



July 2012  
PE 12-05-518

## PERFORMANCE REVIEW

# ALCOHOL BEVERAGE CONTROL ADMINISTRATION

## AUDIT OVERVIEW

A Follow-Up Survey of Enforcement Agents Shows That There Has Been Progress in Some Areas Since the 2010 Survey Was Conducted, But Further Improvements Can Be Made

The Legislative Auditor Identified That the ABCA Was Paying Overtime to an Exempt Employee Who Was Not Required to Receive Overtime Compensation Under the Fair Labor Standards Act

The ABCA Has Internal Controls in Place to Ensure the Accurate Reporting of Time Worked in the Field, But Improvements Can Be Made

The ABCA Assessed Penalties for Ten Percent of License Violations Outside the Guidance of the Agency's Penalty Schedule



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## EXECUTIVE SUMMARY

This report on the Alcohol Beverage Control Administration (ABCA) is authorized by West Virginia Code §4-2-5. The Legislative Auditor conducted a follow-up to the 2010 survey of ABCA enforcement agents to determine whether respondents' opinions on improvements had been made in the areas of administration, management responsiveness, and the treatment of licensees. Additionally, the Legislative Auditor identified that an agency attorney was unnecessarily being paid overtime, improvements can be made in timekeeping internal controls, and that the ABCA should maintain a penalty schedule that includes all types of violations.

### **Report Highlights:**

#### **Issue 1: A Follow-Up Survey of Enforcement Agents Shows That There Has Been Progress in Some Areas Since the 2010 Survey Was Conducted, But Further Improvements Can Be Made.**

- There is no consensus among survey respondents as to whether there have been advancements in the practicality of policies and procedures and the communication of these policies and procedures to employees, although more respondents indicate the opinion that there has been no change than that there has been an improvement or decline.
- Six respondents indicate that changes made by the ABCA since the 2010 survey was conducted make it harder for the Division to achieve its goals, three indicate that these changes have had no impact on the fulfillment of Division goals, and four respondents indicate that these changes better enable them to achieve Division goals.
- Eight respondents state that there has been no change in the adequacy of resources and supplies available to them, while the remaining five state that resources are now more adequate.
- Nearly 85 percent of respondents indicate that there has been an increase in the amount of training available to them, although opinions regarding the quality of this training are more varied.
- Three respondents state that management has become more responsive to their needs, four indicate that management has become less responsive, and six respondents indicate that they have not seen any change in the responsiveness of management.
- The majority of respondents indicate that licensees are being treated more equitably than in 2010.

#### **Issue 2: The Legislative Auditor Identified That the ABCA Was Paying Overtime to an Exempt Employee Who Was Not Required to Receive Overtime Compensation Under the Fair Labor Standards Act.**

- The Legislative Auditor discovered that the ABCA was paying overtime compensation to an attorney who was not required to receive overtime payments under the Fair Labor Standards Act. These payments totaled over \$75,000 during a six-year period.

- An additional \$8,070 was paid to a former Manager of the Enforcement Division over a four-year period.
- In response to the Legislative Auditor's findings, the ABCA ceased overtime payments to the attorney and has taken steps to prevent unnecessary overtime payments to exempt employees in the future.

### **Issue 3: The ABCA Has Internal Controls in Place to Ensure the Accurate Reporting of Time Worked in the Field, But Improvements Can Be Made.**

- The Legislative Auditor evaluated timekeeping documents submitted by Regional Supervisors in the ABCA's Enforcement Division to determine whether the Division is following timekeeping policies and found that policies are being followed in most instances, but written policies have not been updated to reflect some current policies.

### **Issue 4: The ABCA Assessed Penalties for Ten Percent of License Violations Outside the Guidance of the Agency's Penalty Schedule.**

- The Legislative Auditor evaluated the 432 violations that have been assessed since the development of a penalty schedule for assessing the most common license violations in February 2011 and found that 388, or 90 percent, of these violations were evaluated using the guidance of the penalty schedule and 44, or 10 percent, were evaluated outside the penalty schedule.
- Precedent should enable the ABCA to develop guidelines that encompass all types of violations. In order to maintain consistency, equity, and transparency, the ABCA should develop guidelines that include all violations and follow these guidelines in all cases.

## **Recommendations**

1. *The Legislative Auditor recommends that the ABCA include changes in its planned policy modifications to strengthen internal controls over timekeeping.*
2. *The Legislative Auditor recommends that the ABCA develop penalty guidelines for assessing all license violations and use these guidelines in all cases.*

## ISSUE 1

### **A Follow-Up Survey of Enforcement Agents Shows That There Has Been Progress in Some Areas Since the 2010 Survey Was Conducted, But Further Improvements Can Be Made.**

#### **Issue Summary**

The Legislative Auditor conducted a follow-up survey of Enforcement Agents within the Enforcement Division (Division) of the Alcohol Beverage Control Administration (ABCA) to determine whether issues reported in a 2010 survey still exist following a change in administration. The opinions expressed by respondents varied on most matters, with some agents indicating improvement, some indicating decline, and some indicating no change regarding topics such as the quality and practicality of policies and procedures, the effect of changes made by the ABCA on the Division's ability to fulfill its goals, and the responsiveness of management to employees' needs. There was agreement on some issues. A majority of respondents indicated that improvements have been seen in the amount and quality of training available, that there has been a lack of change in the communication of policies and procedures, and that the adequacy of resources and supplies available to complete their job duties has remained unchanged. The ABCA has indicated that changes have been and continue to be made to improve the operations of the agency and the environment in which enforcement agents work. The ABCA should use the information provided by this follow-up survey to guide further improvements.

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*A 2010 survey of enforcement agents within the ABCA Enforcement Division conducted by the Legislative Auditor revealed several potential concerns within the Division.*

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#### **The Follow-up Survey Explored Whether Improvements Have Been Seen in Administrative Areas, Interaction With Management, and Treatment of Licensees.**

A 2010 survey of enforcement agents within the ABCA Enforcement Division conducted by the Legislative Auditor revealed several potential concerns within the Division. Respondents indicated issues such as poor communication and practicality of policies and procedures, lack of responsiveness of management to agents' needs, and inequity in the treatment of licensees. Some respondents also stated that training was inadequate and that there were inadequate supplies and resources to do their job. To update this issue, the Legislative Auditor resurveyed enforcement agents to determine whether the conditions reported in 2010 still exist following changes in administration. The survey was sent to the 18 enforcement agents and inspectors still employed

at the ABCA who had been employed at the time the 2010 survey was conducted. It consisted of 10 closed-ended questions and 4 open-ended questions and respondents were invited to provide comments to further explain their answers throughout the survey. Of the 18 individuals invited to participate, 13 completed the survey. Eleven indicated that they had participated in the 2010 survey and two were unsure.

## Administration

The first section of the follow-up survey dealt with administrative topics such as policies, resources, and training. Thirteen, or 65 percent, of the 20 individuals who responded to the question “Are the policies and procedures of the ABCA clearly communicated and practical?” in the 2010 survey answered no. Since that time, the ABCA indicates that steps have been taken to increase agent knowledge, understanding of, and compliance with agency policies and procedures by providing training seminars that included topics such as:

- Policy and Procedures;
- Harassment in the Workplace;
- Liquor Store Rules;
- Licensing Policies;
- Administrative Policies;
- Report Writing;
- Administrative Citations; and
- Evidence Collection and Procedures.

The follow-up survey sought to determine whether respondents find there has been an improvement in the communication and practicality of policies. Figures 1 and 2 provide the responses to these questions.

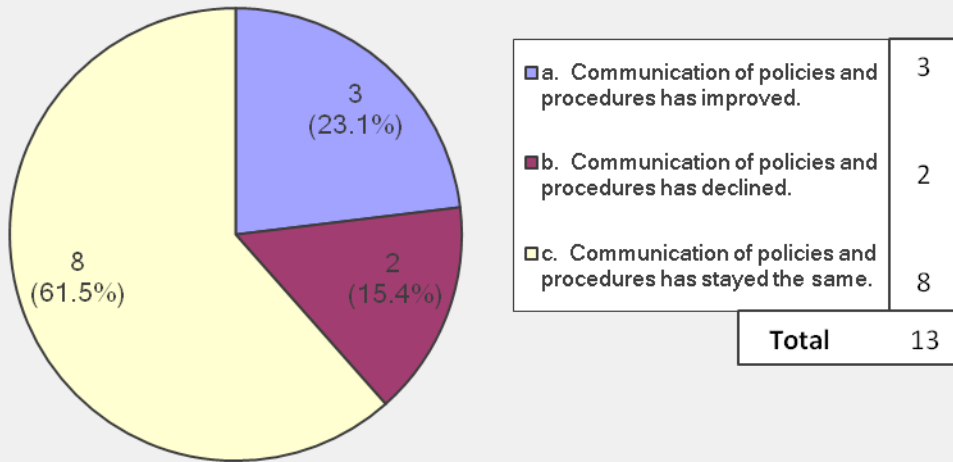
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*Steps have been taken to increase agent knowledge, understanding of, and compliance with agency policies and procedures.*

