

The logo for the Texas Sunset Advisory Commission is a semi-circular emblem. It features a thick black outer border and a white inner border. The center of the emblem is a solid black semi-circle containing the text "Texas Sunset Advisory Commission" in a white, bold, serif font, stacked in four lines.

**Texas
Sunset
Advisory
Commission**

STAFF EVALUATION

Texas Animal Health Commission

A Staff Report
to the
Sunset Advisory Commission

1988

TEXAS ANIMAL HEALTH COMMISSION

June 1988

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Summary of Recommendations

The Texas Animal Health Commission, originally created in 1893 as the Livestock Sanitary Commission, is responsible for administering programs designed to control and eradicate diseases that affect livestock and poultry. The agency is governed by a 12-member commission made up of nine members representing the livestock and poultry industry and three public members. Each member is appointed by the governor for six-year terms. The governor also appoints the commission chair. The commission hires an executive director who directs the agency's day-to-day activities. The executive director employs 294 persons supported by a \$11.2 million budget for fiscal year 1988 from two sources of funding - general revenue and federal funds.

The commission operates from its headquarters in Austin and from 12 area offices and six laboratories located throughout the state. In 1987 over 12,829 inspections involving 22,614,956 head of cattle and 507,555 swine were conducted by the agency's employees. The agency's personnel also stopped 4,083 vehicles involving 158,412 animals to check for compliance with movement permit and entry requirements. In addition, over 2,520 swine garbage feeder operations were inspected and 2,740 herd of cattle involving 518,275 animals were inspected for ticks. Agency personnel also tested 1,248,941 cattle at market for brucellosis. An additional 557,123 head of cattle were tested in the field. The commission's laboratories tested, primarily for brucellosis, 3,313,929 blood samples, 13,640 milk samples and developed and tested 774 tissue samples. Finally, the agency vaccinated 25,905 adult head of cattle and provided partial funding for 1,113,133 calfhood vaccinations in 1987. An additional 3,078 head of cattle were treated for fever ticks.

The sunset review of the commission's structure, administration and programs concluded that the legislature's decision to establish a state agency to administer livestock and poultry disease control programs is still valid. The review also indicated that the commission has fulfilled the purpose for which it was created and should be continued for a 12-year period.

However, the sunset review also determined that, if the commission is continued, certain changes should be made to improve the efficiency and effectiveness of its operations. These changes are summarized in the following material.

RECOMMENDATIONS

THE AGENCY SHOULD BE CONTINUED FOR A 12-YEAR PERIOD WITH THE FOLLOWING CHANGES:

Policy-making Structure

The review of the policy-making structure indicated that it was appropriate for the functions performed by the agency and that no changes are needed.

Overall Administration

Authorization to Charge Fees

1. The commission's statute should be changed to authorize the commission to charge fees for services as necessary to offset the reduction or elimination of federal funding and support of the brucellosis program (Statutory) (p. 38)

The commission receives approximately \$3 million per year from USDA to partially fund its brucellosis disease program. The USDA also provides supplies and personnel for the program. The USDA indicates that direct funding for the program will be eliminated in 1990 and other support currently provided will also be eliminated or reduced. The commission has no fee setting and collection authority to generate revenue to offset the potential elimination of federal support. The commission should have the authority to generate revenue to offset federal cutbacks in funding or support.

Evaluation of Programs

Additional Statutory Requirements for Cattle Dealers

2. The commission's statute should be amended to require cattle dealers to keep records regarding livestock movements and transactions in accordance with commission rules. (Statutory) (p. 44)

The agency's ability to trace outbreaks of brucellosis to the herd of origin depends greatly on the records of transactions maintained by dealers and livestock markets. Requiring cattle dealers to keep records will provide information that is currently unavailable and needed to conduct tracebacks. Currently, livestock markets are required by statute to maintain records of cattle movement. However, there is no similar requirement for cattle dealers. A Class "C" misdemeanor penalty for non-compliance with these provisions should also be added to help ensure that the proper records are maintained.

Penalty Provisions

- 3. The misdemeanor penalties in the commission's statute should be made consistent with current fines and penalties in the Penal Code. (Statutory) (p. 46)**

Most of the commission's penalty provisions were put into statute before the current Penal Code was adopted and do not match the current provisions in the code. Because of the differences between the Penal Code and the commission's statute, there is potential for confusion as to which penalties and fines are applicable to a violation. Changing the commission's penalty provisions to reflect current limits in the Penal Code would make them consistent throughout the commission's statutes and would remove any differences that currently exists between the commission's statute and the state's penal statutes.

Venue for Injunctive Relief

- 4. The commission's statute should be amended to give it authority to seek injunctive relief in Travis County. (Statutory) (p. 51)**

Currently, the commission can only seek injunctive relief in the county where the violation occurred. This can be time consuming and expensive for the commission and the attorney general's office because of the travel involved and the number of court appearances required for these types of cases. Authorizing the commission to seek injunctive relief in Travis County would allow the commission to seek injunctive relief in a more timely and cost effective manner.

Authority to Enforce Penalty Provisions

- 5. The commission should be given the authority to enforce penalty provisions relating to non-compliance of record keeping requirements for livestock markets and slaughter plants. (Statutory) (p. 53)**

Livestock markets and slaughter plants are required by statute to maintain records relating to livestock movement. The commission has the responsibility to define the types of records livestock markets are required to maintain. The commission also has the responsibility to inform slaughter plants of their record-keeping requirements and to conduct spot checks to ensure compliance. Penalty provisions are provided in statute to ensure compliance by markets and slaughter plants with the recordkeeping requirements, however, the statute is silent on what agency or entity has the authority to enforce them. These records are important to the commission for traceback purposes. Giving the commission authority to enforce these penalty provisions would ensure that proper records are maintained by livestock markets and slaughter plants so that the commission can conduct successful tracebacks.

Delegation of Quarantine Power

- 6. The commission's statute should be modified to authorize the delegation of quarantine power to A&M inspectors.**

(Statutory) (p. 55)

Responsibility for control of poultry diseases is split between the commission, the Texas A&M Agricultural Experiment Station and the poultry industry itself. The commission and the Experiment Station have established a method to coordinate their disease control efforts. When disease is found or suspected, an A&M inspector will issue a quarantine of the flock on behalf of the commission. This procedure allows for quick action to prevent the spread of disease through movement of a diseased flock, however, the commission does not have the specific authority to delegate its quarantine power. Providing the commission with this authority would eliminate any problems that could result if the delegation of quarantine power to A&M inspectors was ever challenged by a poultry owner.

Assistance from Law Enforcement Agencies

- 7. The commission's statute should be modified to provide for the following arrangements with law enforcement officials:**

- **The commission and the Department of Public Safety should establish an interagency agreement to improve coordination in enforcing the state's animal health laws; and**
 - **the commission should attempt to develop a similar agreement with selected county sheriff's department.**
- (Statutory) (p. 56)

The agency currently has personnel involved in stopping vehicles bringing livestock vehicles into the state (roadblocks) to ensure compliance with entry requirements for the animals. These efforts are limited because of the large number of interstate highways coming into the state and the small number of commission personnel available to perform the activity. Receiving assistance from state and local law enforcement personnel located in the 28 counties where livestock movement is significant would strengthen the commission's roadblock activities.

