoholic Beverage Code and other laws when infractions occur.

Solution/Impact: Amend Chapter 41 (Carrier Permit) of the Alcoholic Beverage Code to create a Digital Processing Carrier Permit to be issued to digital-based mobile application companies that have the option under the permit to also deliver the product to the consumer. The permit would allow the companies to provide a portal, advertising, payment processing third-party services, and delivery to consumers while being under the regulation of the agency. Regulating this segment of the industry would address the current public safety issues the agency has identified with the current system.

ISSUE 3: Case management system

Description of Issue: As discussed elsewhere in this report, TABC is need of a case management system to manage activities performed by Field Operations, the Licensing Division and other divisions in support of identifying violations and disposing of those violations. This includes functions traditionally found in Code Enforcement Systems, Law Enforcement Systems, and Legal Case Management Systems. TABC also seeks supporting functions of staff management, document management, communication management, workflow management, calendar management, and management reporting.

Discussion: TABC intends the Case Management System to help TABC better use, manage, consolidate, share, and protect information accessible through a centralized database. Desired Functions: Intake Management; Assignment and Dispatch Management; Inspection Management; Investigation Management; Violation Case Management; Incident Management; Legal Case Management; Operations Management; Supporting Activity Management; Management Reporting; and Activity and Case Assignment/Reassignment. TABC currently maintains several systems in support of these activities:

- Agency Reporting and Tracking System (ARTS). This custom in-house application was first developed in 2005. ARTS supports the following modules: Tracking and reporting for original license applications from the field offices, administrative and criminal offenses entered by law enforcement agents, daily activity reporting for field operations personnel, and entering of temporary and catered events. Activities are tracked by license number, but not by case. The system is cumbersome to use. Use of this system creates duplicative entry by law enforcement personnel, has less than desirable security functionality, and requires the agency to maintain the system with either costly in-house programming staff or outside contractors.
- CrisNet/NetRMS (Records Management system). CrisNet is a commercial off-the-shelf system first installed in 2000 and is an incident tracking system. Law enforcement personnel enter incidents after their reports are completed. Incident tracking includes information about an offense, including offender data, witness data, crime data, evidence data, location data, etc. Quite often the offense information is duplicative of

the information entered into ARTS. The system is out of maintenance support and would be costly to bring into current support levels. The systems' security and usability features are outdated and do not support the current needs of TABC's law enforcement users.

- Versa:Regulation (VR) is used for Licensing. VR is a commercial-off-the-shelf system developed and maintained by MicroPac (formerly Iron Data). Although the software package includes modules for Licensing, Compliance and Enforcement, TABC determined that VR did not meet the agency's needs for Compliance and Enforcement. The Versa package is the software that allows permit holders to renew their permits online.
- Internal Inquiry. This in-house custom system built in 2011 was adapted to provide law enforcement personnel access to licensing, compliance and enforcement information that resides in Versa:Regulation. Internal Inquiry provides inquiry access to information that is otherwise unavailable to certain staff due to VR software licensing restrictions. The system creates duplicate information that would otherwise be unnecessary if it was maintained in a single case management solution and requires the agency to maintain the system with either costly in-house programming staff or outside contractors.

Solution/Impact: TABC wants to invest in a strategic Case Management software solution rather than continually implement "piecemeal" improvements to its current case management software. Toward that end, TABC wishes to acquire software and or services to meet agency Case Management needs – either a Software as a Service (SaaS), Commercial Off-The-Shelf (COTS) solution, or through an Interagency Contract (IAC) with the Department of Public Safety to use their SPURS Case Management solution.

ISSUE 4: Volume discounting and excessive discounting

Description of Issue: Discounts - The Code does not define what a "discount" is. Section 102.07(a)(7) of the Code addresses the fact that a discount to a retailer cannot be excessive; however, it does not define what an "excessive discount" is.

Discussion: The agency is charged in Alcoholic Beverage Code section 5.31(b)(3) with ensuring fair competition. Without a definition of discount or excessive discount, an issue has arisen regarding whether discount practices are inappropriately being used to control the pricing and distribution of certain alcoholic beverage products. Certain industry practices related to discounts create an uneven playing field in the marketplace as large retail chains eventually control the price and distribution of specific product lines.

These questions highlight some of the concerns:

- Is it appropriate for a wholesaler or distributor to discount the price of a product based on total purchases of the product by all of the individually permitted stores in a retail chain under the same ownership?
- Is it appropriate for a wholesaler or distributor to discount the price of a product based on total purchases of the product by the chain over an undefined period of time?
- Is it appropriate for a wholesaler or distributor to use a "family plan", which discounts prices on products within the same portfolio of a supplier's product line over a period of time?

In terms of volume discounts, permittees who have multiple individually permitted locations are able to purchase alcoholic beverages at a much greater discount than permittees who own fewer stores. The lack of a definition for volume discount primarily affects smaller businesses directly. However, the lack of a definition for excessive discounts affects all industry and the general public indirectly as a public safety issue, because excessive discounts can lead to a rise in overconsumption.

While the agency does not prohibit volume discounts, it often receives complaints from small stores trying to compete with larger chain operations. The agency is required to investigate each complaint to determine if the volume discount prices were offered to the smaller stores. Often the prices are indeed offered to the smaller stores, but they are unable to purchase the high quantity required to receive the volume discount. In many cases, the wholesale price to a "mom and pop" retailer of a product is higher than the wholesale price of the same product to a large retail chain that purchased the same product under a volume discount pricing plan.

Solution/Impact: Defining in the Alcoholic Beverage Code what a legal volume discount is and what an excessive discount is would provide the agency and the industry with clear direction as to what activities are legal. Licensees would have an unambiguous understanding of how to market their products legally. If these terms were defined, the agency would receive fewer complaints for investigations regarding excessive discounts and volume discounts.

ISSUE 5: Cross-tier violations

Description of Issue: Tied house provisions are primarily designed to protect the retail tier from undue influence, control, and/or ownership by an upper or middle tier member. In today's global economy, large retail chains have reversed that influence and due to their vast buying power, have begun to influence the manufacture of specific branded products and control the availability, distribution, and wholesale pricing of existing brands in the Texas marketplace.

Discussion: Chapter 102 of the Code deals with the tied house provisions of the alcoholic beverage industry. After prohibition, tied house provisions were designed and written to protect members of the retail tier from upper tier influence and ownership. In today's global economy, out-of-state ownership of large retail chains along with in-state ownership of large package store chains have resulted in retail chains having sufficient buying power to influence the upper and middle tiers on brand manufacturing, distribution and wholesale pricing of alcoholic beverage products.

Solution/Impact: The agency tries to apply the Code to current market conditions and it would be useful to the agency and the industry to receive specific guidance on the issue by the Legislature of whether Chapter 102 is meant to apply to retail tier members as well as to upper and middle tier members. Changes to the tied house provisions would address whether prohibited relationships that are being created by the retail tier in today's Texas marketplace should be addressed by the agency during cross tier investigations. Such changes could relieve some of the pressure on the upper and middle tiers that are currently pressured by large retail chains to produce and distribute control brands, restrict product distribution to only the retail chain, and in many cases, dictate the wholesale price of the product to retail chain members.

ISSUE 6: Private/Control labels – prohibition or authorization

Description of Issue: The Alcoholic Beverage Code does not address private labels. "Private labels" is an industry term meant to designate a product being produced for a specific retailer or type of retailer. The private label may contain the retailer's tradename or registered trademark; but in most cases, the distribution and/or wholesale cost of the product is controlled by the retailer due to its buying power in a global economy. Chapter 102 of the Code prohibits an upper tier member from giving a retailer a benefit over another retailer. The agency interprets this to apply when private labels for wine and distilled spirits are sold exclusively to one retailer or retail chain.