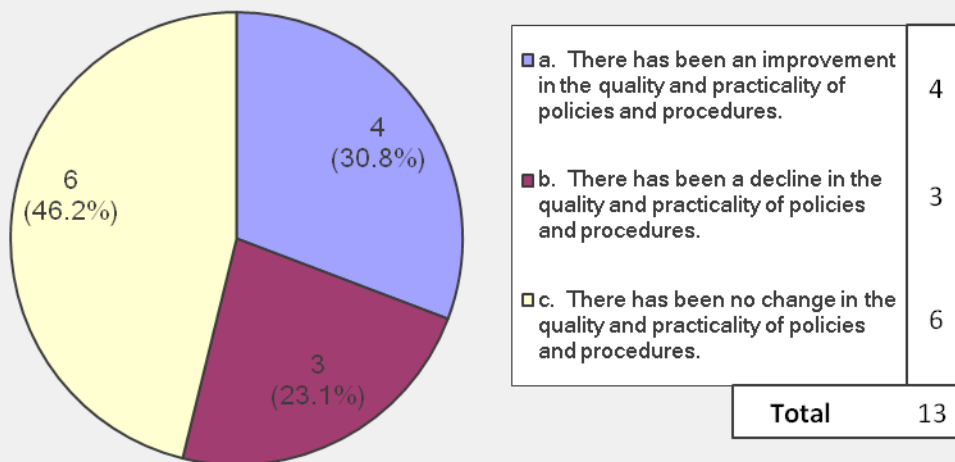
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**Figure 1**  
**How has communication of ABCA policies and procedures changed since the 2010 survey was conducted?**



**Figure 2**  
**How has the quality and practicality of ABCA policies and procedures changed since the 2010 survey was conducted?**



Although there is no consensus as to whether there have been advancements in the practicality of policies and procedures and the communication of these policies and procedures to employees, more respondents indicate the opinion that there has been no change than that there has been an improvement or decline.

The ABCA Commissioner has indicated that a number of changes and improvements have been made since the 2010 survey was conducted. Some of these changes include:

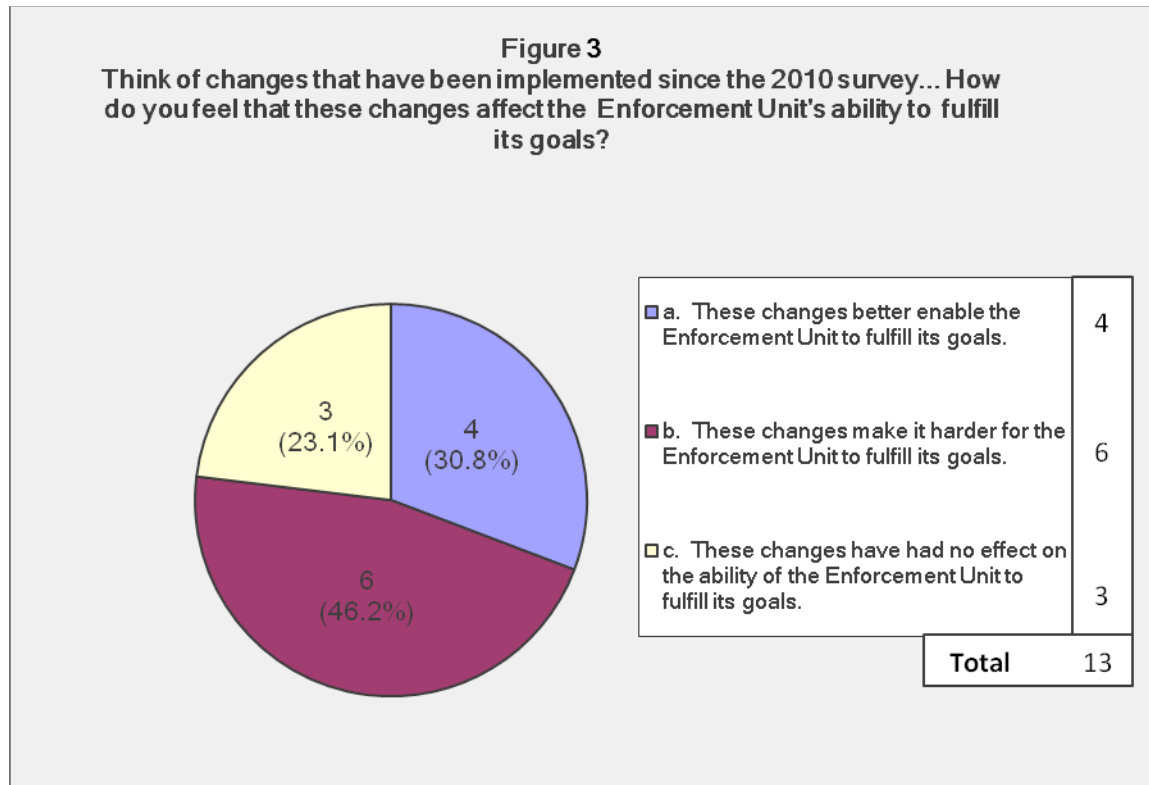
- providing licensee information in an electronic format;
- providing Enforcement Division employees with scanners for use in the field;
- providing reports such as Licensee Status Changes Reports, Stagnant Violations Reports, and Complaint Forms Reports electronically;
- making the monthly time form available online;
- consolidating paper forms such as Incident Report Forms into an online format;
- realigning of enforcement regions to assure an equal distribution of work; and
- enabling photos to be uploaded by field staff to the shared drive.

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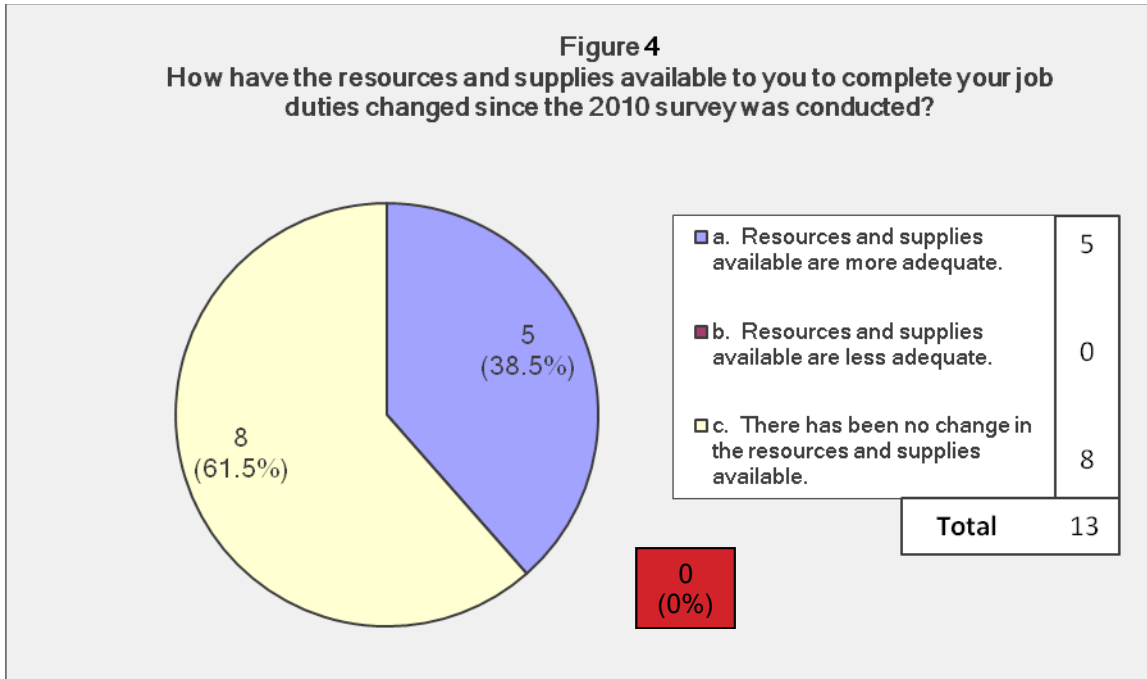
*There is no consensus as to whether there have been advancements in the practicality of policies and procedures and the communication of these policies and procedures to employees.*

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In the follow-up survey, the Legislative Auditor sought to determine whether Enforcement Division staff found these changes beneficial to the performance of their duties. As Figure 3 illustrates, responses were varied, with six respondents indicating these changes make it harder for the Division to achieve its goals, three indicating that these changes have had no impact on the fulfillment of Division goals, and four respondents indicating that these changes better enable them to achieve Division goals.



Of respondents who answered the question of whether they agreed with the statement “I have sufficient resources to complete my job duties” in the 2010 survey, nearly 48% indicated that they agreed while almost 43% indicated disagreement. In the 2012 follow-up survey, the Legislative Auditor sought to determine whether there has been any change in the resources and supplies available to agents. Figure 4 provides the responses to this question.



As this figure shows, eight respondents state that there has been no change in the adequacy of resources and supplies available to them, while the remaining five state that resources are now more adequate. No respondents indicated a decline in the adequacy of resources and supplies. Comments indicated that making scanners and printers available to field agents has been a significant improvement, although it is also indicated that being able to print in color would be an additional asset.