Commission Compliance Personnel as Peace Officers

- 8. The commission should be authorized to commission its compliance officers as peace officers. (Statutory) (p. 60)**

The commission's compliance personnel conducting roadblock activities are involved in actions that can be construed as law enforcement efforts normally performed by peace officers. Compliance officers are also faced with the possibility that their safety could be in jeopardy while conducting a roadblock. In addition, because they are not peace officers, compliance personnel can be involved in situations where action taken can place the officers and the state in a position of liability for those actions. Authorizing the TAHC to commission peace officers for its enforcement activities would solve these problems. The Commission would have flexibility in determining how this recommendation would be implemented.

Other Changes Needed in Agency's Statute

- 9. Minor clean-up changes should be made in the agency's statute. (Statutory) (p. 69)**

Certain non-substantive changes should be made in the agency's statute. A description of these clean-up changes in the statute are found in the "Minor Modifications of Agency's Statute" section of the report.

- 10. The relevant across-the-board recommendations of the Sunset Commission should be applied to the agency. (Statutory) (p. 73)**

Through the review of many agencies, the Sunset Commission has developed a series of recommendations that address problems commonly found in state agencies. The "across-the-board" recommendations are applied to each agency and a description of the provisions and their application to the Texas Animal Health Commission are found in the "Across-the-Board Recommendations" section of the report.

AGENCY EVALUATION

Background

Creation and Powers

In the mid 1800's tick fever in Texas had become a major problem for livestock nationwide. Infested cattle from Texas were being transported to other states, transmitting the disease to other cattle and causing cattle to die. By 1855, 15 states had passed laws refusing entry of Texas cattle. The federal government established a Bureau of Animal Industry within the United States Department of Agriculture (USDA) to determine the cause of the fever tick problem and develop a plan to deal with it. The forerunner to the Texas Animal Health Commission was established in 1893 as the Livestock Sanitary Commission and was created to deal with restrictions on the interstate movement of Texas cattle imposed by the federal government and other states because of tick fever.

In 1949, the original commission, composed of three "practical" livestock raisers, was expanded to nine members representing all aspects of the livestock industry and given its current name, The Texas Animal Health Commission. Additionally, the commission's authority was expanded to include not only the control and eradication of tick fever but to all animal and poultry diseases that were dangerous and communicable to other animals and, in some cases, to humans. In 1983, the commission was again expanded to its current size of twelve members when three representatives of the general public were added to its membership. Other changes were also made in 1983 to make the commission's enabling statute comply with federal regulations. These changes were needed to avoid a quarantine of Texas cattle by the USDA. A quarantine of Texas cattle would have had a drastic effect on the state's cattle industry and its economy. The cost, in 1983, to Texas producers of complying with movement restrictions, the reduction of prices received and the loss of ability to send cattle interstate for feeding and grazing was estimated in 1983 to be \$200 million per year. The USDA had changed its regulations to reflect a new direction for the control and eradication of brucellosis. The commission had changed its regulations to comply with the federal regulations, but its statute was not structured to provide clear authority to administer the brucellosis program as established in regulation. These changes were a major shift in regulation and were needed to avoid a quarantine. The lack of authority was proven by a court ruling which concluded that the commission could not enforce its regulations because its statute did not provide authority for the establishment of the regulations. The legislature, in a special session to address the situation, restructured the commission's statute to provide it with the ability to operate a program that met

federal requirements. Without the changes, the state would have no longer had an adequate brucellosis program and Texas cattle would have been quarantined by the USDA.

The commission operates as one of 12 independent agencies established among the states for animal health. The other 38 states have animal health control within a department of agriculture. The commission has responsibility for disease control and eradication of the leading livestock industry in the nation. Exhibit 1 provides information on the livestock and poultry for which the commission has responsibility.

Exhibit 1
Livestock Industry Statistics

Industry	National Ranking	Total Cash Value	Number of Animals
Cattle	1	\$4,556,000,000	13,400,000
Swine*	18	\$44,115,000	510,000
Sheep	--	\$125,450,000	1,930,000
Goats	1	\$77,591,000	1,670,000
Poultry	7	\$28,000,000	17,500,000

*1986 - all other data is for 1987.

In line with its basic mission to control animal diseases that present a danger to humans and the various livestock industries important to the Texas economy, the commission operates programs to control and/or eradicate brucellosis, fever ticks, tuberculosis, hog cholera, scabies, pseudorabies, and various poultry diseases.

Policy-making Structure

The commission is composed of 12 members appointed by the governor with the advice and consent of the Senate for staggered six-year terms. The chairman of the commission is appointed by the governor. The commission composition is shown in the following exhibit.

Exhibit 2
Commission Member Categories

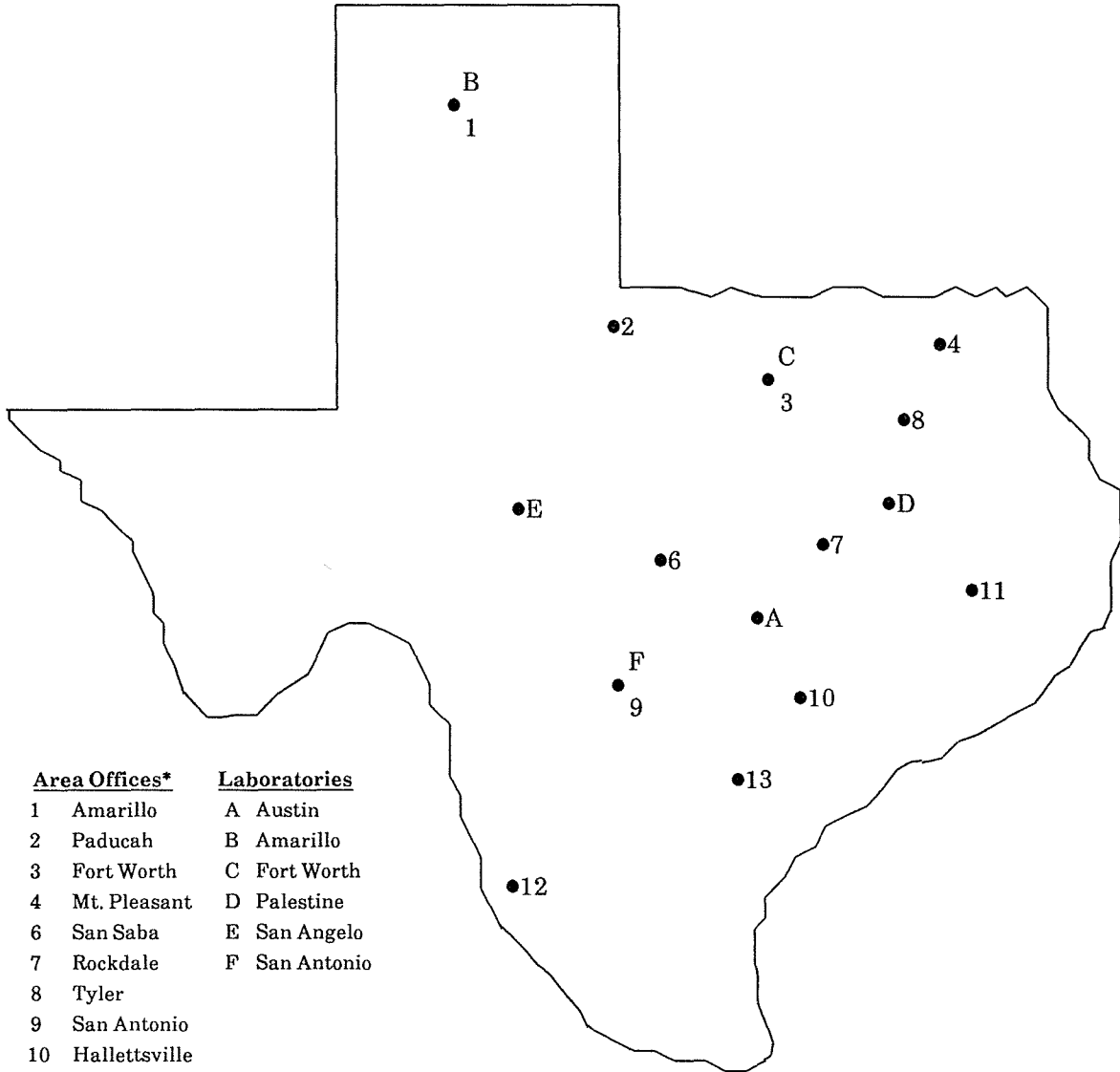
- Practitioner of veterinary medicine
- Dairyman
- Practical cattle raiser
- Practical hog raiser
- Sheep or goat raiser
- Poultry raiser
- Individual involved in the equine industry
- Individual involved in the feedlot industry
- Individual involved in the livestock marketing industry
- Representatives of the general public (3)