Manufacturers of malt beverages (beer and ale) are prohibited by Rule from placing a retailer's name, tradename or trademark on the label. The Rules also prohibit the issuance of label approval for malt beverages if the commission determines that a label is produced for specific retailer. On the other hand, due to changes to the Code in 2007, malt beverages are treated differently from wine and distilled spirits. The Code requires the commission to accept federal certificates of label approval (COLAs) as meeting state labeling requirements for wine and distilled spirits. TABC is therefore forced to issue a private label for wine and distilled spirits based on the federal COLA. This discrepancy is why there is an issue as to whether private labels for wine and distilled spirits constitute an illegal benefit to a retailer by the producer.

Discussion: If the agency receives a complaint stating that a wine or distilled spirits label contains a retailer's name, tradename or trademark and is sold exclusively to only one retailer, the agency conducts an investigation. If it is found that the product is exclusive to one retailer through distribution and/or price controls, the agency pursues administrative action for violation of Code Section 102.07 as the product is considered an illegal benefit to the retailer. However, if the product is found to have not been sold exclusively and is in fact offered to all retailers, there is not a violation. Exclusive is not defined in the Code, so the percentage of sales to other retailers could be as low as 1% of the total sales of the product and the agency could not say the product was exclusive to the retail chain that purchased 99% of the brand.

Since wine and distilled spirits labels with a retailer's name, tradename or trademark are not prohibited in the Code or by Rule (unlike malt beverage labels), the agency must utilize its limited resources to investigate wine and distilled spirits products to determine if an illegal benefit took place. Private labels for wine and distilled spirits are becoming a common practice in the industry and the majority of the tied house investigations involve private label issues.

Without a definition of private labels for wine and distilled spirits, the agency has to determine whether or not an illegal exclusive sale or an illegal agreement controlling distribution or price took place when a label with a retailer's name, tradename or trademark receives Texas label approval.

Solution: Provide a definition in the Code of a private label for wine and distilled spirits. If the revised statute allows for private labels, further clarification would be need to establish whether or not those products could be sold exclusively. Furthermore, consideration should be given as to whether malt beverages should be subject to the same restrictions or have the same benefits as wine and distilled spirits.

Impact: Assuming all ambiguity regarding private labels is addressed in the Code or Rules, licensees and permittees would have a clear understanding of how to market their products legally. The agency would receive fewer complaints for investigations regarding private labels, allowing the agency to refocus resources on other violations. Depending on the definitions, some entities may have to stop selling private labels in Texas.

ISSUE 7: Outdoor advertising (disparate treatment of liquor and beer)

Description of Issue: Provisions in the Alcoholic Beverage Code create an uneven playing field in the marketplace as Mixed Beverage (MB) permit holders have an advertising advantage over Wine and Beer Retailer's (BG) permit holders and Retail (Beer) Dealer's On-Premise (BE) license holders at on-premise locations for the same beer and wine products. Over the years, this has resulted in multiple complaints being received and warning tickets and cases being issued and filed against BG permit and BE license holders for outdoor advertising violations.

Discussion: Regarding outdoor advertising at on-premise locations, the agency is forced to treat outdoor advertising restrictions contained in Subchapter B of Chapter 108 of the Alcoholic Beverage Code for wine and beer retailer (BG) and beer retailer (BE) locations differently than for mixed beverage (MB) locations. Code Section 108.07 provides an exemption from outdoor advertising restrictions for MB locations with the exception of price, which is addressed by agency Rule. This creates confusion in the industry when two locations next to each other with different permits (for example, Mixed Beverage and Wine and Beer retailers) have different outdoor advertising restrictions for the same product. For example, the wine and beer retailer can only advertise the word “beer” one time on the exterior of its building, while the mixed beverage retailer can advertise “Cold Pearl Snap” multiple times on its exterior storefront.

Solution: Amend the Alcoholic Beverage Code to treat Wine and Beer Retailer's permits (BG) and Retail (Beer) Dealer's On-Premise licenses (BE) in the same manner as Mixed Beverage permits (MB) regarding outdoor advertising restrictions. This change would create a more level playing field on marketing issues for all on-premise permits and licenses.

Impact: The agency would issue fewer administrative warnings due to less confusion among retailers on unequal treatment of one segment of the industry. TABC personnel would have more time to focus on other Code violations.

Note: This issue was listed in the Redundancies and Impediments section of TABC's FY2017-2021 Strategic Plan.

ISSUE 8: Destruction of disallowed or illicit alcoholic beverages

Description of Issue: When customers at ports of entry along the Texas-Mexico border attempt to import more alcoholic beverages than are allowed by the Code, TABC personnel allow the customer to return to Mexico to deal with the excess product, destroy the excess product themselves, or abandon the excess product. TABC assumes responsibility for any abandoned product. Similarly, if a customer tries to bring in an illicit beverage into Texas at the border, TABC confiscates it. The POE Division has no statutory ability to destroy the disallowed and confiscated products.

Discussion: With TABC's Ports of Entry Division (POE), Tax Compliance Officers (TCOs) are tasked with the collection of taxes and confiscation of unlawful products and illicit beverages at 30 ports of entry on the Texas-Mexico border and Galveston Seaport. All abandoned and illicit beer, distilled spirits and wine are temporarily stored at ports of entry locations, which have very limited storage capacity. Only commissioned peace officers may destroy seized products, therefore POE supervisors request on a weekly or bi-weekly basis an Enforcement agent to come to the ports of entry to destroy product. This request diverts the Enforcement agent from addressing public safety duties in order to handle an administrative function for another TABC division.

Note: Before 2013, POE practice allowed a POE supervisor--with proper documentation and witness--to destroy the product on site as the product was disallowed or shortly thereafter. In 2013 the TABC General Counsel found that the POE supervisor was not allowed by law to destroy seized product.

Solution/Impact: Allow--by statute or Rule--POE Supervisors, with proper documentation, to destroy disallowed or illicit alcoholic beverage products. This change would allow ports of entry to fulfill the mandate of Code Section 5.37 without disruption of operations and allow Enforcement agents more time to handle public safety duties and not be tasked with the administrative duty of traveling to the ports of entry to destroy alcoholic beverages.

ISSUE 9: Common tasting area for manufacturing tier

Description of Issue: A growing number of manufacturing tier members have TABC permits or licenses to produce more than one type of alcoholic beverage in separately permitted or licensed facilities at the same site. For example, a winery might add a brewery and/or a distillery at the same location. These manufacturing tier members who have different types of production facilities at a single location would like to have a common tasting area where guests could consume any of the products that the member is authorized to sell or serve on the actual permitted or licensed premises of any facility at the location.

Discussion: Holders of manufacturing tier permits or licenses who are allowed to sell/serve alcoholic beverages for on-premise consumption must limit such sales or service to their permitted or licensed premises. A winery can sell for on-premises consumption at the winery either wine it produces on the permitted premises or wine it acquires from other wineries. However, breweries and distilleries can only sell for on-premises consumption the malt beverages or distilled spirits produced by them at their permitted or licensed premises. When a single owner has production facilities for two or three different types of alcoholic beverage at a single site, each of the facilities has its own permit or license and each category of alcoholic beverage must be produced at a separate facility.

The result can be that if a guest at the brewery wants to enjoy a beer, it must be consumed on the brewery's premises and cannot be carried to the winery, where the guest's spouse wants to have a glass of wine, which cannot be carried to the brewery. This has led to premises being designated in such a manner that guests of the brewery are seated on one side of a table on the brewery's premises, while guests of the winery are seated on the other side of the same table on the winery's premises, with the boundary between the two premises being physically displayed on the table.