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*Eight respondents state that there has been no change in the adequacy of resources and supplies available to them, while the remaining five state that resources are now more adequate.*

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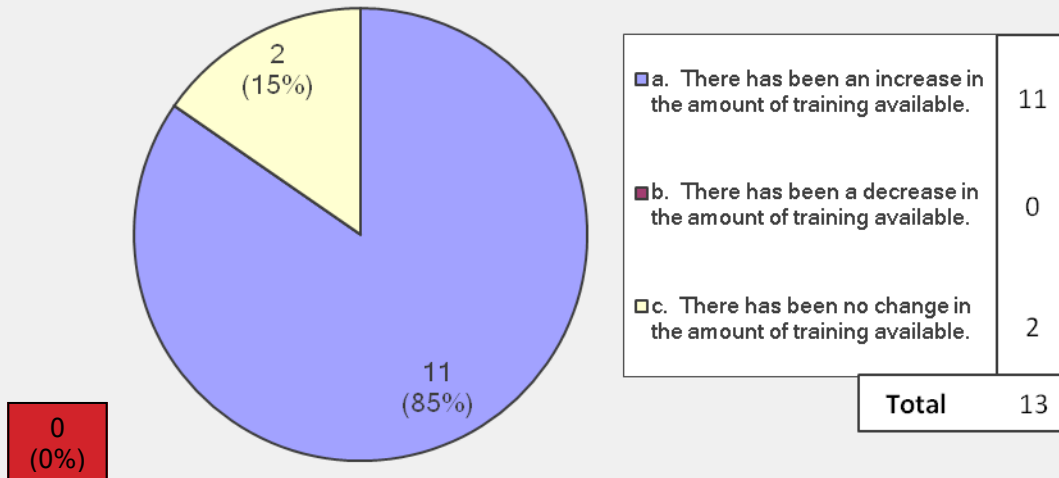
In response to a question on the 2010 survey asking whether agents receive adequate training, 11 agents indicated they felt the training they received was adequate while 9 indicated that training was inadequate. Respondents to the follow-up survey were more in agreement. As Figure 5 shows, nearly 85% of respondents indicate that there has been an increase in the amount of training available to them, although, as shown in Figure 6, opinions regarding the quality of this training are more varied. Although a majority of respondents state there has been an increase in the quality of training, five state there has been no change in the quality of training and one respondent indicates that training has decreased in quality.

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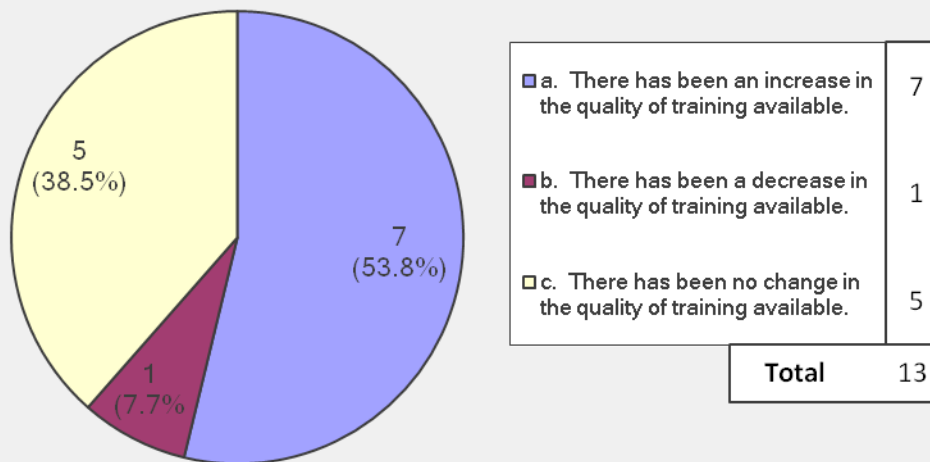
*Nearly 85% of respondents indicate that there has been an increase in the amount of training available to them, although opinions regarding the quality of this training are more varied.*

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**Figure 5**  
**How has the amount of training available to you changed since the 2010 survey was conducted?**



**Figure 6**  
**How has the quality of training available to you changed since the 2010 survey was conducted?**

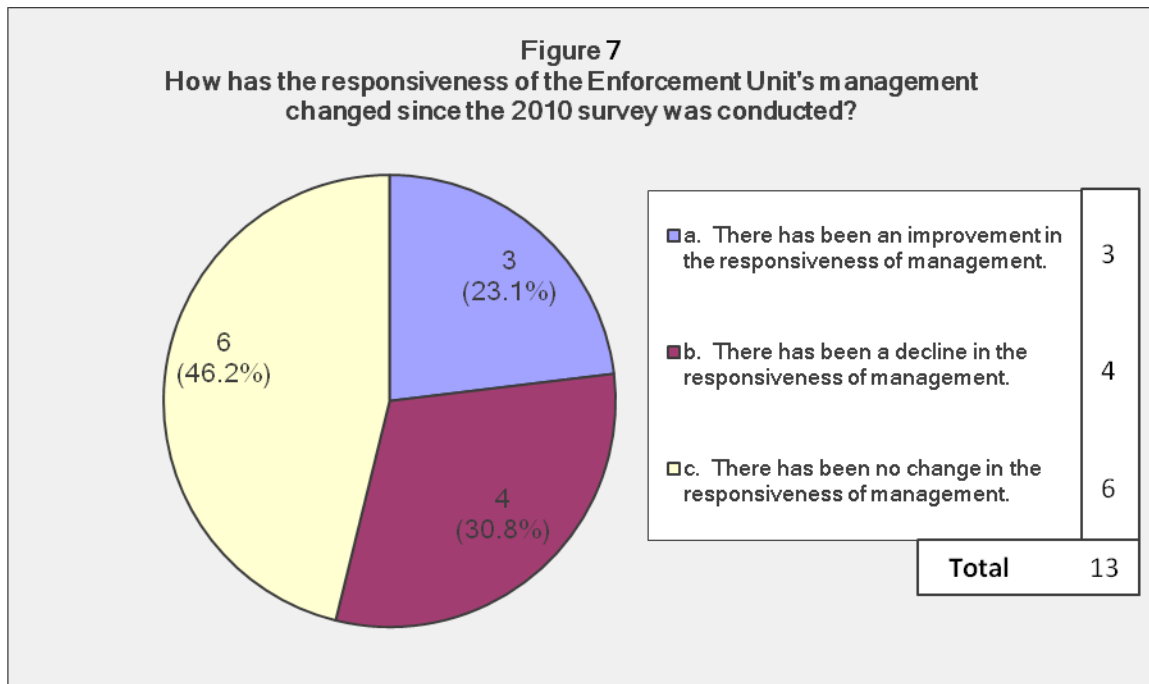


In addition to inviting comments to expand on responses to the questions above, the survey also included an open-ended question asking what type of training agents would find beneficial. Several respondents indicate that training could be improved by eliminating redundancy and increasing the relevancy of training to the specific knowledge needed by agents. Though most respondents did not offer specific examples of training they would like to receive, some suggestions included training on how to write reports so that all agents write reports the same way and computer classes tailored toward filling out the forms and paperwork agents are expected to complete.

*Three respondents state that management has become more responsive, four indicate that management has become less responsive, and six respondents indicate that they have not seen any change in the responsiveness of management.*

### Management Responsiveness

The follow-up survey included one question concerning the responsiveness of management. Respondents who answered the 2010 survey question “Do you feel that the management of the Enforcement Unit is responsive to your needs?” were nearly evenly divided, with 10 respondents indicating that management was not responsive to their needs and 9 indicating that management was responsive. Responses to the follow-up question were varied. As shown in Figure 7, three respondents state that management has become more responsive, four indicate that management has become less responsive, and six respondents indicate that they have not seen any change in the responsiveness of management.



Comments included with this question and responses to three open-ended questions asking respondents what overall improvements have been made in the agency since the 2010 survey was conducted, what further improvements are needed, if any, and any other issues respondents might want to share, revealed a variety of opinions regarding interactions with management. Several respondents indicate that they are now better able to communicate with management, express their opinions, and have questions answered, while others indicate that micromanagement is an issue or there is a lack of fairness or respect in their dealings with their supervisors. The ABCA Commissioner indicates the following:

*The Acting Enforcement Director, at the direction of the Commissioner, has gone to great lengths to maintain an environment of fair treatment. Furthermore, the agency as a whole expects each employee to be treated with respect. Beyond reminding and encouraging this value in every employee of the WVABCA, we have provided classes to address this issue and have reminded everyone of the Commissioner's open door policy. While the chain of command is a process that ensures consistency and fairness, if a situation arises with an employee's immediate supervisor they are encouraged to consult the Acting Enforcement Director, Human Resources, or even the Commissioner's Office.*

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*Several respondents indicate that they are now better able to communicate with management while others indicate that there is a lack of fairness or respect in their dealings with their supervisors.*

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## **Treatment of Licensees**

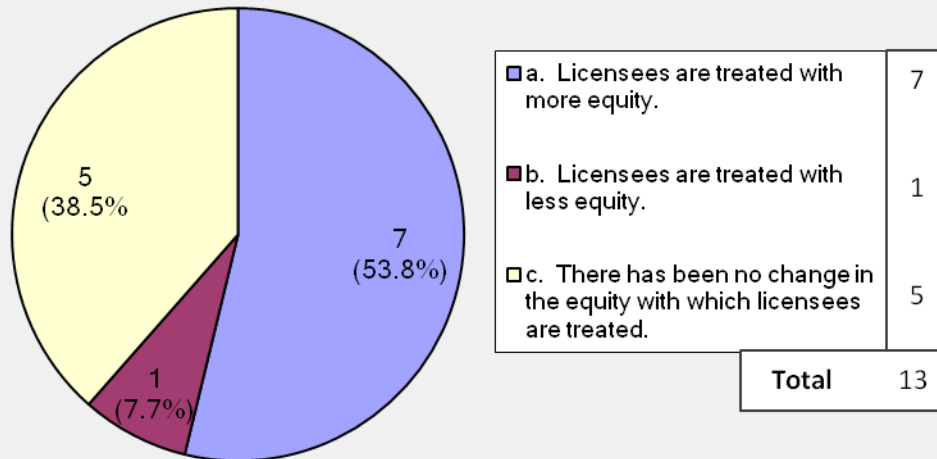
The ABCA issues licenses to business owners for handling, serving, and selling alcoholic beverages in the state and ensures that licensees comply with applicable West Virginia laws. When licensees violate these laws, the ABCA is responsible for assessing penalties. At the time of the 2010 survey, 52% of survey respondents answered “no” to the question “Do you feel that licensees are treated equally within your region?”. Comments indicated that some respondents had the perception that politics or favoritism played a role in determining what penalties, if any, were assessed for violations against some licensees. The follow-up survey asked respondents how the treatment of licensees had changed since the 2010 survey was conducted. As Figure 8 below illustrates, the majority of respondents indicate the perception that licensees are being treated more equitably than in 2010. Five respondents, or 38.5 percent, indicate that there has been no change in the equity with which licensees are treated and one respondent indicates the perception that licensees are being treated less equitably. This topic is discussed in more detail in Issue 4.