The commission is responsible for establishing the rules and guidelines under which its personnel and agency programs operate. The commission is also involved in agency operations through the use of oversight subcommittees that monitor and guide the agency's activities. The commission holds meetings on an as needed basis, roughly four to six times per year. The commission also conducts hearings upon request by an animal owner for the purpose of determining whether the owner can justify an exception to a commission rule or a decision made by the executive director. In 1987, the commission held three such hearings.

Funding and Organization

The commission operates from its headquarters in Austin and 12 area offices and six laboratories located throughout the state. Exhibit 3 shows the location of the field offices and laboratories. The commission has 320 employees budgeted for 1988, 50 in Austin and 270 in the area offices and laboratories. The commission is operating on a \$11,272,517 budget for fiscal year 1988. The budget (see Exhibit 4) is structured to reflect its legislative appropriation pattern which is based on the disease programs it operates. The commission is supported by general revenue funds and \$3 million in federal funds for its brucellosis program. The agency is organized both by the disease programs it operates and by the functions it performs in those programs. The organization structure is provided in Exhibit 5.

Exhibit 3
Location of Area Offices and Laboratories



<u>Area Offices*</u>	<u>Laboratories</u>
1 Amarillo	A Austin
2 Paducah	B Amarillo
3 Fort Worth	C Fort Worth
4 Mt. Pleasant	D Palestine
6 San Saba	E San Angelo
7 Rockdale	F San Antonio
8 Tyler	
9 San Antonio	
10 Hallettsville	
11 Corrigan	
12 Laredo	
13 Beeville	

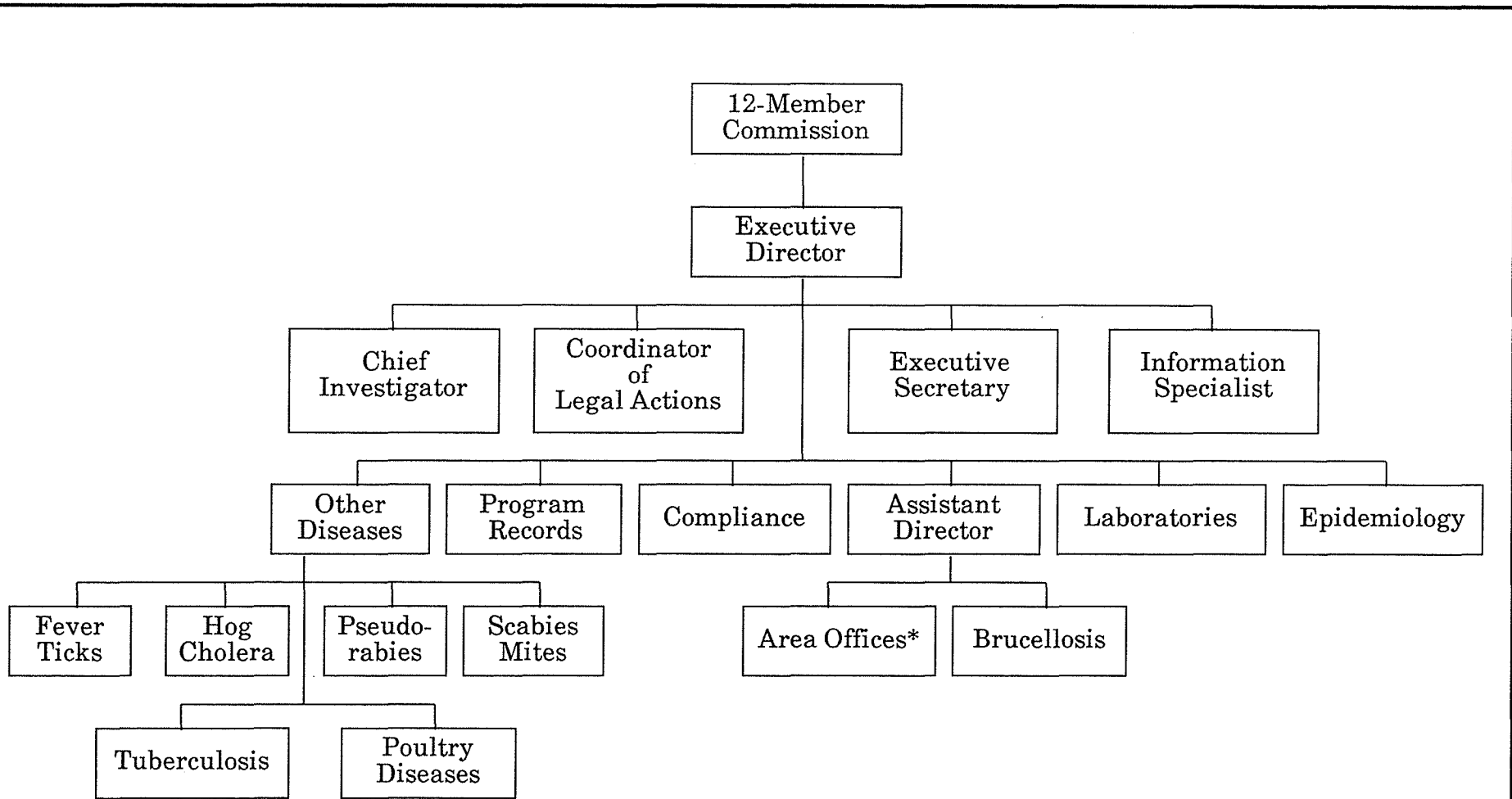
* The commission's area office number five in Corsicana was recently closed.