Solution/Impact: CSHB 3089 (85th Legislature, Regular Session) by Rep. Morrison would have amended the Code by creating Chapter 82, Common Tasting Area for Members of Manufacturing Tier. The bill addressed where a common tasting area could be located, how inventory moving in and out of the common tasting area would be tracked and taxed, the requirement for separate recordkeeping, and which permitted or licensed facility serving the common tasting area would be penalized if a Code or Rule violation occurred in the common tasting area. At the hearing on the bill in the House Licensing and Administrative Procedures Committee, brewers and distillers indicated their support for the bill while distributors and wholesalers indicated their opposition to it. The bill was placed on the General State Calendar on May 11, but there was no vote. Note: Rep. Morrison introduced HB 284 (85th Legislature, 1st Special Session) which was identical to CSHB 3089.

ISSUE 10: Authority of auditors to seize illicit alcoholic beverages

Description of Issue: During open inspections of licensed and permitted locations, field auditors may identify alcoholic beverages as illicit. However, an auditor does not have the authority under the Code to seize an illicit beverage as evidence.

Discussion: On a daily basis, auditors in the field conduct open inspections of licensed and permitted locations to inspect alcoholic beverages for label approval, TABC identification stamps on distilled spirits, and instances of refilling distilled spirits. Any of these issues could result in the alcoholic beverages being identified as illicit in the marketplace. Incidents of this nature routinely happen in the field. This situation poses a problem because an auditor does not have the authority under the Code to seize the illicit beverage as evidence in preparing an administrative case against the permit or license holder. The auditor is forced to contact the regional office and request that an Enforcement agent be dispatched to the location to place the illicit beverage under seizure. Because the majority of agents work nights, the availability of an agent to be able to conduct the seizure in a timely manner is always an issue. Even if an agent is available, it is time consuming to wait for the agent to arrive at the location and often interferes with the agent's regular work schedule.

Solution/Impact: Allow authorized representatives (auditors) of the agency to seize an illicit beverage in the course of their assigned duties. This would be less intrusive for the license and permit holder, more productive and expedient use of an auditor's time, and not interfere with another employee's (agent's) job duties.

ISSUE 11: Repeal of blue sign

Description of Issue: The issue is whether the current requirement in Alcoholic Beverage Code Sections 11.041 and 61.11 requiring certain TABC- licensed premises to post certain warning signs referring to the possession of weapons on the premises (i.e., blue signs) is still necessary and effective or instead is misleading, overly broad, and a cause of public confusion and therefore should be repealed.

In 1995, when the Legislature created a concealed handgun license (CHL), it also required certain TABC licensees that have on-premise sales of alcohol amounting to 51% or more of their income to post a "red sign" indicating that handguns are not allowed on the premises even if carried by a CHL holder. [Government Code, Section 411.204] In 1997, the Legislature required all TABC licensees to post a "blue sign" if they were not required to post a "red sign." The "blue sign" must give notice that it is unlawful to carry a weapon on the premises unless it is a concealed handgun and the person holds a License to Carry (LTC, which replaced the CHL). [Alcoholic Beverage Code, Sections 11.041 and 61.11] In 2015, the Legislature approved open carry of handguns, but allowed business owners (including TABC permittees and licensees) to post trespassing signs indicating that open and/or concealed carry is not allowed on the business's premises, even if the person has an LTC. [Penal Code, Sections 30.06 and 30.07]

Discussion: One source of confusion is the conflict faced by a TABC licensee who is required by Alcoholic Beverage Code Sections 11.041 or 61.11 to post a blue sign indicating a person with an LTC can carry a handgun on the premises but who, in fact, wants to exercise the right under Penal Code, Sections 30.06 or 30.07, to ban open and/or concealed carry. Posting both a blue sign and a trespassing sign could be confusing to a patron with an LTC who wants to comply with posted notices.

In addition to the confusion related to the interplay of the blue sign requirement, open carry, and trespassing signs, the notice required to be placed on the blue sign is misleading because it is incorrect. Alcoholic Beverage Code Sections 11.041 and 61.11 state that notice must be given that "it is unlawful for a person to carry a weapon on the premises unless the weapon is a handgun and the person is licensed to carry." However, there is no statutory prohibition that makes it unlawful to carry all weapons except handguns on a TABC -licensed premises. For example, a person does not violate the law by carrying a long gun on such premises. Under Alcoholic Beverage Code section 11.61(e), a TABC licensee could lose its license if it knowingly allows a person to possess a firearm in a building on its premises. But actually possessing a long gun on a TABC-licensed premises is as legal as possessing it on the street or at the Capitol.

A third problem with the blue sign is its overly broad applicability. The requirement to display a blue sign applies to any TABC permit or license holder that does not have to display a red sign. Thus, TABC- licensed breweries, wineries, and distillers should display blue signs, regardless of whether they are in the state and regardless of whether they have on-premise consumption (e.g., in taprooms).

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Solution/Impact: HB 2022 by Rep. Goldman and SB 953 by Hancock (85th Legislature, Regular Session) would have repealed Alcoholic Beverage Code Sections 11.041 and 61.11 and Government Code §411.204(d), and thereby eliminate the blue sign requirement.

In regard to Penal Code sections 30.06 and 30.07 trespassing signs, whether there is a blue sign or not, it is up to the business owner to decide whether to allow individuals with an LTC to enter the business premises with a handgun at all or only with the handgun concealed or only with the handgun carried openly. For these purposes, it makes no difference whether the premises is permitted or licensed by TABC. Therefore, if the business owner:

- does not want to allow individuals with an LTC to carry concealed (so therefore it is okay to carry openly), the owner posts a 30.06 sign. The presence or lack of presence of a blue sign is irrelevant.
- does not want to allow individuals with an LTC to carry openly (and therefore it is okay to carry concealed), the owner posts a 30.07 sign. The presence or lack of presence of a blue sign is irrelevant.
- does not want to allow individuals with an LTC to carry a handgun onto the property, the owner posts 30.06 and 30.07 signs. The presence of a blue sign causes confusion in this situation because the blue sign indicates it is okay to enter as long as an individual has an LTC.

Eliminating the blue sign requirement is a further indication that, aside from the red sign requirement, the holder of an LTC carrying a handgun into a TABC- licensed premises is subject to the same requirements as when entering a barber shop or dry cleaner. LTC holders would thus only have to check for trespassing signs (as with any business) or a red sign (at a TABC-licensed business).

Note: This issue was listed in the Redundancies and Impediments section of TABC's FY2017-2021 Strategic Plan.

ISSUE 12: Cybersecurity

Description of Issue: TABC stores highly confidential data of license and permit holders and must protect confidential data from exposure or theft. Without funding to make considerable improvements to aggressively address TABC's increasing number of cybersecurity threats, TABC's IT security program is increasingly vulnerable.

Discussion: TABC maintains confidential data including personally identifiable information, criminal violation history, legal data, corporate data (including ownership and revenue), sales data, and the like. Statutorily TABC is the custodian of this data and must prevent unauthorized access, unauthorized intrusion, and unauthorized use.

As part of the statewide Enterprise Security Program, TABC engaged Gartner in May 2013 to evaluate the IT Security Program, requirements, and current capabilities against industry leading practices. Gartner recommended 28 initiatives to improve TABC's cybersecurity maturity to protect against cybersecurity threats.

In the last four years since the study was completed, the number and complexity of attempted intrusions have increased at an alarming rate. In the last two biennia, the agency has requested legislative funding to try to keep pace with its security programs to minimize risk. Without continued improvements for this initiative, TABC's risk exposure to cybersecurity threats increases significantly.