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*The majority of respondents indicate the perception that licensees are being treated more equitably than in 2010.*

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**Figure 8**  
**How has the treatment of licensees changed since the 2010 survey was conducted?**



## Additional Concerns

As previously mentioned, the follow-up survey included several open-ended questions asking respondents what improvements have been made in the agency overall since the 2010 survey, what further improvements can be made, if any, and whether there were any other issues respondents would like to share. Additional matters discussed by respondents included the following:

- Some respondents indicate that safety in the field is a concern to them and a desire is expressed to have more input as to whether a police presence is needed when working in certain areas.
- Several comments indicate dissatisfaction with salary inequality, which was also a concern expressed in the 2010 survey. The ABCA Commissioner has indicated that an internal evaluation was conducted and found that pay inequity exists between inspectors and agents who perform similar job duties but have different job classifications. Salaries for the 23 classified enforcement agent and inspector positions are subject to compliance with the West Virginia Division of Personnel's compensation plan while salaries for the 15 exempt positions are not. It is



anticipated by the ABCA Commissioner that the Division of Personnel will update these classifications and eliminate this inequality.

- The need for documents used by agents to be more user-friendly was discussed by some respondents.

## Conclusion

The Legislative Auditor conducted a follow-up survey of enforcement agents and inspectors to determine whether improvements have been made since the initial survey was conducted in 2010. Opinions varied on most matters, with some agents indicating improvement, some indicating decline, and some indicating no change regarding topics such as the quality and practicality of policies and procedures, the effect of changes made by the ABCA on the Division's ability to fulfill its goals, and the responsiveness of management to employees' needs. There was agreement on other topics, such as, a majority of respondents indicated that improvements have been seen in the amount and quality of training available to them, while no change has been seen in both the communication of policies and procedures and the adequacy of resources and supplies available to complete their job duties. The ABCA has indicated that changes have been and continue to be made to improve the operations of the agency and the environment in which enforcement agents work. The results of this follow-up survey should provide the agency with information necessary to guide further improvements. For example, the ABCA should consider:

- finding out what training would benefit agents and making this training available;
- updating documents to be more user-friendly;
- eliminating the perception of inequity in the treatment of licensees by complying with recommendations made in Issue 4 of this report;
- making color printers available in the field, if possible;
- working with agents to ensure safety in the field; and
- consulting with agents when determining whether police presence is needed when working in certain areas.

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*The results of this follow-up survey should provide the agency with information necessary to guide further improvements.*

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## Issue 2

### **The Legislative Auditor Identified That the ABCA Was Paying Overtime to an Exempt Employee Who Was Not Required to Receive Overtime Compensation Under the Fair Labor Standards Act.**

#### **Issue Summary**

During the course of the audit, the Legislative Auditor discovered that the ABCA was paying overtime compensation to an attorney who was not required to receive overtime payments under the Fair Labor Standards Act. These payments totaled over \$75,000 during a six-year period. An additional \$8,070 was paid to a former Manager of the Enforcement Division over a four-year period, although overtime payments are not being made to the current Enforcement Division Manager. According to the Department of Revenue, no other attorneys within the Department have received overtime compensation. **In response to the Legislative Auditor's findings and confirmation through consultation with state and federal representatives, the ABCA ceased overtime payments to the attorney and has taken steps to prevent unnecessary overtime payments to exempt employees in the future.** The ABCA also indicated that it plans to change its policy to require approval of both an employee's immediate supervisor and the Office of the Commissioner before overtime is permitted. The Legislative Auditor commends the ABCA for taking action to stop unnecessary overtime payments and prevent such mistakes in the future.

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*According to the West Virginia Division of Personnel, the Attorney III position is not required to receive overtime compensation, nor was the Attorney II position required to receive overtime compensation when it existed.*

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### **An ABCA Attorney Has Been Paid Over \$75,000 in Overtime Compensation Despite Being Exempt From FLSA Overtime Compensation Requirements**

The ABCA lists two attorney positions on its organization chart – Attorney I, a part-time position that is currently vacant, and Attorney III, a full-time position that has been filled by the same individual since August 2009. This individual (Attorney) was employed in the Attorney II position, which no longer exists, from May 2006 until assuming the Attorney III position. According to the West Virginia Division of Personnel, the Attorney III position is not required to receive overtime compensation, nor was the Attorney II position required to receive overtime compensation when it existed. The determination of these positions as not required to receive overtime is based on the Fair Labor Standards Act (FLSA), which establishes standards for minimum wage, overtime pay, recordkeeping, and youth employment in the private sector as well as federal, state, and local governments. Section 13(a)(1) of the FLSA

provides exemptions to the minimum wage and overtime requirements for employees that meet certain provisions, including those employed in a “*bona fide professional capacity*,” which includes the practice of law as described in 29 CSR §541.304.

The ABCA Commissioner indicates that the agency determines whether employees receive overtime based on FLSA standards. The agency has an Overtime/Compensatory Policy that has been in place since 2008 to establish guidelines in compliance with the FLSA. This policy defines an exempt employee as follows:

*“Exempt employees include the Commissioner, Deputy Commissioner, and certain Executive Administrative and Professional employees as described in the Fair Labor Standards Act.”*

*The Attorney has been paid over \$75,000 in overtime compensation since being hired in May 2006.*

Additionally, the policy specifically states that the outlined standards for overtime and compensatory time apply only to covered employees, as exempt employees are not required to receive payment for hours worked in excess of 37.5 hours per week. However, the Legislative Auditor found that the Attorney had been receiving overtime compensation despite being classified exempt.<sup>1</sup> Table 1 provides the total amount of overtime compensation paid to the Attorney from the date of hire through March 13, 2012 as recorded in the West Virginia State Auditor’s Employee Payroll Information Control System (EPICS). As this table illustrates, the Attorney has been paid over \$75,000 in overtime compensation since being hired in May 2006.

**Table 1**  
**Overtime Compensation Paid to the ABCA Attorney**  
**May 1, 2006 – March 13, 2012**

<b>Fiscal Year</b>	<b>Total Overtime Compensation</b>
FY 2006	\$ 14.11
FY 2007	\$13,850.84
FY 2008	\$12,574.69
FY 2009	\$15,239.96
FY 2010	\$20,009.74
FY 2011	\$10,109.27
FY 2012	\$ 3,416.18
<b>Total</b>	<b>\$75,214.79</b>

Source: Legislative Auditor calculations of compensation figures reported in the State Auditor’s EPICS.

<sup>1</sup>The Post Division of the Office of the Legislative Auditor released a report in June 2012 ([PA 2012 500](#)) which identified that 23% of state agencies provide cash overtime payments to FLSA exempt employees.

## The ABCA Has Stopped Overtime Payments to the Attorney and Taken Steps to Prevent Unnecessary Overtime Payments in the Future

There are nine other agencies besides the ABCA within the West Virginia Department of Revenue. Of these nine, five employ attorneys. None of the attorneys for these five agencies are paid overtime compensation, although these agencies do allow overtime for non-exempt employees. **According to the Cabinet Secretary of the Department of Revenue, no other attorneys in the Department have received overtime compensation.**

The Legislative Auditor inquired as to why the ABCA Attorney was receiving overtime compensation. The ABCA Commissioner indicated that the previous ABCA administration allowed the Attorney to receive overtime compensation, and that the Attorney has been notified, as a result of this review, that he will no longer be receiving overtime compensation.

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*The Attorney has been notified, as a result of this review, that he will no longer be receiving overtime compensation.*

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In order to determine if there were other employees that unnecessarily received overtime compensation, the Legislative Auditor evaluated ABCA Overtime Reports for FY 2008-FY 2012 as of January 2012 and found that the previous manager of the Enforcement Division, who vacated the position in January 2011, was also paid overtime during this timeframe. The amounts of overtime payments made to the former manager are provided in Table 2 below.