Exhibit 4

Budget Expenditures for 1988 by Program Category

Administration	\$1,010,656
General Operations	
Inspection and Compliance	\$2,083,660
Statistical Services	693,265
Laboratory Support	954,462
Indemnity	5,090
Epidemiology	160,945
	<u>3,897,422</u>
Specific Operations	
Brucellosis	
- Surveillance	\$2,441,109
- Adult Vaccination and Testing	2,134,407
- Calfhood Vaccination	684,094
Hog Cholera	197,859
Tuberculosis	45,946
Pseudorabies	35,034
Fever Tick	400,542
Scabies	379,997
Poultry Disease	45,451
	<u>\$6,364,439</u>
	<u><u>\$11,272,517</u></u>
TOTAL	

Exhibit 5
TAHC Organization Structure



* The other diseases are also dealt with by field personnel, however most of the field effort is towards brucellosis.

Programs and Functions

The commission's functions fall into the categories of prevention, control and eradication. As mentioned previously the commission operates programs dealing with the following specific diseases:

- brucellosis
- hog cholera
- pseudorabies
- scabies
- tuberculosis and
- poultry disease

The commission has basically organized its activities by disease. However, as seen in Exhibit 5, the commission also has organizational units that reflect a function performed rather than as a specific disease program. To gain a better understanding of the commission's efforts, the review examined the programs operated and the functions performed. While the methodologies differed between the various disease programs, the functions performed by commission personnel can be placed into general functional categories as shown below:

- administration
- disease detection
 - inspection/monitoring
 - testing
 - prevention/treatment
- enforcement actions

The following description provides detail on the specific disease programs operated by the commission and, in a separate section, the functions performed in those programs.

Disease Programs

The commission currently operates specific programs which focus on brucellosis, fever ticks, tuberculosis, hog cholera, pseudorabies, scabies and poultry diseases. While these diseases are not all those that fall within the commission's jurisdiction they represent the ones that currently require specific attention by the commission. Details concerning the diseases and elements of the disease programs are provided below.

Brucellosis. Brucellosis is a bacteria that affects the reproductive ability of cattle. Infection causes the abortion of calves, weakened calves and reduced milk production. The disease is transmitted to other animals in close contact with the infected animals. Humans can contract the disease, called undulant fever, through contact with a diseased animal during calving, at slaughter and through raw milk. Cattle with brucellosis are suitable for human consumption as the bacteria does not survive after slaughter and processing of the meat. The brucellosis program, a cooperative effort between the commission and the USDA, accounts for approximately one-half of the commission's budget and one-third of its personnel. The USDA provides direct financial support of approximately \$3 million per year to the commission to partially fund its program. The USDA also furnishes equipment and supplies for the program worth \$ 1 million per year. Finally, the USDA has staff located in the state that work in the program under the agency's supervision. The purpose of the brucellosis program is to locate, control and eradicate the disease in the state.

All states are required by federal law to have a brucellosis program. The USDA, through its regulations (the Uniform Methods and Rules and the Code of Federal Regulations), requires that certain elements be included in the program and that states meet certain deadlines for control and eradication. States are classified by the USDA based on the amount of disease present in the state's cattle population. Exhibit 6 shows the classifications used and the corresponding disease rates.

Exhibit 6
State Brucellosis Classifications

<u>Classification</u>	<u>12 month Accumulative Herd Infection Rate*</u>	<u>12 month Adjusted MCI Reactor Rate**</u>
Free State	Zero	≤ .05
Class A State	≤ .25	≤ .10
Class B State	≤ 1.5	≤ .30
Class C State	> 1.5	> .30

* This number represents the percentage of herds that test positive for brucellosis out of the estimated total herd population.

** This number represents the percentage of cattle that test positive for brucellosis at slaughter, livestock markets, shows, farms and ranches. "MCI" stands for the Market Cattle Identification program.

Currently Texas is classified as a "B" state with a herd infection rate, as of March 1988, of .72 and 1,040 herds under quarantine because of disease. Exhibit 7 on the following page provides a listing of each state's classification along with the number of herds under quarantine. Texas must reach or have made substantial progress toward Class "A" by October, 1990 or face restrictions by the USDA as well as other states on the interstate movement of its cattle. Exhibit 8 details the state's progress toward the control and eradication of the brucellosis disease.

Exhibit 8

Progress of the Brucellosis Program Herd Infection Rate

	<u>FY 85</u>	<u>FY 86</u>	<u>FY 87</u>
Infected Herds	2,483	1,681	1,464
Accumulative Herd Infection Rate	1.63	1.07	1.03

* As of March, 1988

Each state establishes its own entry requirements for cattle coming from other states. These requirements are important because of the number of cattle transported between states. For example, in 1986, 1,702,000 head of cattle were shipped from Texas to other states while 2,920,000 were brought into Texas. States without a disease problem attempt to ensure that cattle brought into their states do not create a problem. The need for smooth and efficient interstate movement was one of the primary reasons the USDA established national guidelines and requirements for a brucellosis disease program. The state's program, operated by the commission, is patterned after the federal standards. The basic components of the program involve testing cattle to find the disease, placing diseased or suspected herds under quarantine, developing a specific herd plan to deal with the problems, removing diseased catted from a herd and sending them to slaughter and, in many cases, vaccinating the remainder of the herd to help prevent the further spread of the disease. As another preventive measure, the agency also provides partial funding for calfhoo vaccination. Other preventive measures used include the testing of herds adjacent to infected herds for possible spread of the disease and the designation of special control counties for areas where the disease is a particular problem. Restrictions are placed on cattle movement within and from these counties to assist

Exhibit 7
Classification of States and Herds Under Quarantine as of
March 1988

State	Class	Number of Quarantined Herds
Alabama	A	42
Alaska	Free	0
Arizona	A & Free	1
Arkansas	B	123
California	A	19
Colorado	A	4
Connecticut	Free	0
Delaware	Free	0
Florida	B&C	878
Georgia	A	13
Hawaii	Free	0
Idaho	A	1
Illinois	A	10
Indiana	A	8
Iowa	A	7
Kansas	A	30
Kentucky	B	79
Louisiana	C	409
Maine	Free	0
Maryland	Free	0
Massachusetts	Free	0
Michigan	Free	0
Minnesota	Free	0
Mississippi	B	307
Missouri	A	65
Montana	Free	0
Nebraska	A	9
Nevada	A	1
New Hampshire	Free	0
New Jersey	Free	0
New Mexico	A	4
New York	Free	0
North Carolina	Free	0
North Dakota	Free	0
Ohio	Free	0
Oklahoma	B	229
Oregon	A	0
Pennsylvania	Free	0
Puerto Rico	Free	0
Rhode Island	Free	0
South Carolina	Free	1
South Dakota	A	3
Tennessee	A	10
Texas	B	906
Utah	Free	0
Vermont	Free	0
Virginia	A	1
Virgin Islands	Free	0
Washington	A	0
West Virginia	Free	0
Wisconsin	Free	0
Wyoming	Free	0
TOTAL		3,160

with disease control. Currently 14 counties in southeast Texas are included in the special control area. The commission operates the brucellosis program through the functions described later in this background section.

Tick Fever. Cattle fever is transmitted by the fever tick. Cattle that contract the fever suffer drastic weight loss and usually die very quickly (within weeks). Tick fever is not transmittable to humans. The fever tick problem in the late 1800's was primarily responsible for the creation of the commission, and was essentially brought under control in Texas in 1943. Today, the fever tick is primarily found on the Texas-Mexico border. Mexico continues to have a tick infestation problem and ticks are occasionally transported into the state on cattle from the border area. The last outbreak of tick fever in the state occurred in 1985.