Solution/Impact: Provide funding to initiate improvements to TABC's cybersecurity maturity to strengthen its infrastructure in order to further minimize the risk of loss or theft of private information of license holders. TABC listed cybersecurity improvements as an exceptional item in both the 2016-2017 and 2018-2019 Legislative Appropriation Requests, but neither were adopted.

ISSUE 13: Modernization of legacy regulatory licensing system

Description of Issue: There is a need to modernize the agency's legacy regulatory licensing system in order to improve efficiency and functionality for both internal staff and external customers. The current regulatory licensing solution has fallen significantly behind the technology curve due to being highly customized and costly to upgrade.

Discussion: In 2005, the agency completed a major two-year technology transformation project which migrated mainframe applications and database systems to a modern enterprise environment. This was accomplished using LicenseEase software from Versa Systems. Information systems must constantly change to meet increased demands for improved functionality and access to information. In 2009 Versa:Regulation (v2.4) was implemented as the successor to LicenseEase and, at the time, was the next generation of business applications designed by Versa Systems to improve efficiency and deliver enhanced customer service. As a maintenance paying client, TABC is entitled to all system upgrades, but there are significant upfront costs associated with customization.

Solution/Impact: In 2017 the agency needs to upgrade the current regulatory licensing system or consider alternative commercial off-the-shelf (COTS) products on the market. The next generation of regulatory licensing system needs to be more flexible than its predecessor, contain more functionality, and be configurable to more closely match the agency's business processes. Other noteworthy needs in the product include an improved online portal module for industry/public access, a mobile inspection module for Field Operations to conduct site inspections, and a regulatory analytics module to measure and report productivity and performance. The next solution will be open, accessible, and a more secure technology supporting Section 508 compliance (amended section of the Rehabilitation Act of 1973 that allows all users, regardless of disability status, access to technology); have platform independence; be built to open standards; have a role-based security model; and be hosted on site or in the cloud. TABC will require an appropriation from future legislatures for a modern regulatory system that meets the ever changing needs of the agency (and industry).

ISSUE 14: Criminal history checks

Description of Issue: The Code is inconsistent as to the authority to run background checks on applicants, spouses and residentially domiciled persons under Sections 28, 25.06 and 69.06. The practice and procedures currently in place have been documented in policy in which both permit and license applicants are treated the same when it comes to background checks. As of the latest audit by the Department of Public Safety in 2017, it was noted that the TABC authority to run criminal histories is limited by the Code to only the applicant and the spouse of those under Sections 25.06 and 69.06 and only to the applicant in Section 28 and to residentially domiciled for both. The reasons behind the inconsistencies are not clear. In addressing the issue, consideration should also be given to on-premises versus off-premises permits and licenses as it pertains to background findings for an applicant's spouse. If felony convictions exist for the spouse of a Retail (Beer) Dealer's Off Premise License (Chapter 71) or a Wine and Beer Retailer's Off Premise Permit (Chapter 26), then that conviction does not disqualify the applicant but would disqualify the applicant for a Retail (Beer) Dealer's On-Premise License (Chapter 69) or a Wine and Beer Retailer's (On-Premise) Permit (Chapter 25).

Discussion: Sections of the Code for applicants for beer, ale and wine specifically address convictions of an applicant and an applicants' spouse. The agency has maintained that multiple sections of the Alcoholic Beverage Code give TABC the authority to run background searches on spouses of and those who are residentially domiciled with Mixed Beverage Permit holders (Chapter 28). History has shown that these background checks of the spouse or residentially domiciled person have proven beneficial in protecting public safety.

Solution/Impact: Amend the Code to clarify whether the agency should have authority to treat all license and permit applicants the same by providing a sound legal basis as to the qualifications and requirements associated with criminal background checks for applicants, applicant's spouse and residentially domiciled persons. It would provide clear definition and direction and would eliminate confusion for both the applicant and the Licensing Division.

ISSUE 15: Number of licenses and permits

Description of Issue: Currently there are more than 70 different types of licenses, permits, certificates and authority. These are divided among the three tiers and also among categories for those engaged in the alcoholic beverage industry whether it is beer, ale, wine, or distilled spirits.

Discussion: As it exists now, an applicant might require one to five different licenses or permits to perform all the activities necessary to conduct its business operations. Applicants do not always understand the regulations and do not always communicate all the authorities required regarding their business type which later may result in administrative action and the need to apply for additional licenses and permits. The Code has become so complex and separated between liquor and beer that it makes it difficult for even a seasoned person to communicate because various sections of the Code address multiple issues regarding authority given under a specific license/permit.

Solution/Impact: Consolidate some of the 70+ types of licenses and permits and give all the authority to the license or permit holder that may be exercised without requiring additional license/permit to do so. For example, instead of a separate license that gives the business the authority to transport alcohol from one location to another, authorize the business to perform all activities necessary to conduct their business, including transporting alcohol between locations. Consolidating would simplify the current license/permit structure, provide consistency between beer and liquor, be less confusing to holders of a license or permit, and reduce ambiguity and conflicting standards. The solution would reduce the number of licenses and permits, resulting in a loss of revenue from fees; however, adjustments could be made to remaining fees to compensate for the increased privileges authorized for each license or permit.

X. Other Contacts

- A. Fill in the following charts with updated information on people with an interest in your agency, and be sure to include the most recent email address.

Exhibit 81: Contacts

Interest Groups

Group or Association Name	Contact Person	Telephone	Email Address
17th Street Bar and Restaurant Assoc.	Becky Guerra	(956) 330-1091	becky@patioonguerra.com
AB-InBev or Anheuser-Busch	Jack Roberts	(512) 477-6833	wjr1949@sbcglobal.net
AB-InBev or Anheuser-Busch	Kenneth Judd	(314) 577-7104	kenneth.judd@anheuser-busch.com
AB-InBev or Anheuser-Busch	Royce Poinsett	(512) 542-7054	rpoinsett@gardere.com
AB-InBev or Anheuser-Busch	Tristan Castaneda	(512) 320-9933	
Aegis Advocacy (AB-InBev or Anheuser-Busch)	Mark Bordas	(512) 236-9242	mbordas5@sbcglobal.net
Alan Gray Consulting	Alan Gray	(512) 422-5201	alangrayconsulting@gmail.com
Alcohol & Drug Abuse Prevention (ADAP)	Rudolph Rodriguez	(956) 787-7111	rrodriguez@bhsst.org
Andrews Distributing	Barry Andrews, President	(214) 525-9414	bgandrews@andrewsdistributing.com
Andrews Distributing	Jim Campbell, V.P.	(214) 525-9414	jcampbell@andrewsdistributing.com
At Law, PLLC	Angel Tomasino	(210) 845-8835	attorney@atlaw.us
Bay Area Council on Drugs and Alcohol (BACODA)	Vanessa Ayala	(281) 218-6604	
Beatty, Bangle Strama (Wholesaler Beer Distributors of Texas)	Keith Strama	(512) 879-5050	kstrama@bbsfirm.com
Beer Institute	Mary Jane Saunders	(202) 737-2337	mjsaunders@beerinstitute.org
Ben E. Keith Company	Craig Woodcook	(817) 877-5700	cawoodcook@benekeith.com
Ben E. Keith Company	Kevin Bartholomew (President)	(214) 634-1500	kevinbartholomew@benekeith.com
Bethel Prevention Coalition	Keely Petty (Pastor)	(210) 651-3331	admin@bethelcommunitysa.org
Brookshire Brothers	Phil Metzinger	(936) 634-8155	pmetzinger@brookshirebros.com
Brookshire's	Jason Cooper	(903) 534-2161	jasoncooper@brookshires.com
Brown Consulting	Buster Brown	(512) 457-0600	contact@thebrownsconsulting.com
Brown Distributing	Dave Smith Sales Mgr.	(512) 478-9353	daves@austinbud.com
Brown Distributing	Hector Montes, Accounting Mgr.	(512) 583-6790	hectorm@austinbud.com
Brown Distributing	Laurie Brown Watson	(512) 478-9353	lauriew@austinbud.com
Brown-Forman	Robert Ferguson, V.P. Central Division	(972) 620-5299	Robert_Ferguson@B-F.com
Burleson & Craig, P.L.L.C	Clyde Burleson	(713) 526-2226	clyde@burlesoncraig.com
California Wine Institute	Tyler Rudd	(512) 293-0247	tylerrudd@ruddattorneys.com
CC Downtown Management District	Barbie Baker	(361) 882-2363	AlyssaB@cctexas.com
CC Human Trafficking Task Force	Minta Moore	(361) 946-6331	minta@newliferefugeministries.org
Circles of San Antonio (SACADA)	Tracy Talavera	(210) 225-4741	ttalavera@sacada.org
Consultant (Wholesaler Beer Distributors of Texas, others)	Randy Yarbrough	(512) 837-7265	randyy@swbell.net
Cross Check Alliance	Judy Schier Hobbs	(512) 352-4155	