<b>Table 2</b> <b>Overtime Positions to ABCA Exempt Positions</b> <b>FY 2008 – January 2012</b>	
<b>Fiscal Year</b>	<b>Total Overtime Compensation</b>
2008	\$3,251.48
2009	\$3,365.34
2010	\$4,734.30
2011	\$1,454.01
<b>Total</b>	<b>\$8,070.83</b>

Source: ABCA Overtime Reports, FY 2011-2012

As this table illustrates, **the former Enforcement Division Manager received a total of just over \$8,070 in overtime payments over a four-year period, despite the position being exempt from overtime requirements under the FLSA.**

In addition to immediately ceasing overtime payments to the Attorney, the ABCA Commissioner indicated that the following actions have been taken:

*Representatives of the West Virginia Alcohol Beverage Control Administration (ABCA) met with representatives of the West Virginia Division of Personnel (DOP) and the State Budget Office and consulted by telephone with a representative of the United States Department of Labor to discuss policies relating to overtime, including DOP policy, the Fair Labor Standards Act and the current ABCA policy and practice for administering overtime. Based on these discussions we have not identified any additional issues with regard to overtime. However, in an effort to maximize economy within the agency we have reviewed ABCA policies and have reorganized our chain of command...*

Prior to this reorganization, five positions were exempt from overtime requirements:

1. Commissioner
2. Deputy Commissioner
3. Enforcement Division Manager
4. Comptroller
5. Public Health Educator III

Following the reorganization of the ABCA chain of command, which became effective May 1, 2012, there are now 13 positions that are exempt from overtime requirements:

1. Commissioner
2. Deputy Commissioner
3. Administrative Services Manager IV
4. Attorney III (and other Attorney positions)
5. Unit Manager, Enforcement
6. Staff Development Specialist
7. Unit Manager, Wine and Spirits
8. Administrative Service Assistant II (director of Human Resources)
9. Procurement Officer
10. Comptroller

11. Database Administrator I

12. Warehouse Manager

13. Unit Manager, Beer

An Overtime Pre-Approval Form has also been developed that requires the approval of an employee's direct supervisor and the Office of the Commissioner before overtime is permitted.

## **Conclusion**

The Legislative Auditor brought to the ABCA's attention that overtime compensation was being paid to an attorney who was not required to receive overtime compensation under the FLSA. The Attorney received over \$75,000 in overtime pay over a six-year period. An additional \$8,070 was paid to a former manager of the Enforcement Division over a four-year period. In response to the Legislative Auditor's review, the ABCA has ceased overtime payments to the Attorney and taken steps to prevent unnecessary overtime payments to exempt positions in the future. The agency consulted with state and federal representatives regarding overtime policies and standards and, following these consultations, made changes to the overtime eligibility of equivalent positions. Agency policy is being changed to require approval of both an employee's immediate supervisor and the Office of the Commissioner before overtime is permitted. The Legislative Auditor commends the ABCA for taking immediate action to stop unnecessary overtime payments and prevent such mistakes in the future.





## Issue 3

### **The ABCA Has Internal Controls in Place to Ensure the Accurate Reporting of Time Worked in the Field, But Improvements Can Be Made.**

#### **Issue Summary**

The ABCA has several policies in place regarding timekeeping. The Legislative Auditor evaluated timekeeping documents submitted by Regional Supervisors in the ABCA's Enforcement Division to determine whether the Division is following timekeeping policies. It was found that policies are being followed in most instances, but that written policies have not been updated to reflect some current policies, such as requiring the submission of the Weekly Activity Report by Regional Supervisors and the Overtime Hours form by the Unit Manager reporting overtime hours worked by Regional Supervisors. The ABCA has indicated that the agency is in the process of updating its written policies to reflect administrative and operational changes. It is recommended that the agency include in its policy updates changes to strengthen internal controls over timekeeping.

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*Since field employees do not work a 9 to 5, Monday through Friday work schedule and are not in an office setting where their presence is easily verified by management, it is important that the agency be able to ensure these employees are working the required number of work hours and performing their work duties.*

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#### **The ABCA Has Several Policies Related to Timekeeping**

The ABCA's Enforcement Division has several employees - 5 Enforcement Supervisors and 38 Enforcement Agents and Inspectors - whose duties are performed in the field, based out of their homes, in ABCA's five districts. Since field employees do not work a 9 to 5, Monday through Friday work schedule and are not in an office setting where their presence is easily verified by management, it is important that the agency be able to ensure these employees are working the required number of work hours and performing their work duties. The establishment of adequate internal controls for reporting time and attendance helps to reduce the risk of fraud and abuse. The Legislative Auditor sought to determine what controls the ABCA has in place related to timekeeping for its Enforcement Division. The United States General Accounting Office (GAO)'s time and attendance guidance document, *Maintaining Effective Control over Employee Time and Attendance Reporting* and the Defense Contract Auditing Agency (DCAA) *Contract Audit Manual* were used to establish the following criteria:

- The agency should have a policy in place for recording time and attendance information and maintaining documentation of this information.

- The supervisor has primary responsibility for authorizing and approving timekeeping transactions. The supervisor should review and authorize:
  - planned work schedules,
  - applications for leave,
  - changes to work schedule (preferably prior to occurrence),
  - employee submissions of actual time worked and leave taken, and
  - adjustments or corrections to time records.
- Recorded information should be complete, accurate, timely, valid, in compliance with any legal requirements, and sufficiently detailed to allow for verification. To achieve these objectives, the following should be recorded for each employee during each pay period:
  - employee name;
  - pay period dates;
  - hours worked;
  - hours of overtime pay to which employee is entitled;
  - dates and hours of leave, credit hours, and compensatory hours earned and used;
  - evidence of approval; and
  - supporting documentation or records for absences.
- The employee and supervisor should sign the timecard/timesheet in accordance with procedures to verify the accuracy of the time reported.

The ABCA has several policies in place regarding timekeeping for the Enforcement Division:

- Policy Number E-105 requires employees to document the duties that they complete via a Weekly Activity Report;
- Policy Numbers E-122 and P-109 require employees to submit a Monthly Time Record indicating the number of hours worked or leave used each day for the most recent month; and

- Policy P-100 details the process for working and being compensated for overtime hours, including the submission of an Overtime Hours form as a cover sheet for the Monthly Time Sheet.

The ABCA also recently began requiring the submission of an Overtime Pre-Approval form that must be approved by the Office of the Commissioner and an employee's immediate supervisor before overtime is permitted. Although this form is not yet required by policy, the ABCA indicates that policies and procedures are being updated to reflect administrative and operational changes such as this one.

### **ABCA Policies Should Be Updated to Reflect Changes in Timekeeping Practices**

In order to verify that controls are being utilized by the ABCA in practice, the Legislative Auditor evaluated the following timekeeping documents for the five Enforcement Supervisors within the ABCA Enforcement Division:

- Monthly Time Records for 2009-2011
- Overtime Hours Forms for 2009-2011
- Weekly Activity Reports for 2011

### **Monthly Time Records**

The ABCA policies P-109 and E-122 governing Monthly Time Records establish several checks for ensuring that errors in the reporting of time are not made. Employees must complete the Monthly Time Record in its entirety, explaining any overtime worked in the Comments section, and sign the form to attest to its accuracy. An employee's direct supervisor must then sign the form to verify its accuracy. The Unit Manager is responsible for verifying the accuracy of forms submitted by Enforcement Supervisors. Final responsibility lies with the immediate supervisor for ensuring that the information is accurate and correct. Although the policy requires that the immediate supervisor ensure that inaccuracies or errors are corrected, no stipulations are made for documenting these corrections, such as that changes to final forms be initialed or signed by the individual making the changes and the supervisor who approves them. Following approval by the Unit Manager, forms are forwarded to and maintained by the Payroll Supervisor, who uses the information reported to verify and calculate regular, overtime, and leave hours.

Upon reviewing the Monthly Time Records submitted for Enforcement Supervisors, the Legislative Auditor found the following:

- Forms have been submitted as required by policy.
- Enforcement Supervisors have certified to the truth and accuracy of forms by signing as required by policy.
- Descriptions of overtime worked are provided in the Comments section as required by policy.
- The Unit Manager or, in some cases, the ABCA Commissioner, has certified that each form is accurate by signing as required by policy.
- There is evidence that hours reported have been verified by Payroll.
- On all but one form on which overtime was reported, overtime earnings have been computed by Payroll.
- The Unit Manager and the ABCA Commissioner have approved the overtime earnings computed by Payroll.
- In 11 instances, changes had been made in writing on completed forms. On three of these forms, the changes were initialed by the individual making the change. One form had been changed in five places, one of which was initialed and the other four were not. Seven altered forms had no initials indicating who had made or approved the changes.

## Overtime Hours Forms

Overtime Hours forms are completed by an employee's supervisor and, for Enforcement Unit employees, are to indicate the funding source the overtime hours fall under. Although Policy E-122 does not specify that the Unit Manager complete and sign these forms indicating overtime hours worked by Enforcement Supervisors, this is the practice. Upon reviewing Overtime Hours forms, the Legislative Auditor found the following:

- Forms are attached to Monthly Time Records on which overtime hours have been claimed as required by policy.
- Forms are signed by the Unit Manager or Commissioner.
- Forms indicate the funding source under which overtime hours fall as required by policy.

## Weekly Activity Reports

Weekly Activity Reports are completed by the employee and must include dates, times, general duties performed, and a brief description of specific duties on each day. Although Policy E-105 requires an employee's supervisor to ensure the form is completed and that the employee is on duty as indicated on the form, neither the employee nor the supervisor is required to sign the form to attest to its accuracy. As with the Overtime Hours form, policy applies only to Regional Supervisors' subordinates, but in practice, Regional Supervisors complete Weekly Activity Reports and submit them to the Unit Manager for review.

Policy numbers P-100, P-109, and E-122 all stipulate that falsifying a Monthly Time Record is a felony under West Virginia Code §61-3-22, and that failing to complete the form or falsifying information on the form will result in disciplinary action by the ABCA up to and including dismissal. Policy P-100 further indicates that falsifying any record of hours worked or overtime hours will result in disciplinary action. Policy Number E-105 contains no such stipulations.