The commission has a cooperative program with the USDA to ensure that the fever tick does not become a problem again in the United States. The USDA is responsible for inspecting all cattle coming into Texas from Mexico and regularly patrols the border to prevent infested cattle from straying or being smuggled into the state. The agency provides surveillance in the border counties checking cattle for ticks at markets and on private land. Inspecting for ticks involves a thorough physical examination (scratching) of the animals - cattle and horses - to determine the presence of fever ticks. When ticks are found, the animal, its herd, and premise of origin and adjacent herds are quarantined. All animals are treated with insecticide through dipping or, in some cases, spraying. The quarantine lasts for nine months. Treatment is done by USDA personnel with insecticide provided by the agency. Counties along the border provide public treatment facilities. The potential for the presence of fever ticks has resulted in special requirements for a large portion of Cameron County on the southern tip of Texas. All animals moving within or out of this special control area must be scratch tested and dipped before movement.

Tuberculosis. Tuberculosis is a disease of domestic animals as well as humans. The disease is characterized by a long incubation period and is debilitating in that it causes loss of muscle function including the functioning of the lungs. Humans can contract the disease from eating meat from an infected animal, however, the primary source of problems for humans is milk. Both state and federal agencies are involved in the detection and control of tuberculosis. The USDA has primary responsibility for the disease in cattle. Meat inspection by meat inspectors at slaughter is the usual source of detection. When the disease is found in the field, the infected animal is sent to slaughter. These animals may be fit for human

consumption depending on the progress of the disease. The animal's herd of origin is placed under quarantine for a minimum of ten months with release dependent on the passing of tests which vary with the severity of the situation.

Hog Cholera. Hog cholera is a viral disease of swine characterized by rapid spread and high mortality. The disease is not transmittable to humans. At one time hog cholera was a serious problem for Texas pork producers, however, a successful eradication program has left Texas essentially free of the disease since 1974. The commission's program is now one of prevention. Activities involve the inspection and tagging of swine at livestock markets for identification and tracing purposes. Also, the agency licenses and inspects swine feeding operations that feed garbage containing meat products to swine. The inspection process is used to ensure that the garbage is properly cooked to prevent any cholera in the garbage from being fed to the swine.

Pseudorabies. Pseudorabies is a herpes virus found in swine which can also be transmitted to other animals, although not to humans. The disease causes abortions and significant death losses in suckling pigs. Pseudorabies is a major swine health problem in large pork producing states of the midwest, however it is currently not a problem in Texas. When the disease has been found in Texas, it has been detected in its early stages of spreading and has been controlled before a problem has developed. When infection is found, the herd is quarantined and infected animals are slaughtered. Release of quarantine occurs once the herd has met testing requirements.

Scabies. Scabies mites are a microscopic parasite that can infect sheep and cattle but do not pose a threat to human health. Infested animals tend to stop eating and become consumed with the "mad itch" caused by the scabies mites, thus experiencing dramatic weight loss and hide damage. The disease spreads quickly among animals in close contact. Sheep scabies is not found in Texas. Scabies among cattle is now effectively treated with injections of the drug ivermectin. Infested animals are quarantined and required to undergo treatment - either injecting them with ivermectin or dipping them in a treatment solution. Animals are released from quarantine after treatment.

Poultry Diseases. Poultry diseases are controlled by several agencies in Texas. Exhibit 9 indicates the agencies involved and their respective responsibilities. The poultry industry itself is the main source of disease detection through participation in the "National Poultry Improvement Plan", a voluntary national disease control program. The plan provides for detection through, among

other things, the testing of flocks for disease. The Texas A&M Agricultural Experiment Station also provides disease detection through the inspection of poultry (usually small flocks) not covered by the national plan. When A&M inspectors find disease, they issue a quarantine on behalf of the commission.

Exhibit 9
Responsibilities for the Regulation of Poultry Disease in Texas

Agency	Responsibility
Poultry Improvement Board	Serves as contact agency with the USDA to administer the National Poultry Improvement Plan
Poultry Industry	As plan participants, industry members comply with disease control requirements, test their flocks and vaccinate to prevent disease.
Texas Animal Health Commission	Has general authority for control of animal disease, including quarantine power over diseased poultry.
Texas A&M University Agricultural Experiment Station	Operates a disease control program for poultry not covered by the national plan (small, backyard-type operations, exhibitions, shows).

The human danger involved in poultry diseases is salmonella, which is a generic disease term which includes the primary disease of pullorum typhoid. Salmonella can be transmitted to humans from diseased poultry that is not properly cooked. The effects of salmonella on humans is similar to other food poisoning and can cause nausea and vomiting and can be fatal depending on severity.

The agency's effort related to control of poultry diseases is mainly control and eradication. When disease is found the commission gets involved through the development of a plan to address the problem using vaccination, disinfection and possibly the depopulation of the diseased flock. Diseases controlled for include pullorum typhoid, gallisepticum, synoviae and meleagridis which are covered by the national plan. Pullorum typhoid among small flock owners is monitored through the A&M program. Also, the agency is involved in checking for laryngotracheitis and exotic newcastle although these diseases are not commonly found in Texas.

Functions

As mentioned previously the commission's activities can be placed into general functional categories. Exhibit 10 describes these functions and indicates where they

Exhibit 10
TEXAS ANIMAL HEALTH COMMISSION
Disease Control by Function

Functions	Brucellosis	Cattle Tuberculosis	Tick Fever	Scabies	Hog Cholera	Psuedo Rabies	Poultry Disease
<u>Administration</u>							
a. General Administration	X	X	X	X	X	X	X
b. Information Services	X	X	X	X	X	X	X
c. Accounting	X	X	X	X	X	X	X
d. Personnel	X	X	X	X	X	X	X
e. Data Processing	X	X	X	X	X	X	X
f. Purchasing	X	X	X	X	X	X	X
g. Statistical/Clerical Services	X	X	X	X	X	X	X
<u>Prevention, Control, and Eradication Program</u>							
a. Disease Detection Activities							
1. Inspections/Monitoring							
-- Markets/Feedlots/Premises	X		X	X	X		X
-- Slaughter Plants	X	X					
-- Roadblocks	X		X	X			
-- Permit Compliance	X	X	X	X	X	X	X
-- Tracebacks	X	X	X	X	X	X	
-- Garbage Feeders					X		
-- Tick Scratching			X				
2. Testing							
-- Markets	X						
-- Herd Testing	X	X				X	
-- Milk Plants	X						
-- Laboratory	X	X	X				

Exhibit 10
TEXAS ANIMAL HEALTH COMMISSION
Disease Control by Function

Functions	Brucellosis	Cattle Tuberculosis	Tick Fever	Scabies	Hog Cholera	Psuedo Rabies	Poultry Disease
b. Prevention/Treatment							
1. Vaccinations	X						
2. Dipping/Injections			X	X			
3. Indemnity		X					
4. Epidemiology	X	X	X	X	X	X	X
c. Enforcement Actions							
1. Hold Orders/Quarantines	X	X	X	X	X	X	X
2. Informal/Formal Hearing	X	X	X	X	X	X	X
3. Misdemeanor Complaints/Fines	X	X	X	X	X	X	X
4. Investigations	X	X	X	X	X	X	X
5. Injunctions	X	X	X	X	X	X	X

are performed in the commission's disease control programs. Exhibit 11 provides an approximation of expenditures by function to indicate the relative emphasis placed on the various functions. A description of the functions is set out below.