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Group or Association Name	Contact Person	Telephone	Email Address
Cross Oak Group (Texas Craft Brewers Guild)	Jim Dow	(512) 499-8336	jdow@crossoakgroup.com
Cross Oak Group (Texas Craft Brewers Guild)	Mark Homer	(512) 499-8336	mhomer@crossoakgroup.com
Cross Oak Group (Texas Craft Brewers Guild)	Nelson Nease	(512) 466-8271	nelson@nhnpc.com
Denton County DWI Law Enforcement Advisory Group	Brent Robbins	(940) 349-2710	
Diageo	Eric Glenn	(512) 477-5200	eric@schluetergroup.com
Diageo	Winn Atkins	(512) 371-7117	winn.atkins@diageo.com
Distilled Spirits Council of the United States (DISCUS)	Dale Szyndrowski	(972) 578-1635	dszyndrowski@discus.org
Distilled Spirits Council of the United States (DISCUS)	Lynne Omlie	(202) 682-8824	Lomlie@discus.org
East Texas Coalition	Susan Anderson	(903) 939-9010	Susan.anderson@nextstepcsi.com
Faust Distributing Company	Don Faust, Jr.		
Fifth Generation (TITO's Vodka)	Bryan Plater, V.P. Finance	(512) 243-2755	bryan@titosvodka.com
Fifth Generation (TITO's Vodka)	Tito Beveridge, President	(512) 243-2755	tito@titosvodka.com
Freetail Brewing Company	Scott Metzger		scott@freetailbrewing.com
Gabriel's Liquors	Johnny D. Gabriel	(210) 646-9992, ext. 206	gabrielholdings@sbcglobal.net
Gardere Law	Dewey Brackin	(512) 542-7025	dbrackin@gardere.com
Gardere Law	Mark Vane	(512) 542-7077	mvane@gardere.com
Garrison Brothers Distillery	Dan Garrison	(512) 302-0608	dan@garrisonbros.com
Gerald Franklin Agency	Gerald Franklin		gfranklin@geraldfranklinagency.com
Graham Brothers/Graham Central Station	Mark Threadgill		
Graham Brothers/Graham Central Station	Roger Gearhart		
Greater Austin Merchants Association (GAMA)	Aziz Khoja		
Greater Austin Merchants Association (GAMA)	Steve Koebele	(512) 565-2622	steve@texcounsel.com
Greater East End Management District	Martin Chavez	(713) 928-9916	mchavez@greatereastend.com
Greater Houston Restaurant Association	Melissa Stewart	(713) 802-1200	mstewart@ghra.com
Greater Houston Retailers Cooperative Association, Inc.	Romina Kadiwal	(281) 295-5300	Romina@GHRAonline.com
Hance Scarborough, LLP (Southern Glazer's)	Cheri Brimberry Huddleston	(512) 487-4022	chuddleston@hslawmail.com
Hance Scarborough, LLP (Southern Glazer's)	Robert Floyd		
HEB	Jennifer Heath	(210) 938-4983	heath.jennifer@heb.com
Hillco Partners (Distilled Spirits Council of the United States, others)	Jay Howard	(512) 480-8962	jhoward@hillcopartners.com
Hillco Partners (Distilled Spirits Council of the United States, others)	Kyle Mauro	(512) 480-8962	kmauro@hillcopartners.com
Houston Distributing Company	Bo Huggins		
IMPACT Communities	Shari Phillips	(972) 921-7945	sphillips@DPRI.com

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Group or Association Name	Contact Person	Telephone	Email Address
Jack Hilliard Distributing (Budweiser)	Ron Longoria, President	(979) 775-9047	rlongoria@jhbud.com
Kercheval & Associates (Texas Hospitality Association)	Todd Kercheval	(512) 275-7341	todd@toddkercheval.com
Kroger	Gary Huddleston		
Kyle Frazier & Associates (Texas Wine and Grape Growers Association, others)	Kyle Frazier	(512) 217-1854	jkf1@texas.net
L&F Distributing	Greg Lamantia		greg.lamantia@lnfdist.com
Laredo Crime Stoppers	Coleen Rodriguez	(956) 727-8477	crodriguez@laredocrimestoppers.org
Law Office of Don Walden	Don Walden	(512) 349-9595	donwalden@peoplepc.com
Law Office of James O Houchins	Jim Houchins	(512) 479-0777	jim@houchinslaw.com
LifeSteps Council on Alcohol and Drugs	Rasna Sielaff	(512) 246-9880	Rosana@lifestepsCouncil.org
Lionstone International	Nick Lucca		nick.lucca@lionstone.com
Live Oak Brewing Company	Chip McElroy	(512) 385-2299	chip@liveoakbrewing.com
Martin, Frost & Hill	Jack Martin	(512) 473-0300	jmartin@jmartinlaw.com
Martin, Frost & Hill	Kimberly Frost	(512) 473-0300	kfrost@mfhliquorlaw.com
Martin, Frost & Hill	Kyle Hill	(512) 473-0300	khill@mfhliquorlaw.com
Martin, Frost & Hill	Lou Bright	(512) 473-0300	lbright@mfhliquorlaw.com
McAllen Crime Stoppers	Moses Garcia	(956) 821-2180	McAllencrimestoppers@gmail.com
McDermott Will & Emery LLP	Marc Sorini	(202) 756-8284	msorini@mwe.com
McGarry and Associates (Republic National Distributing Company)	Chelsey Hutchinson	(512) 708-9053	
McGarry and Associates (Republic National Distributing Company)	Mignon McGarry	(512) 708-9053	mignon@mignonm.com
Mexcor Wine and Spirits	Eduardo Morales, President	(713) 979-0066	eduardo@mexcor.com
MillerCoors	Bob Hunt	(214) 618-7440	bob.Hunt@millercoors.com
Monshaugen & Van Huff, P.C.	Al Van Huff	(713) 880-2992	al@vanhuff.com
Montgomery County District Attorney's Office (Human Trafficking)	Tyler Dunman	(936) 539-7800	tyler.dunman@mctx.org
Mothers Against Drunk Driving (MADD)	Reita Hill	(254) 690-6233	reita.hill@madd.org
Mothers Against Drunk Driving (MADD)	Stephanie Monnat	(512) 445-4976 x4857	stephanie.monnat@madd.org
Mothers Against Drunk Driving (MADD)	Beatriz Torres	(210) 349-0200	Beatriz.torres@madd.org
Mothers Against Drunk Driving (MADD)	Kathy Bell-Schexnaider	(409) 832-5704	
North Arlington BAR Coalition	Benjamin St. John	(817) 459-3156	Benjamin.stjohn@arlingtontx.org
Pernod Ricard	Tara J. Engel	(202) 644-4913	tara.engel@pernod-ricard.com
Peticolas Brewing Company	Michael Peticolas		michael@peticolasbrewing.com
Point of Sale Outdoor Media	Raymond Rodriguez	(817)488-7711	raymond@posoutdoor.com
Republic National Distributing Company	Jay Johnson		jay.johnson@RNDC-usa.com
Republic National Distributing Company	Vic Brooks	(512) 658-0430	Vic.Brooks@RNDC-USA.COM
Riggs & Ray, P.C	Jennifer Riggs	(512) 457-9806	jriggs@r-alaw.com
Rio Grande Valley Chapter of MADD	Ana Verley	(956) 361-3681	ana.verley@madd.org