Upon reviewing Weekly Activity Reports, the Legislative Auditor found the following:

- Four of the five Regional Supervisors submitted forms as required by policy for the entire evaluated timeframe. However, one Regional Supervisor submitted a written log on notebook paper for January-July 2011, after which Weekly Activity Reports were submitted.
- Only two of the four Regional Supervisors who turned in forms for the entire year consistently filled out the section of the form indicating general duties performed each day. The reports submitted by the Regional Supervisor who provided forms for August-December also had this section filled out. One of these Regional Supervisors placed an "X" next to each activity performed rather than a number indicating how many of each activity, such as phone calls, was completed.
- There is variance in the degree of specificity in descriptions of activities completed. One agent may describe activities for a day as "office duties, emails, paperwork, calls" while another describes in detail the specific individuals to whom calls were made or emails sent.

Although the ABCA has policies in place that help establish internal controls for preventing timekeeping fraud and abuse and ensuring that field employees are accurately reporting the work duties they perform, some improvements can be made to strengthen these controls. Therefore,

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*Although the ABCA has policies in place that help establish internal controls for preventing timekeeping fraud and abuse and ensuring that field employees are accurately reporting the work duties they perform, some improvements can be made to strengthen these controls.*

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**the Legislative Auditor recommends that the ABCA include changes in its planned policy modifications to strengthen internal controls over timekeeping.** Some updates that should be considered for enhancing internal controls include:

- Policies numbers P-109 and E-122 should stipulate that changes to completed forms must be initialed or signed by the individual making the changes and the supervisor approving the changes.
- Policy numbers E-105 and E-122 should stipulate that Weekly Activity Reports be filled out showing Regional Supervisors' work duties performed and that Overtime Hour forms showing overtime worked by Regional Supervisors must be filled out. Though this is the case in practice, policy has not been updated accordingly.
- Policy Number E-105 should contain the stipulation that providing false information or neglecting to complete the Weekly Activity Report as required by policy will result in disciplinary action from the ABCA.
- Policy Number E-105 should indicate that employees must provide the number of each activity performed and specific details when describing these activities on the Weekly Activity Reports in order to ensure consistency and accountability.
- Policy Number E-105 should require a signature on the Weekly Activity Reports attesting to their accuracy.
- Policy numbers P-109 and E-122 should include stipulations for when documentation is required for leave and what form this documentation should take.

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*In order to decrease the possibility of timekeeping fraud and abuse, it is important that an agency have adequate internal controls in place.*

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## Conclusion

In order to decrease the possibility of timekeeping fraud and abuse, it is important that an agency have adequate internal controls in place. The ABCA has several policies in place regarding timekeeping. The Legislative Auditor evaluated timekeeping documents submitted by Regional Supervisors in the ABCA's Enforcement Division and found that policies are being followed in most instances, but that written policies have not been updated to reflect some changes in timekeeping practices. The ABCA has indicated that the agency is in the process of updating its policies to reflect administrative and operational changes. While the Legislative Auditor commends the ABCA for having policies in place establishing controls over timekeeping, it is recommended that

the agency include in its policy updates changes to strengthen internal controls over timekeeping.

### **Recommendation**

1. *The Legislative Auditor recommends that the ABCA include changes in its planned policy modifications to strengthen internal controls over timekeeping.*





## Issue 4

### **The ABCA Assessed Penalties for Ten Percent of License Violations Outside the Guidance of the Agency’s Penalty Schedule.**

#### **Issue Summary**

The ABCA issues licenses for handling, serving, and selling alcoholic beverages in the state and ensures that licensees comply with applicable West Virginia laws. In order to determine whether the ABCA is assessing penalties for licensee violations in a fair and impartial manner, the Legislative Auditor evaluated the 432 violations that have been assessed since the development of a penalty schedule for assessing the most common license violations in February 2011. It was found that 388, or 90 percent, of these violations were evaluated using the guidance of the penalty schedule and 44, or 10 percent, were evaluated outside the penalty schedule. Of the 10 percent assessed outside the penalty schedule, the Legislative Auditor did not find any disturbing issues. The ABCA indicates that some violations are not able to be reviewed using the guidance of the penalty schedule due to a variety of circumstances. However, precedent should enable the ABCA to develop guidelines that encompass all types of violations. In order to maintain consistency, equity, and transparency, the ABCA should develop guidelines that include all violations and follow these guidelines in all cases.

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*Four evaluations of the ABCA issued by the Post Audit Division of the Office of the Legislative Auditor have found that the lack of a formal penalty schedule for violations provided an opportunity for licensees committing the same violations to be fined unequally.*

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### **The ABCA Has Developed a Penalty Schedule for Assessing the Most Prevalent License Violations**

As discussed in Issue 1, a 2010 survey of Enforcement Agents found that 52% of respondents felt that licensees were not being treated equitably. The Legislative Auditor’s follow-up survey of Enforcement Agents found that 7 of the 13 respondents state there has been an improvement in the equity with which licensees are treated, one respondent states there has been a decline in equity, and five state that there has been no change. Comments ranged from indicating that the new administration is treating licensees with more fairness and standardization to stating that penalties still depend on “*who you know.*”

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*A penalty schedule was developed in February 2011 for the most prevalent violations.*

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Four evaluations of the ABCA issued by the Post Audit Division of the Office of the Legislative Auditor have found that the lack of a formal penalty schedule for violations provided an opportunity for licensees committing the same violations to be fined unequally. Although the ABCA had not complied with the Post Audit Division’s recommendations to develop a penalty schedule when the last Post Audit report on ABCA was released in 2009, a penalty schedule was developed in February 2011 for the most prevalent violations. The ABCA indicates, however,

that not all violations can be assessed using the penalty schedule due to the “*nature and complexity of performing our regulatory functions,*” and that unique violations require taking a number of factors into account, including the following:

- nature of the violation;
- preventability;
- severity (whether violence was involved, whether the licensee was involved, public safety issues);
- history of violations;
- duration between occurrences;
- period of time the licensee has been in operation;
- comments and concerns of the public;
- concerns, reports, and criminal citations from law enforcement;
- due process and the preponderance and availability of evidence;
- corrective actions and the indication of willingness on the part of the licensee to improve operations to prevent future violations; and
- licensee operating procedures.

The ABCA’s penalty schedule for Class A and Class B licensee violations is provided in Table 3 below. Class A licenses are those issued for on-premise consumption, such as to a tavern or private club. Class B licenses are those issued for off-premise consumption, such as to a liquor retail outlet. In determining whether an offense is a first or subsequent offense, the ABCA typically looks at the previous two years, although the agency indicates that the “*severity or frequency of previous violations or other extenuating circumstances*” may lead to offenses dating further back than two years being taken into consideration.

<b>Table 3 ABCA Enforcement Unit Penalty Schedule for Licensee Violations</b>	
<b>Class A On-Premise License Basic Offenses</b>	<b>Class B Off-Premise License Basic Offenses</b>
1 <sup>st</sup> offense – Warning Letter	1 <sup>st</sup> offense – Warning Letter
2 <sup>nd</sup> offense - \$350 fine	2 <sup>nd</sup> offense - \$150 fine
3 <sup>rd</sup> offense - \$550 fine, 3-day suspension of license (Thursday, Friday, Saturday)	3 <sup>rd</sup> offense - \$350 fine
4 <sup>th</sup> offense – discretion of the Commissioner	4 <sup>th</sup> offense - \$550 fine, 2-day suspension of license
Source: The ABCA’s Violations Guidelines document.	

### **The Majority of Penalties Assessed Since the Development of a Penalty Schedule Have Followed Penalty Schedule Guidelines**

In order to determine whether penalties are being assessed in a fair and impartial manner, the Legislative Auditor obtained violation and penalty data from 2006 through April 17, 2012. Between the development of the penalty schedule on February 11, 2011 and April 17, 2012 there were 432 violations, of which the ABCA indicates 24 were assessed outside the penalty schedule due to the severity of the violations committed. Upon reviewing the 432 violations, the Legislative Auditor found an additional 20 licensees that were penalized outside the penalty schedule. Seventeen of these were fined more than the amount recommended by the schedule and one was fined less than the recommended amount. Additionally, two Class A licensees with no prior offenses were fined \$150 although, as the penalty schedule shown above illustrates, a first offense for a Class A establishment should result in a warning letter and the lowest recommended fine for a Class A establishment with a prior offense is \$350. As Table 4 shows, a total of 388, or 90 percent, of the 432 violations assessed since the development of the penalty schedule have followed the recommended penalties.

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*A total of 388, or 90 percent, of the 432 violations assessed since the development of the penalty schedule have followed the recommended penalties.*

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**Table 4**  
**Violations Assessed Since the Development of the Penalty Schedule**

	<b>Number</b>	<b>Percentage</b>
<b>Total Violations</b>	432	100%
<b>Assessed Using Penalty Schedule Guidance</b>	388	90%
<b>Assessed Outside the Penalty Schedule</b>	44	10%

Source: Legislative Auditor calculations based on assessment of ABCA Violation Detail reports.