Administration.

Administration activities support the agency's operation of its disease programs. Basic administration functions are performed such as oversight of the commission's field offices, cost control and efficiency studies, maintenance of program records and the overall monitoring of the commission's efforts. Accounting, personnel, purchasing, leasing and data processing functions are also provided. The agency also has an information services activity to provide information to the public and persons affected by the commission's efforts. Finally, administrative personnel operate a computer information system with the USDA called the Brucellosis Information System (BIS) which tracks key information related to the brucellosis disease control program.

Exhibit 11

Budgeted Expenditures for 1988 by Functional Category

Administration	\$1,707,786
Prevention, Control and Eradication	
A. Disease Detection	
1. Inspections/Monitoring	3,266,776
2. Testing	5,380,372
B. Prevention/Treatment	792,458
C. Enforcement Actions	125,125
	\$11,272,517

Disease Detection

The disease detection function encompasses a large portion of the agency's efforts. Disease detection can be divided into two main activities, Inspection/Monitoring and Testing.

Inspections/Monitoring. Efforts in this area involve the inspection of cattle, swine and other animals at livestock markets and feedlots for compliance with disease control requirements such as record-keeping, testing and permitting. In 1987, 12,829 inspections were made involving 22,614,956 head of cattle and 507,555

swine. Also, 11,710 movement permits were issued. Slaughter plants are also periodically checked for compliance with blood sample and record-keeping requirements (1,220 inspections in 1987). Also, agency personnel stop vehicles on a random basis when they enter the state and check for compliance with movement permit and entry requirements. Last year, 4,083 vehicles were stopped and 158,412 animals were checked. Disease detection is also carried out through traceback investigations. Animals identified as having a disease are traced back to their herds of origin in an attempt to find where the disease came from so that it can be controlled. In 1987, 4,240 investigations were conducted resulting in the traceback of 8,688 infected animals and the quarantine of 776 herds.

Detection functions are also performed through the license and inspection of swine garbage feeding operations. Inspection of these operations ensures that garbage is properly cooked so that diseases are not transmitted to the swine. Last year, 2,520 garbage feeder inspections were conducted. One other detection activity involves the inspection of animals in the Mexico border area for the presence of fever ticks. This effort ensures that infested animals are identified and treated and fever ticks are not allowed to spread to other areas of the state. In 1987, 2,740 herds with 523,225 head were inspected for ticks.

Testing. This effort involves the payment for and the monitoring of brucellosis testing of cattle at market. Market tests are performed by private veterinarians and are paid by the markets. The agency provides funds to the markets. In 1987, 1,248,941 head of cattle were tested at market. Agency inspectors monitor the testing activity at market. Inspectors perform the tests themselves on cattle located on an individual's property or on land adjacent to infected or suspect herds. Last year, 8,750 herds were tested in the field involving 557,123 head of cattle. One last component of the testing function involves testing conducted in the commission's laboratories. Laboratory tests are used to confirm field tests performed by field personnel as well as private veterinarians. Tests are also used to supplement the results of field tests to determine the exact type of disease involved (such as a vaccine - caused reaction versus field - strain disease reaction). Tests are conducted on milk samples collected from milk plants and tissue cultures from slaughter plants either to confirm the findings of previous tests or as an initial screening test. Laboratory activity for 1987 included 3,313,929 blood samples tested, 13,640 milk samples tested and 3,575 tissue and milk cultures developed and tested.

Prevention/Treatment

Prevention and treatment efforts are designed to prevent the spread of disease and, where possible, to eliminate the disease. For brucellosis, when a diseased animal is detected, the remainder of the herd is vaccinated to help prevent the spread of the disease. These vaccinations are performed by commission personnel and federal veterinarians. Commission personnel adult vaccinated 25,905 head of cattle in 1987. As another preventive measure, the commission encourages calfhooed vaccinations and pays approximately one-third of the fee (currently \$1) charged by private veterinarians performing the service. In the last fiscal year, 1,113,133 calfhooed vaccinations were performed at a cost to the state of \$1,343,106. Treatment and prevention efforts related to fever ticks involves the spraying or dipping of infested animals as well as any other animals in the herd of origin or on adjacent land. The actual treatment is carried out by federal personnel while the insecticide used is provided by the state. Approximately 76,000 head of cattle were treated in 1987 by federal and state personnel (3,078 by state personnel). Treatment for scabies involves a requirement that infected animals undergo treatment at owner's expense. Treatment cures the animals and prevents the spread of the disease. No animals were identified by agency personnel as needing treatment in 1987. In the case of tuberculosis, no treatment is available and infected animals are required to be slaughtered. The commission has the authority to pay indemnity of up to \$25 to the owner for each animal destroyed. In 1987, the agency paid approximately \$400 in indemnity to owners for 16 animals destroyed. The final aspect of the commission's prevention and treatment effort is the use of epidemiological investigations. Epidemiology is the science pertaining to the incidence, distribution and control of disease in a population. The commission employs two epidemiologists to work with commission personnel, producers and private veterinarians to develop specific control and eradication plans for herds where disease is found. The plan specifically includes an attempt to trace the origin of the disease and any possible spread of or exposure to the disease. In 1987, 2,390 consultations were made by the staff epidemiologist and commission veterinarians with herd owners and/or their private veterinarians. Also, 1,362 herd plans were developed.

Enforcement Actions

The commission's enforcement efforts are designed to ensure compliance with the state's animal health laws and with its rules and regulations. Commission personnel have the ability to quarantine animals that either have disease or are

suspected of having disease and to enter public or private property to enforce animal health laws or regulations. An animal owner can be required to test animals and follow specific treatment plans developed to deal with disease problems found. An animal owner must comply with these requirements but can request a hearing with the executive director for an exception. If not satisfied with the director's decision, the owner can request a hearing with the commission. The failure of an owner to comply with the commission's decision results in the filing of a complaint in district court in the county where the owner resides. Violations of other provisions of the commission's laws and regulations are filed by the agency with a justice of the peace in the precinct or county where the owner resides. Continued non-compliance following j.p. court action causes an injunction to be filed by the commission in the district court having jurisdiction where the violation occurred. Enforcement activity for 1987 included 776 herds quarantined, 63,428 animals quarantined at market, 1976 investigations conducted, 743 complaints filed in the justice of the peace court and 16 injunctions sought during the year.

Review of Operations

Focus of Review

The sunset staff review of the Texas Animal Health Commission included all aspects of the commission's activities. The review focused specifically on the brucellosis control program because of its size and importance relative to the commission's other programs and because the state is required to meet certain federal requirements by October 1, 1990 to avoid restrictions on the interstate movement of Texas cattle. A number of activities were undertaken by the staff to gain a better understanding of the commission and its programs. These activities included:

- visits to area offices;
- visits with field personnel to slaughter plants, dairy farms, ranches, swine garbage feeders, livestock markets and shows;
- accompanying compliance officers on roadblocks;
- discussions with commission personnel in the central office and with USDA regional and area personnel;
- meetings with interest groups; and
- phone interviews with other state's animal health personnel.