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Group or Association Name	Contact Person	Telephone	Email Address
Saint Arnold Brewing Company	Brock Wagner	(512) 916-4565	brock@saintarnold.com
Shift+ - Paso Del Norte Health Foundation	Jeremy Jordan	(915) 422-5124	Jeremy.Joran@e.pasoymca.org
Silver Eagle Distributors, L.P.	John Nau	(713) 866-6328	
SMS Law	Mike Moses	(312) 670-6867	mike@smslaw.com
Southern Glazer's Wine and Spirits	Alan Greenspan		Alan.Greenspan@glazers.com
Southern Glazer's Wine and Spirits	Alan Steen	(512) 964-0189	alan.steen@sgws.com
Southern Glazer's Wine and Spirits	Bennett Glazer		
Spec's Liquors	John Rydman	(713) 526-8787	jrydman@specsonline.com
Spoetzl Brewery/Gambrinus Company (Shiner Beer)	Allen Reininger	(210) 490-9128 ext. 5339	allen.reininger@gambrinus.com
Sex Trafficking Allied Response Team (START)	Kim Stark	(806) 763-3232	kim@voiceofhopelubbock.org
Strike & Techel Alcoholic Beverage Law (Amazon)	Kristen Techel	(415) 237-6394	kristen@strikeandtechel.com
TAMU CC Social Sciences Advisory Council	Dr. Sarah Scott	(361) 825-2733	Sarah.Scott@tamucc.edu
Texans Standing Tall	Christi Koenig Brisky, Esq	(512) 442-7501	ckoenigbrisky@texansstandingtall.org
Texans Standing Tall	Nicole Holt	(512) 442-7501	nholt@texansstandingtall.org
Texas Association of Manufacturers	Richard (Tony) Bennett	(512) 236-1464	tony.bennett@manufacturetexas.org
Texas Craft Brewers Guild	Charles Vallhonrat	(713) 501-8067	charles@texascraftbrewersguild.org
Texas Distilled Spirits Association	Richard Evans	512-422-3705	
Texas Food and Fuel Association	Matt Burgin	(512) 617-4305	mburgin@tffa.com
Texas Food and Fuel Association	Scott B. Fisher	(512) 617-4308	sfisher@tffa.com
Texas Hospitality Association	Joey Bennett	(512) 275-7382	
Texas Lobby Group	Mike Toomey		
Texas Municipal League	Shanna Igo	(512) 531-7400 x5	sigo@tml.org
Texas Package Store Association	Fred Niemann	(512) 474-6901	fred.niemann@gmail.com
Texas Package Store Association	Lance Lively	(512) 472-3232	llively@texaspackage.com
Texas Restaurant Association	Kenneth Besserman	(512) 457-4100	kbesserman@trmail.org
Texas Restaurant Association	Richie Jackson	(512) 457-4100	richie@trmail.org
Texas Retailers Association	Jim Sheer	(512) 472-8261 x3	jsheer@txretailers.org
Texas Travel Industry Association	Homero Lucero		homerol@ttia.org
Texas Wine and Grape Growers Association	Debbie Reynolds	(817) 421-3201	debbie@twgga.org
The Beer Alliance of Texas (BAT)	J.P. Urrabazo	(512) 474-5378	jpurabazo@beeralliance.org
The Beer Alliance of Texas (BAT)	Mike "Tuffy" Hamilton		
The Beer Alliance of Texas (BAT)	Rick Donley	(512) 474-5378	rickdonley@beeralliance.org
The Coalition, Inc. (aka Angelina Coalition)	Sharon Kurk	(936) 634-9308	skurk@angelinacoalition.org
The Graydon Group	Jay Propes	(512) 225-1007	propes@thegraydongroup.com
The Graydon Group	Shannon Swan	(512) 225-1008	shannon@thegraydongroup.com
The Ratliff Company	Kevin Cooper	(512) 433-9213	kevin@ratco.net
Total Wine and More (aka Fine Wines & Spirits of North Texas)	Bob Shaffer		rshaffer@totalwine.com
Total Wine and More (aka Fine Wines & Spirits of North Texas)	Byron Campbell	(214) 213-3443	byroncampbell@capitol-insights.com

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Group or Association Name	Contact Person	Telephone	Email Address
Total Wine and More (aka Fine Wines & Spirits of North Texas)	Drew Campbell	(214) 213-3443	drewcampbell@capitol-insights.com
Total Wine and More (Corporate Office)	David and Robert Trone	(301) 795-1000, ext. 300	dtrone@totalwine.com
Treaty Oak Distilling Company	Daniel Barnes, President	(512) 413-1227	daniel.r.barnes@gmail.com
Twin Liquors (Corporate Office)	David Jabour, President	(512) 222-0700	djabour@twinliquors.com
Twin Liquors (Corporate Office)	Margaret Jabour, Executive V.P.	(512) 222-0700	margaretjabour@twinliquors.com
UNIDAD Coalition	Melissa Alviar	(956) 787-0004	malviar@bhsst.org
Veterans of Foreign Wars	Roy J. Grona, State Adjutant/Quartermaster	(512) 834-8535	roy@texasvfw.org
Walgreen Company (Corporate Office)	Karen Kenney Reagan	(847) 315-2698	
Walmart	Jim Renfrow		
West 7TH Street Stakeholders	Thomas McNutt	(214) 868-5348	Thomas.McNutt@fortworthtexas.gov
Whole Foods	Ryan Bissett	(512) 542-0876	Ryan.Bissett@wholefoods.com
Wholesaler Beer Distributors of Texas (WBDT)	Steve Greinert	(512) 739-7400	
Wholesaler Beer Distributors of Texas (WBDT)	Tom Spilman	(512) 476-0697	tom@wbdt.com
Wholesaler Beer Distributors of Texas (WBDT)	Doug Davis	(512) 476-0697	
William C. Dufour, Attorney	Bill Dufour	(512) 458-2700	Bill@billdufourlaw.com
William Yarnell	William Yarnell	(512) 844-7791	william@williamyarnell.com
Windstead PC	Janis Carter	(512) 370-2871	jlcarter@winstead.com