### **The ABCA's Penalty Schedule Can Be Improved to Ensure Equity, Consistency, and Transparency in the Assessment of Penalties Against Licensees**

The ABCA indicates that violations are determined to be of greater severity and therefore assessed outside the penalty schedule if they result in bodily injury, consist of multiple or complex situations, involve riotous conditions, and/or involve public safety concerns. Although the agency indicates that the Commissioner, Deputy Commissioner, Acting Enforcement Director, and General Counsel review these violations in order to maintain consistency, no records are maintained documenting the decision process. The ABCA points to the unique nature of violations and the discretionary powers of the ABCA Commissioner set forth in West Virginia Code to support this practice. However, **it is the opinion of the Legislative Auditor that the ABCA should be able to establish penalty guidelines based on precedent that will encompass all manner of violations.** Such a penalty schedule might incorporate penalty ranges that would allow the ABCA some discretionary power while still preventing the appearance of unfairness or bias in the assessment of penalties. **Therefore, the Legislative Auditor recommends that the ABCA develop penalty guidelines for assessing all license violations and use these guidelines in all cases.**

### **Conclusion**

The ABCA developed a penalty schedule for assessing the most common license violations in February 2011. In order to determine whether licensee penalties are being assessed in a fair and impartial manner, the Legislative Auditor evaluated the 432 violations that have

been reviewed since that time. It was found that 388, or 90 percent, of these violations were evaluated using the guidance of the penalty schedule and 44, or 10 percent, were evaluated outside the penalty schedule. The ABCA indicates that some violations are not able to be reviewed using the guidance of the penalty schedule due to a variety of circumstances. However, it is the opinion of the Legislative Auditor that past precedent should enable the ABCA to develop guidelines that encompass all manner of violations. The largest penalty that can be assessed is \$1,000 per violation. The largest penalty assessed using the penalty guidelines is \$550 per violation. The Legislative Auditor acknowledges that there is not a large amount of discretion on the part of the ABCA Commissioner when assessing penalties outside of the penalty guidelines. Nonetheless, in order to maintain consistency, equity, and transparency, the Legislative Auditor recommends that the ABCA develop guidelines for all violations and follow these guidelines in all cases.

## **Recommendation**

- 2. The Legislative Auditor recommends that the ABCA develop penalty guidelines for assessing all license violations and use these guidelines in all cases.*



## Appendix A: Transmittal Letter

### WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

Building 1, Room W-314  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0610  
(304) 347-4890  
(304) 347-4939 FAX



John Sylvia  
Director

July 11, 2012

Ronald M. Moats, Commissioner  
ABCA  
900 Pennsylvania Avenue  
4<sup>th</sup> Floor  
Charleston, WV 25302

Dear Commissioner Moats:

This is to transmit a draft copy of the Performance Review of the Alcohol Beverage Control Administration. This report is scheduled to be presented during the July 24, 2012 interim meeting of the Joint Committee on Government Operations and the Joint Committee on Government Organization. The meeting is scheduled from 2:00 p.m. to 4:00 p.m. in the House Chamber. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committees may have.

If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify us by Friday, July 13, 2012. We need your written response by noon on Wednesday, July 18, 2012 in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 304-340-3192 by Thursday, July 19, 2012 to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

  
John Sylvia

c. Charles O. Lorensen, Cabinet Secretary, Department of Revenue

*Joint Committee on Government and Finance*





## Appendix B: Objective, Scope and Methodology

This report on the Alcohol Beverage Control Administration (ABCA) is authorized by West Virginia Code §4-2-5.

### Objective

The objectives of this report were to determine the following: whether there has been any improvement in the issues mentioned in a 2010 survey of enforcement agents within the ABCA Enforcement Division; whether it was necessary to make overtime payments to an ABCA attorney; whether adequate internal controls exist to verify the hours reported by field employees in the Enforcement Division; and whether penalties for license violations are assessed in a consistent and impartial manner.

### Scope

The scope of this review included the opinions of enforcement agents on whether or not improvements have been made by the agency since the Legislative Auditor's survey of enforcement agents was conducted in 2010. The survey was sent only to enforcement agents who were employed at the time of the 2010 survey. The issue of overtime paid to the ABCA attorney covered FY 2006 through March 13, 2012. The analysis of timekeeping documents for Regional Supervisors covered 2009-2011, and the Legislative Auditor reviewed licensee violation and penalty data from 2006 through April 17, 2012. The analysis of violations to determine whether penalties fell within the ABCA's penalty schedule included violations that occurred following the adoption of the penalty schedule in February 2011. This review only focused on the enforcement division and the work hours of employees in the administrative offices. Auditors did not review other sections of the ABCA such as the licensing division or the warehouse operations.

### Methodology

In order to determine whether issues discussed by respondents in the 2010 survey still exist, the Legislative Auditor conducted a follow-up survey of enforcement agents employed in 2010, and corresponded with the Commissioner of ABCA to determine what changes or improvements have been made to respond to the enforcement agents' concerns. In order to determine whether overtime payments made by the ABCA follow policy guidelines, the Legislative Auditor evaluated overtime payments recorded by the agency and the West Virginia State Auditor's Employee Payroll Information Control System (EPICS); consulted with the West Virginia Division of Personnel; reviewed the Fair Labor Standards Act and ABCA policy documents; and corresponded with the ABCA and Department of Revenue. In order to evaluate the impartiality of penalties assessed for license violations, the Legislative Auditor evaluated the 432 violations that have been assessed since the development of a penalty schedule and corresponded with the agency regarding the assessment process.



# Appendix C: Agency Response



**STATE OF WEST VIRGINIA  
DEPARTMENT OF REVENUE  
ALCOHOL BEVERAGE CONTROL ADMINISTRATION**

900 Pennsylvania Ave., 4<sup>th</sup> Floor  
Charleston, West Virginia 25302

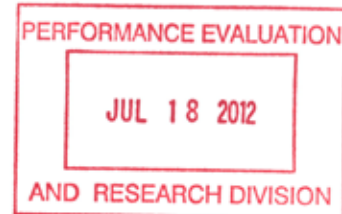
EARL RAY TOMBLIN  
GOVERNOR

RONALD M. MOATS  
COMMISSIONER

CHARLES O. LORENSEN  
CABINET SECRETARY

July 18, 2012

Mr. John Sylvia  
Director  
Performance Evaluation and Research Division  
West Virginia Legislature  
Building 1, Room W-314  
1900 Kanawha Blvd., East  
Charleston, WV 25305



RE: Response to letter dated July 11, 2012.

Dear Mr. Sylvia:

On behalf of the Alcohol Beverage Control Administration (ABCA), I greatly appreciate your efforts to conduct a fair and thorough review of our agency. Your recommendations will help us improve agency policies and effectively fulfill the ABCA's duties and responsibilities. We also appreciate the opportunity to respond to the Performance Review. We believe that many of the suggestions made in this review will aid ABCA in continuing to improve the operations of the agency. Below we explain how the agency currently addresses your suggestions and its continued plans to do so in the future.

*Item 1*

It is evident that the ABCA has made progress in the areas of concern identified by the review, especially in regard to increased training and better communication between the main office and field agents. The Legislative Auditor made several specific suggestions. Each are addressed in turn:

In response to the first point, *"finding out what training would benefit agents and make this training available,"* the agency affords field employees every opportunity to help shape and select the topics and agenda items for statewide training sessions. To better illustrate this point we are enclosing an email sent to the entire Enforcement Unit requesting ideas and suggestions for April 2012 statewide training session. Four responses were received. Two agents requested Ethics training and one requested Harassment and Diversity training. Both were provided at state wide training in April. One agent requested training in Evidence which had been provided at the most recent previous training in October, and one agent requested training in how to file grievances. This was not covered in training, but the agent

John Sylvia, Director  
Performance, Evaluation and Research Division  
July 18, 2012  
Page 2

was directed to the Grievance Board website. Additionally, at supervisor meetings and during prior training sessions we verbally solicited input from enforcement personnel for training topics. In fact, your review shows that 85% of the respondents indicated an increase in training. The training topics stated on page 6, "some suggestions included training on how to write reports...and computer classes tailored toward filling out the forms and paperwork agents are expected to complete," were covered at the statewide training sessions on March 31, 2011, October 25, 2011, and January 24-27, 2012. This information is noted in the attached appendix.

As to the second point, "*updating documents to be more user-friendly*," since the receipt of the original survey results, the Enforcement Unit has made significant changes to many of the most commonly used forms. Many of those changes were based on feedback from agents. Employees are always educated on changes to documents and the use of new forms during statewide training sessions and regional meetings. Moving forward, the ABCA will evaluate and modernize all documents and forms used by the Enforcement Division in an effort to increase user-friendliness and improve operations.

The ABCA will address the third point, "*eliminating the perception of inequity in the treatment of licenses by complying with recommendations made in Issue 4 of this report*," later in this response.

The fourth point proposes, "*making color printers available in the field, if possible*." The ABCA purchased printer/fax/scanners for the entire Enforcement Unit in early 2012. Each agent received training on the use of these machines. The agency is in the process of going paperless, thereby reducing operational costs and promoting efficiency. Color documents and photos are scanned into files available to all ABCA personnel, eliminating the need for color printers.

The fifth point suggests, "*working with agents to ensure safety in the field*." The safety of every ABCA employee is of the utmost importance. The agency remains committed to developing practices and policies to address and promote employee safety. The ABCA currently provides year round training to our Enforcement Unit staff to ensure the safety of both the agents and the public. The ABCA has purchased and/or is in the process of purchasing and providing training for the Enforcement Unit on the following items:

- Fitted bullet resistant vests
- Blackberry cell phones (currently being replaced with iPhones 4S). iPhone 4S is the most current Apple IOS software available
- Jabra Box hands-free mobile device for use with new iPhones
- Scanner (one function is ID verification)
- New Laptops (additional form of communication)
- Clothing (jackets, coats, shirts) making personnel easily identifiable
- New UV pen lights (higher rated UV spectrum which will assist with verifying identification)
- Acquiring a contract to purchase hand-held radios. These radios will use the statewide interoperable radio network (SIRN). The SIRN will allow access to 911 services, WV State Police dispatch, other law enforcement agencies, and Enforcement personnel.