These activities yielded a basic understanding of the general objectives of the commission and the identification of key issues affecting its operations. The issues identified generally fall into four specific areas. First, is there a continuing need for the function of the commission? Second, is a separate agency necessary to carry out the commission's functions or can the functions be placed in another state agency to increase overall efficiency and effectiveness or to produce significant cost savings? Third, what is needed to ensure that the commission has adequate funding when and if federal assistance is phased out? Fourth, what approaches are needed to improve the commission's overall performance and to allow the state to reach Class 'A' status for its brucellosis program as quickly as possible?

Regarding the first area, the review focused on whether there is a continuing need for the commission's function. Research indicates that each state must administer several disease control programs based on minimum standards established by the USDA. Failure to have acceptable programs would result in the USDA and, in most cases, other states placing severe restrictions on the interstate movement of the state's livestock. This would result in significant economic hardship for the state's livestock industry. For example it was estimated in 1988 that the Texas livestock industry would suffer an estimated annual loss of \$72

million if a quarantine were placed on the interstate movement of Texas cattle because of the failure of the program to meet federal requirements. Therefore, the function performed by the commission should be continued to ensure the free interstate movement of Texas livestock.

Regarding the second area, research was conducted to determine if a separate commission should continue to carry out the animal disease control functions or whether the functions should be merged with the Texas Department of Agriculture (TDA) or with the Texas A&M Agricultural Experiment Station. The research indicated that there is no apparent justification for a merger.

Regarding the first area of merger, there is no duplication of effort or overlap between the two agencies programs and functions. The primary role of the Texas Department of Agriculture is the promotion of Texas agriculture. The TDA also regulates the production and sale of seeds, pesticides, eggs, and milk. However, TDA has no programs or functions that directly relate to animal health. TDA does have responsibility for the regulation of pesticides used on livestock and operates import/export facilities for cattle awaiting transportation after sale. Those activities do not relate directly to control of animal health diseases. The commission, on the other hand, has one responsibility, controlling and eradicating diseases that affect livestock and poultry. The review did indicate that merging the two agencies offered some potential cost savings through reductions in administrative and computer support staff. In addition, a merger could result in the consolidation of at least four area offices resulting in savings in rent, utilities and some support staff. However, even if merged, the current programs, program staff and laboratories of the commission would have to be maintained given TDA's lack of expertise in the area of animal disease control. Therefore placing the commission's function in TDA solely on the basis of cost savings is not justified.

The second potential area for merger examined during the review relates to poultry disease regulation which is currently split between the commission, the Texas A&M Agricultural Experiment Station and the poultry industry itself. The poultry industry provides much of the regulation through participation in a voluntary national disease program. The Texas A&M Experiment Station operates an inspection program for poultry owners that are not participants in the national program. Texas A&M operates the program because of its expertise in poultry and poultry diseases and because of its laboratory capabilities. As with all animal health diseases, the commission has overall responsibility for poultry disease control and, when a quarantine action is needed, the commission issues the final order. The

review found that the current split scheme used for poultry regulation was efficient and effective. The industry's participation was reviewed as part of the sunset review of the Poultry Improvement Board and was found to be effective in controlling poultry diseases. With respect to the A&M program, the review indicated that the Experiment Station has the expertise and capability to operate its inspection program and that similar capabilities would need to be established in the commission if the program was transferred. Therefore, no cost savings would be realized if the programs were consolidated. Also, if the inspection program was moved from A&M to the commission, personnel involved would need to work constantly with A&M because it has the most expertise related to poultry. Regarding the commission's role in poultry disease control, the review indicated that it was appropriate for the commission to have final authority for poultry diseases as with all other animal diseases. The review concluded that coordination between the Experiment Station and the commission was adequate and that maintaining the current split of responsibility was justified. One recommendation has been developed to clarify the authority of A&M inspectors to issue quarantines, when necessary, on behalf of the commission.

Regarding the third and fourth areas, approaches were developed to address potential reductions in federal assistance and to improve the commission's overall performance . These recommendations are contained in the body of the report.

Policy-making Structure

The evaluation of the policy-making structure was designed to determine if the current statutory structure provides a proper balance of interests within the composition; contains an effective means of selection and removal of members; and, provides for adequate oversight of staff activities. The review concluded that the current commission composition provides an adequate balance of representation among the various segments of the livestock industry and the general public. The commission's oversight of agency activities is also adequate as the commission has established subcommittees with the responsibility for key areas of the agency's operations. These two subcommittees provide guidance to the agency on financial matters such as budget preparation and the development of rules and regulations for disease programs. This input helps ensure that the agency is operating as the commission intends. Regarding the selection and removal of commission members, the review concluded that the current selection process is appropriate, however, no procedure exists to remove members for just cause. This problem is addressed through the application of the Sunset Commission's across-the-board recommendations which provides for a removal process. No other recommended changes were made related to the policy-making structure other than minor changes recommended in the Minor Modifications Section of the report.

Overall Administration

The evaluation of the administration of the commission was designed to determine if management and reporting procedures were consistent with generally accepted practices for the internal management of time, personnel and funds. The commission's budget and planning processes were reviewed along with methods used to implement the commission's policies and procedures. The monitoring of the efforts of field staff and the use of and accounting for federal funds received by the commission were also reviewed. Audit reports and management letters issued by the state auditor to the commission were also examined.

The review found that the commission is administered in an efficient manner and has adequate planning and monitoring efforts. The review of the state auditor's findings indicated that only minor problems have been identified in the past and commission staff have taken prompt action to correct any deficiencies. Lastly, the examination of a key administrative area, the use, monitoring and draw down of federal funds, indicated the function is carried out appropriately. In this area, the agency has developed an accounting system that tracks the efforts of field staff and the payment of funds for market cattle testing in the brucellosis program (\$3 million in fiscal year 1987). Information developed through this system is used to obtain reimbursement from the United States Department of Agriculture (USDA) for staff effort and payment for market testing. The system is comprehensive and discussion with USDA staff indicated it included elements needed to enable timely and verifiable claims for reimbursement of expenses the state incurs as part of the cooperative brucellosis program. The system used for tracking federal funds also enables the commission to monitor the expenditure of state funds in the various programs it operates.

While the review of administration did not reveal any problems with the commission's administrative structure or performance, one area was identified where improvement could be made. The commission faces the possibility of losing federal funds currently provided for the brucellosis program. A recommendation to address this potential problem is discussed in the following material.

Ability to Generate Fee Revenue is Needed

The commission currently receives approximately \$3 million per year from the USDA to partially fund its brucellosis disease program. The USDA also provides supplies for the program as well as personnel to work in the program. The USDA has indicated that direct funding for the program will be eliminated in 1990 and

other support currently provided will either be eliminated or reduced. Unlike most state regulatory agencies, the commission has no fee setting and collection authority. The review indicated that the commission needs this ability to generate revenue to offset any federal cutbacks in funding.

The commission's statute should be changed to authorize the commission to charge fees for services as necessary to offset the reduction or elimination of federal funding and support of the brucellosis program.