Interagency, State, or National Associations

Group or Association Name	Contact Person	Telephone	Email Address
Alcohol and Tobacco Tax and Trade Bureau		(877) 882-3277	
Association of Certified Anti-Money Laundering Specialists		(866) 459-2267	info@acams.org
Association of Certified Fraud Examiners		(512) 478-9070	
Austin Human Resources Management Association		(800) 561-2096	
Austin Regional Intelligence Center			info@arictexas.org
Bell County Criminal Investigators Group	LT Frank Plowick	(254) 501-8830	fplowick@killeentexas.gov
Central Texas Area Police Chief's and Sheriff's Association (Waco PD)	Chief Ryan Holt	(254) 750-7501	ryanh@wacotx.gov
Corpus Christi Police Department Gang Task Force	LT Lee Price	(361) 886-2600	LeonardP@cctexas.com
Dallas County Criminal Justice Advisory Board	Jeff Segura	(214) 761-1389	jeff.segura@dallascounty.org
FBI National Academy Association	Capt. Stephanie Schoenborn	(210) 458-4775	stephanie.schoenborn@utsa.edu
National Alcohol Beverage Control Association		(703) 578-4200	
National Association of Beverage Importers, Inc. (NABI)	Bill Earle	(202) 393-6224	nabipresident@bevimporters.org
National Beer Wholesalers Association		(800) 300-6417	

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Group or Association Name	Contact Person	Telephone	Email Address
National Conference of State Liquor Administrators (NCSLA)	Pamela Frantz	(847) 721-6410	pfrantz@ncsla.org
National Liquor Law Enforcement Association (NLLEA)	Lara Morford	(301) 755-2795	lara.morford@nllea.org
North Texas Anti-Gang Unit (Federal Bureau of Prisons)	Antonio Jenkins	(972) 623-5983	axjenkins@bop.gov
North Texas Anti-Trafficking Team (U.S. Attorney's Office)	Dow Croyle	(214) 659-8660	dow.croyle@usdoj.gov
North Texas Crime Information Exchange	Nick Selby		nick.selby@streetcredsoftware.com
North Texas Fusion Center	Glenn Meeks	(214) 491-6804	gmeeks@co.collin.tx.us
North Texas Joint Terrorism Task Force (Dallas Police Department)	Glenn Stone		glenn.stone@leo.gov
Sheriffs' Association of Texas	Steve Westbrook	(512) 458-4775	steve@txsheriffs.org
Texas Human Trafficking Prevention Task Force (Office of Texas Attorney General)	Kaye Woodward-Hotz	(512) 463-6648	kaye.woodward-hotz@oag.texas.gov
Texas Narcotic Officers Association (TNOA)	Gilbert S. Gonzalez	(915) 629-0055	info@tnoa.org
Texas Police Chiefs Association	Gene Ellis	(254) 563-6309	gellis@beltontexas.gov
Texas State Human Resources Association	Suzanne Retiz	(512) 440-3067	
Victoria Gang Task Force	Paul Zamarripa	(361) 782-7668	PZamarripa@cscd.net

Liaisons at Other State Agencies

Entity (known relationship or representation)	Contact Person	Telephone	Email Address
Attorney General's Office	Jody Hughes	(512) 936-1729	jody.hughes@oag.texas.gov
Attorney General's Office (Administrative Law Division)	Karen Watkins	(512) 475-4005	karen.watkins@oag.texas.gov
Attorney General's Office (Enforcement Division)	Demetri Anastasiadis		demetri.anastasiadis@oag.texas.gov
Attorney General's Office (General Litigation Division)	Adam Bitter	(512) 463-2120	adam.bitter@oag.texas.gov
Attorney General's Office (General Litigation Division)	Angela Colmenero	(512) 475-4100	angela.colmenero@oag.texas.gov
Attorney General's Office (General Litigation Division)	Matthew Bohuslav	(512) 475-4099	matthew.bohuslav@oag.texas.gov
Attorney General's Office (Prosecution Division)	Thomas O. Clout	(512) 463-6588	
Attorney General's Office (Prosecution/Human Trafficking and Transnational/Organized Crime Division)	Krista Melton	(512) 463-2111	
Camp Bowie	Lt. Colonel Jamey Creek	(325) 646-0159	
Camp Mabry Garrison Command	Lt. Colonel Paul Mancuso	(512) 782-1426	paul.d.mancuso2.mil@mail.mil
Camp Mabry Operations, Training Center and Garrison Command	Major Casey Shaw	(512) 782-5178	casey.r.shaw3.mil@mail.mil
Camp Maxey	Capt. David Merrill	(512) 782-5001 x4515	
Comptroller of Public Accounts	Coy Rosenbaum	(512) 936-8574	coy.rosenbaum@cpa.texas.gov
Comptroller of Public Accounts	Jim Harris	(512) 936-2061	james.harris@cpa.texas.gov
Comptroller of Public Accounts	Stephen Bushover	(512) 475-0418	stephen.bushover@cpa.texas.gov

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Entity (known relationship or representation)	Contact Person	Telephone	Email Address
Comptroller of Public Accounts	Viri Rodriguez	(512) 936-6137	Viri.Rodriguez@cpa.texas.gov
Comptroller of Public Accounts	Wesley Green	(512) 463-8437	wesley.green@cpa.texas.gov
Fort Wolters	Major Benjamin Garcia	(940) 325-6872 x11	
Legislative Budget Board	Fisher Reynolds	(512) 463-5630	Fisher.Reynolds@lbb.state.tx.us
Office of the Governor	Jared Staples	(512) 463-1778	jared.staples@governor.state.tx.us
Office of the Solicitor General	Mike Murphy	(512) 936-2995	MichaelP.Murphy@oag.texas.gov
Texas Association of Counties	Ashley Royer, CMP	(512) 478-4753	ashleyr@county.org
Texas Association of Counties	Aurora Flores-Ortiz	(512) 478-8753	auroraf@county.org
Texas Association of Counties	Ender Reed	(512) 478-8753	enderr@county.org
Texas Association of Counties	Laura V. Garcia	(512) 478-8753	laurag@county.org
Texas Department of Public Safety	Dale L. Avant	(512) 424-5030	dale.avant@dps.texas.gov
Texas Department of Public Safety	David G. Baker	(512) 424-7774	david.baker@dps.texas.gov
Texas Department of Public Safety	Enrique Muniz	(281) 517-1430	rick.muniz@dps.texas.gov
Texas Department of Public Safety	Gabriel L. Ortiz	(512) 424-5318	gabriel.ortiz@dps.texas.gov
Texas Department of Public Safety	Mark A. Koenig	(512) 997-4149	mark.koenig@dps.texas.gov
Texas Department of Public Safety	Steven McCraw	(512) 424-7770	steven.mccraw@txdps.state.tx.us
Texas Department of Public Safety	Steven Schwartz	(254) 759-7196	steven.schwartz@dps.texas.gov
Texas Department of Transportation	Terry Pence	(512) 416-3167	terry.pence@txdot.gov
U.S. Customs & Border Protection	Beverly Good	(915) 730-7004	beverly.good@dhs.gov
U.S. Customs & Border Protection	Carlos Rodriguez	(956) 565-3140	
U.S. Customs & Border Protection	Carlos Rodriguez	(956) 354-3630	
U.S. Customs & Border Protection	Chief John Landry	(713) 454-8002	john.g.landry@cbp.dhs.gov
U.S. Customs & Border Protection	Crescencio Cantu	(956) 849-1678	
U.S. Customs & Border Protection	Cynthia Rodriguez	(830) 752-3101	cynthia.rodriguez@dhs.gov
U.S. Customs & Border Protection	Donna Sifford	(915) 764-2359	donna.sifford@dhs.gov
U.S. Customs & Border Protection	Efrain Solis Jr.	(956) 283-2001	
U.S. Customs & Border Protection	Michael Neipert	(432) 229-3349 x254	michael.r.neipert@cbp.dhs.gov
U.S. Customs & Border Protection	Mike Perez	(830) 703-2012	mike.perz@dhs.gov
U.S. Customs & Border Protection	Petra Horne	(956) 703-3583	petra.horne@cbp.dhs.gov
U.S. Customs & Border Protection	Serveriano Soliz	(956) 487-1655	
U.S. Customs & Border Protection	Sidney Aki	(956) 523-7311	sidney.aki@dhs.gov
U.S. Department of Homeland Security/ United States Secret Service	David W. See	(972) 868-3107	david.see@uss.s.dhs.gov
United States Department of Justice/Drug Enforcement Administration	Darien Rentfro	(214) 366-8904	James.D.Rentfro@usdoj.gov

XI. Additional Information

- A. Texas Government Code, Sec. 325.0075 requires agencies under review to submit a report about their reporting requirements to Sunset with the same due date as the SER. Include a list of each agency-specific report that the agency is required by statute to prepare and an evaluation of the need for each report based on whether factors or conditions have changed since the statutory requirement was put in place. Please do not include general reporting requirements applicable to all agencies, reports that have an expiration date, routine notifications or notices, posting requirements, federally mandated reports, or reports required by G.A.A. rider. If the list is longer than one page, please include it as an attachment.