As to the sixth point, "*consulting with agents when determining whether police presence is needed when working in certain areas*," this already occurs on a regular basis. In some situations, the agency may request assistance from law enforcement during special operations. Enforcement personnel are encouraged to request law enforcement support when they may encounter a potentially dangerous situation.

John Sylvia, Director  
Performance, Evaluation and Research Division  
July 18, 2012  
Page 3

*Item 2*

The ABCA agrees with the review's conclusion. Once this issue was brought to the attention of the agency, steps were immediately taken to correct the issue as outlined in the review. The ABCA works diligently to ensure all employees are compensated fairly in an effort to establish a honest and impartial work environment.

*Item 3*

The ABCA agrees with the recommendations made in the Performance Review draft and will make policy modifications to strengthen internal controls over timekeeping. The ABCA does not condone timekeeping fraud and abuse, and implementation of the review's recommendations will solidify this practice.

*Item 4*

The ABCA Commissioner is not unlike a judge or magistrate and to properly discharge his/her duties must have the flexibility to weigh numerous factors, including but not limited to:

- Nature of the violation
- Preventability of the violation
- Severity (violence, public safety, or licensee involvement)
- History of violations
- Duration between occurrences
- Period of time licensee has been in operation
- Comments and concerns of the public
- Concerns, reports and criminal citations from law enforcement
- Due process, preponderance of evidence and the availability of evidence
- Corrective actions and indication of the licensee's willingness to improve operations to reduce the likelihood of future violations
- Licensee's operating procedures

In *WV Code* §11-16-23 and 60-7-13 the West Virginia Legislature had the foresight to recognize the large variety of potential violations and delegated the Commissioner with the discretionary power and authority to adjudicate cases. The Legislature intended to grant the Commissioner the ability to review any number of disparate facts and situations so as to make each decision based on the factors presented in each specific matter. All violations are not necessarily equal and allowing the Commissioner the discretion assigned to him/her by the Legislature ensures the fairest treatment of all licensees. The ABCA believes its current practices are equitable and transparent, comply with the WV code, and weigh all relevant factors to reach a proper determination with every matter.

John Sylvia, Director  
Performance, Evaluation and Research Division  
July 18, 2012  
Page 4

Once again, thank you for the opportunity to respond to the Performance Review. I am pleased to see this review come to a close and appreciate the cooperation our office received from the Performance Research Evaluation Division. I am confident your review will help advance operations and further the mission and goals of the ABCA

If you have any questions or comments with regard to the above please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Ronald M. Moats". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Ronald M. Moats  
Commissioner

**From:** Smith, Shawn E  
**Sent:** Monday, February 13, 2012 9:50 AM  
**To:** Bash, Michael L; Blankenship, Charlotte A; Dunbar, Mark F; Felton, Stephen B; Hairston, Teeanee N; Johnson, William E; Kafer, Donna J; Koontz, John E; Lee, Donna M; Marple, David L; Mason, Dale K; Mattern, John T; Miles, Harold D; Miller, Danny T; Moore, Heather D; Nestor, Jason W; Painter, Gary L; Pritt, Paul A; Sapp, David F; Shelton, Larry C; Short, John R; Smith, Sarah B; Sneberger, Teri L; Towner, Cassie A; Weiler, Michael L; Wooton, Fredric L  
**Cc:** Brewster, Erin R; Moats, Ronald M; Robinson, Gary L  
**Subject:** Statewide Training

We are working on setting up a statewide training for the later part of April. Please respond to this email with any ideas you have regarding training sessions you would like to have presented at the training? If you know of an agency, organization or person that offers any instruction with regards to your proposed training please include that information as well. Thanks!

**From:** Smith, Shawn E  
**Sent:** Monday, February 13, 2012 9:50 AM  
**To:** Bash, Michael L; Blankenship, Charlotte A; Dunbar, Mark F; Felton, Stephen B; Hairston, Tearnee N; Johnson, William E; Kafer, Donna J; Koontz, John E; Lee, Donna M; Marple, David L; Mason, Dale K; Mattern, John T; Miles, Harold D; Miller, Danny T; Moore, Heather D; Nestor, Jason W; Painter, Gary L; Pritt, Paul A; Sapp, David F; Shelton, Larry C; Short, John R; Smith, Sarah B; Sneberger, Teri L; Towner, Cassie A; Weiler, Michael L; Wooton, Fredric L  
**Cc:** Brewster, Erin R; Moats, Ronald M; Robinson, Gary L  
**Subject:** Statewide Training

We are working on setting up a statewide training for the later part of April. Please respond to this email with any ideas you have regarding training sessions you would like to have presented at the training? If you know of an agency, organization or person that offers any instruction with regards to your proposed training please include that information as well. Thanks!



2011-2012 ABCA ENFORCEMENT TRAINING			
Subject	Trainer	Dates	Location
Diversity / Harassment in the Workplace Grants Policies and Procedures Liquor Store Rules Ethics	Human Rights Commission Charlotte Blankenship (Enf. Agent II) / Gary Winters (Gov. Hwy. Safety Program) Shawn Smith (Acting Enf. Director) Anoop Bhasin (General Counsel) Ethics Commission	3/28/2011 3/28/2011 3/28/2011 3/28/2011 3/29/2011	
Processing ABCA/Licensing Photographs Excel Training Courtroom Testimony Leave System/Monthly Time Sheets/Overtime Tour of ABCA Warehouse Report Writing/Interpersonal Communications	ABCA IT Department Office of Technology WV Prosecuting Attorneys Institute ABCA Payroll Ed Hart (Warehouse Manager III) WV State Police	3/29/2011 3/29/2011 3/30/2011 3/31/2011 3/31/2011 3/31/2011	West Virginia State Police Academy
West Virginia Intelligence Exchange (WVIX) West Virginia State Police (Detecting Intoxication) WVABCA (Fake ID's) State Treasurer's Office (457 Plan/ING) Dept. of Corrections - Gang Activity in WV	Sergeant J. E. Light (WVSP Intelligence Unit) Sergeant J.C. Powers (WVSP) Harold Miles (Enf. Agent II) / Steve Felton (Inspector II) Phyllis White (Treasurer's Office / ING, Rep.) Donnie Daniels (Investigator)	7/9/2011 7/20/2011 7/20/2011 7/20/2011 7/21/2011	Canaan Valley Resort
Defensive Driver Training Class	Steve Holland	8/24/2011	DEP Building - Kanawha City
Defensive Driver Training Class	Steve Holland	9/26/2011	Lakeview Resort - Morgantown
Defensive Driver Training Class	Steve Holland	10/22/2011	Regional Education Service Agencies Dunbar, WV
Administrative Citations Report Writing Evidence ABCA Enforcement Wine Enforcement / General Information Gangs Fake ID's ABCA Simulator Mixed ABCA Agenda G2 Reports	Anoop Bhasin / Shawn Smith Anoop Bhasin / Shawn Smith Dale Mason (Enf. Supervisor) Anoop Bhasin / Shawn Smith Christina Propst (Office Assistant III) / Anoop Bhasin Joseph Cannon (Special Agent - Virginia ABCA) Joseph Cannon Dave Marple (Enf. Agent II) / Michael Bash (Inspector II) Brian Wilkerson (Purchasing Assistant) Andy Barker (Programmer Analyst II)	10/25/2011 10/25/2011 10/25/2011 10/25/2011 10/25/2011 10/26/2011 10/26/2011 10/27/2011 10/27/2011 10/27/2011	Chief Logan State Park
Security Training - Securing the Human - Part 1	Computer Based Training	12/8/2011	Online

Microsoft Training	Chris Romaca	1/24/2012 - 1/27/2012	WVABCA - Kanawha City
Investigation Report	David Rose (IT Specialist)		
Administration Citation			
Supplemental Report			
WVABCA Portal Training			
Print / Fax / Scan Training			
Diversity Training	Mary Kaye Jacquet	4/24/2012	
Sexual Harassment Training	Mary Kaye Jacquet	4/24/2012	
Bill Passage Update	Anoop Bhasin	4/25/2012	
IT Enforcement Form Training / Iphone Updates	Chris Romaca (Programmer Analyst III) / Colby Craven (Programmer)	4/25/2012	Pipestem State Park
Alcohol Training	Gary Robinson (Supervisor I)	4/25/2012	
Accounting	Julia Jones (Comptroller)	4/25/2012	
Ethics	Theresa Kirk	4/26/2012	
New Driver's License / Identification	Don Estep (WV Department of Motor Vehicles)	4/26/2012	
Underage Compliance Checks	Sarah Smith (Enf. Agent II)	4/26/2012	
Grants	Charlotte Blankenship	4/26/2012	
Security Training - Securing the Human - Part 2	Computer Based Training	4/19/2012	Online
NLLEA Training Academy - (Five Participants Budgeted for WV)			
Basic Phase / Advanced Phase / Special Investigations	NLLEA Academy Staff	6/3/2012 - 6/8/2012	Charleston Marriott
Iphone Training	Chris Romaca / Colby Craven	7/13/2012	WVABCA - Charleston
Iphone Training	Shawn Smith		
Iphone Training	Chris Romaca / Colby Craven	7/16/2012	WVSP Detachment - Morgantown
Iphone Training	Shawn Smith		
Iphone Training	Chris Romaca / Colby Craven	7/17/2012	WVABCA - Charleston
Iphone Training	Shawn Smith		



WEST VIRGINIA LEGISLATIVE AUDITOR

**PERFORMANCE EVALUATION & RESEARCH DIVISION**

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