Exhibit 82: Evaluation of Agency Reporting Requirements

Report Title	Legal Authority	Due Date and Frequency	Recipient	Description	Is the Report Still Needed? Why?
Prohibited Hours Enforcement Report	Alcoholic Beverage Code, Section 5.61	Biennially: Oct 31 of even-numbered years	Legislature & Governor	The report summarizes the commission's enforcement efforts concerning alcohol sales and consumption during prohibited hours. Information is provided on a statewide basis and for each region and major metropolitan area.	Potentially no as it captures only a small part of the total law enforcement operation.

- B. Has the agency implemented statutory requirements to ensure the use of "first person respectful language"? Please explain and include any statutory provisions that prohibits these changes.

Not applicable

- C. Fill in the following chart detailing information on complaints regarding your agency. Do not include complaints received against people or entities you regulate. The chart headings may be changed if needed to better reflect your agency's practices.

Exhibit 83: Complaints Against the Agency — Fiscal Years 2015 and 2016

	Fiscal Year 2015	Fiscal Year 2016
Number of complaints received	54	48
Total number of allegations (A complaint can have multiple allegations)	84	61
Number of allegations dropped/found to be without merit:	53	25
Number of complaints pending from prior years	0	0
Average time period for resolution of a complaint	35	61*

More details are provided in Section VII for the Office of Professional Responsibility program.

- D. Fill in the following charts detailing your agency's Historically Underutilized Business (HUB) purchases.

Exhibit 84: Purchases from HUBs

Fiscal Year 2015

Category	Total \$ Spent	Total HUB \$ Spent	Percent	Agency Specific Goal*	Statewide Goal
Heavy Construction	\$0	\$0	0.00%	11.20%	11.20%
Building Construction	\$0	\$0	0.00%	21.10%	21.10%
Special Trade	\$58,815	\$320	0.54%	32.90%	32.90%
Professional Services	\$50,425	\$50,425	100.00%	23.70%	23.70%
Other Services	\$2,002,522	\$362,321	18.09%	26.00%	26.00%
Commodities	\$2,202,299	\$601,827	27.33%	21.10%	21.10%
TOTAL	\$4,314,061	\$1,014,893	23.53%		

Fiscal Year 2016

Category	Total \$ Spent	Total HUB \$ Spent	Percent	Agency Specific Goal	Statewide Goal
Heavy Construction	\$0	\$0	0.00%	11.20%	11.20%
Building Construction	\$0	\$0	0.00%	21.10%	21.10%
Special Trade	\$31,356	\$9,422	30.05%	32.90%	32.90%
Professional Services	\$52,192	\$50,837	97.40%	23.70%	23.70%
Other Services	\$2,053,235	\$313,093	15.25%	26.00%	26.00%
Commodities	\$2,686,933	\$242,643	9.03%	21.10%	21.10%
TOTAL	\$4,823,716	\$615,995	12.77%		

- E. Does your agency have a HUB policy? How does your agency address performance shortfalls related to the policy? (Texas Government Code, Sec. 2161.003; TAC Title 34, Part 1, rule 20.286c)**

TABC strives to increase agency HUB participation by participating in cooperative multi-agency efforts in vendor education & HUB recruitment and increasing the amount of business solicited from certified HUB's. TABC attends a number of HUB seminars and expos to network with HUB vendors and make them aware of commodities and services TABC purchases.

- F. For agencies with contracts valued at \$100,000 or more: Does your agency follow a HUB subcontracting plan to solicit bids, proposals, offers, or other applicable expressions of interest for subcontracting opportunities available for contracts of \$100,000 or more? (Texas Government Code, Sec. 2161.252; TAC Title 34, Part 1, rule 20.285)**

Although TABC does not enter into many contracts over \$100,000, when it does it follows the HUB subcontracting policy of making a good faith effort in soliciting bids, proposals or offers from HUBs.

- G. For agencies with biennial appropriations exceeding \$10 million, answer the following HUB questions.**

- 1. Do you have a HUB coordinator? If yes, provide name and contact information. (Texas Government Code, Sec. 2161.062; TAC Title 34, Part 1, rule 20.296)**

Yes. Domingo Lugo, Purchaser IV, 512-206-3264

- 2. Has your agency designed a program of HUB forums in which businesses are invited to deliver presentations that demonstrate their capability to do business with your agency? (Texas Government Code, Sec. 2161.066; TAC Title 34, Part 1, rule 20.297)**

Due to limited manpower and budget restrictions, TABC has not designed a program of HUB forums, but has partnered with other agencies in the past.

- 3. Has your agency developed a mentor-protégé program to foster long-term relationships between prime contractors and HUBs and to increase the ability of HUBs to contract with the state or to receive subcontracts under a state contract? (Texas Government Code, Sec. 2161.065; TAC Title 34, Part 1, rule 20.298)**

Not at this time.

H. Fill in the charts below detailing your agency’s Equal Employment Opportunity (EEO) statistics.

Exhibit 85: Equal Employment Opportunity Statistics

1. Officials / Administration

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
2015	15	27%	7.4%	27%	22.1%	53%	37.4%
2016	16	25%	7.4%	25%	22.1%	56%	37.4%

2. Professional

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
2015	230	20%	10.4%	13%	19.3%	60%	55.3%
2016	240	21%	10.4%	25%	19.3%	59%	55.3%

3. Technical

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
2015	10	10%	14.4%	30%	27.2%	20%	55.3%
2016	10	10%	14.4%	30%	27.2%	10%	55.3%

4. Administrative Support

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
2015	12	42%	14.8%	17%	34.8%	83%	72.1%
2016	11	36%	14.8%	9%	34.8%	90%	72.1%

5. Protective Services

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
2015	236	7%	14.8%	32%	34.8%	15%	72.1%
2016	237	6%	14.8%	33%	34.8%	15%	72.1%

6. Para-professionals

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
2015	156	10%	14.8%	75%	34.8%	62%	72.1%
2016	157	8%	14.8%	77%	34.8%	59%	72.1%

I. Does your agency have an equal employment opportunity policy? How does your agency address performance shortfalls related to the policy?

To ensure all employees and leaders of TABC are aware of the policy and how TABC enforces the policy, all employees and leaders must complete EEO training within 30 days of employment and every two years thereafter. The HR Division ensures the agency complies with EEO law and internal policy. If the HR Division is informed of areas where EEO violation or “shortfalls” may occur, HR conducts a preliminary investigation to see if the violation has merit. If it does the incident is handed over to the Office of Professional Responsibility (OPR) to conduct a full investigation. Once the results from the OPR investigation is completed, HR, the division director and OPR meet to review the outcomes and next steps. If the decision to terminate due to the violation, the termination request is reviewed by the HR Director and the legal team.

XII. Agency Comments

None.