The commission's brucellosis program is a cooperative effort with the USDA. The USDA provides direct funding, supplies and in-kind support. Direct funding is provided through a cooperative agreement in which the state agrees to operate a disease program under specific conditions and the USDA provides \$3 million per year in funding support for the program. The USDA also provides approximately \$1 million worth of equipment and supplies for the program such as test kits, identification tags, laboratory supplies and vaccine. In addition, the USDA assigns some of its staff located in the state to work in the state program under the supervision of the commission. The estimated total value of federal assistance is \$12 million annually. This effort is primarily related to brucellosis although efforts are also directed at other diseases in the state.

The USDA is under a five-year budget plan, originating in 1985, that calls for a reduction of funding for its support of state brucellosis programs nationwide. The budget plan reduces the funding by approximately 50 percent from 1985 to 1990. The total federal brucellosis budget for 1988 is \$65.6 million as compared to \$67.5 million for fiscal year 1987. The proposed spending level for 1989 is set at \$55.8 million with a further reduction to \$45 million for 1990. The budget reduction involves elimination of funding for cooperative agreements (except for some clerical support) and supplies and the reduction of in-kind support. Using these criteria the projected loss for the Texas program beginning in 1990 is \$2.6 million for the cooperative agreement, \$1 million in supplies and \$500,000 in staff support for a total of \$4.1 million. This figure represents over 60 percent of the total funding for the commission's brucellosis program. If the federal support is withdrawn, the funding would need to be replaced to maintain the effectiveness of the brucellosis program. As mentioned in the background section, the state must have a viable program and continue progress toward the federal deadline of reaching class "A" status for the state's program by 1990. Failure to have an adequate program and the

resulting restrictions on the Texas livestock industry would have a \$72 million dollar annual negative fiscal impact on the industry.

Because of the importance of the program, the review focused on ways to ensure that other funding is available if federal support is reduced or eliminated. The funding level for the federal brucellosis program of the USDA is far from certain. Attempts have been made in the past to reduce the funding level but Congress has restored the funding during the congressional budget process. However, the state should have a contingency plan for funding if the projected reduction of federal support actually occurs. The contingency plan is needed because the federal budget decision in 1990 will occur between regular sessions of the Legislature and, without the plan, a special session could be the only way to deal with any reduction of federal funds.

Because of the state's current fiscal climate additional general revenue funding was not seen as the most reliable contingency source. The only other viable options are the reduction of current expenditures and the commission's ability to generate revenue through fee charges. The commission does not currently have the authority to establish fees for services it performs. The review indicated several areas where funding could be reduced and fees could be charged to generate revenue if needed. Eighteen states were selected and a survey was conducted to determine, among other things, what fees were charged in other states. The states were chosen based on several factors -- the size of the state's livestock industry, its location, the existence of a disease problem in the state and the existence of a "model" disease program. The survey identified five states that charge fees for services or assess fees at livestock concentration points such as livestock markets. Fee areas include inspections, testing and vaccinations. Other states also limit state funding by requiring that livestock owners pay for part of their disease programs. Eleven states require owners to pay for brucellosis testing of cattle at markets. Also, 12 states require owners to bear the cost of vaccinations. Currently, the commission pays for testing at markets using federal and state funds. Approximately \$2 million (approximately \$1.5 million federal and \$.5 million state) is paid to markets for payment to private veterinarians to perform the tests. Also, the commission pays for a portion of the cost of calfhood vaccinations. Approximately \$500,000 of state funds will be paid directly to private veterinarians towards the cost of vaccinations (currently \$1 per head) in 1988. The review concluded that a combination of fee charges and elimination of payments for market testing and vaccinations could be used by the commission to compensate for the potential loss of federal funds. The commission currently has

authority in the General Appropriations Act to transfer funds within the funding pattern for its brucellosis program. This authority could be used to discontinue funding for market tests and vaccinations, (approximately \$2.5 million per year) and transfer the \$1 million in state funds to other areas of the program. The livestock industry in Texas, as in many other states, would bear the cost of the testing and vaccinations.

As part of the review of the funding issue, various ways to structure a funding plan were analyzed to ensure that the commission could develop a plan if needed. While the commission is best suited to establish the actual plan, it was necessary to structure a hypothetical one to ensure that a workable plan could be set up. To develop the plan, it was necessary to make certain assumptions. First, it was assumed that federal support would be reduced as indicated by the budget plan for the federal brucellosis program (\$4.1 million). Second, it was assumed that the state would pick up funding for the supplies currently provided by the USDA and most of the in-kind federal support lost (approximately \$1.5 million). Finally, it was assumed that the commission would discontinue payment for market testing and vaccinations and use its authority to transfer funds within its brucellosis program to shift the funds to other parts of the brucellosis program (approximately \$1 million). Using the assumptions above, the commission would need to generate approximately \$1.6 million from fee charges to make up for lost federal funds. Exhibit 12 shows three fee structures that could be used to generate additional funds needed. The fee structures shown in the chart are hypothetical and were developed to show that fees could be charged to generate revenue as needed to deal with the federal funding reduction. The commission would have the responsibility for establishing an actual fee schedule as necessary to address a funding shortfall.

Exhibit 12

Possible Fee Schedules Based on 1987 Data	Options		
	1	2	3
Fee at Market (x 1,248,941 head)	\$.50 \$624,470	\$.25 \$312,235	\$.30 \$374,682
Fee at Slaughter (x 6,155,000 head)	.15 \$923,250	.20 \$1,231,000	.20 \$1,231,000
Fee for Permits (x 10,733 permits)	\$10 \$107,730	\$10 \$107,730	--
Fee for Certification of Disease Free Herds (x 1,901 herds)	\$25 \$47,525	\$25 \$47,525	--
Totals	\$1,702,975	\$1,698,490	\$1,605,682

The review concluded that the commission should be given fee authority which, along with other measures, can be used to deal with a funding problem caused by the loss of federal funding for the brucellosis program. The fee authority would only be triggered by an actual reduction of federal funds received by the commission. The fee development process would begin when the USDA informs the commission that the funding will be reduced or eliminated. This would occur during the federal budget process that begins three or four months before an actual contract is signed for the next fiscal year (federal fiscal year, October-September). At that time the commission would know how much federal funding will be available and can begin developing a fee schedule to generate revenue that will be needed. The commission would have the flexibility to establish any fees and generate any level of revenue up to the federal funding amount set in its appropriation bill pattern. The commission could operate its programs using general revenue funds appropriated until fee revenues began to be collected. The commission would need an explanatory rider added to its appropriation bill pattern which explains the procedures that would be needed to generate fees and expend the funds generated. The fee authority would be a permanent mechanism available to contend with federal funding changes now or in the future.

Evaluation of Programs

The Texas Animal Health Commission administers seven programs that address the following animal diseases: brucellosis, fever ticks, tuberculosis, hog cholera, scabies, psuedorabies and various poultry diseases. The commission's activities in each of these programs can be placed in the following functional categories: administration; prevention, control and eradication; and enforcement. Included within the prevention, control and eradication category are disease detection activities such as inspecting, monitoring and testing activities, and prevention and treatment activities.

The review focused on these functional categories as they relate to each program to determine if they were sufficient to control and eradicate diseases that affect livestock and poultry. The commission's functions were particularly examined to determine if they were adequate enough to allow Texas to reach class "A" status for its brucellosis program by October 1, 1990. In addition, the review examined whether there are approaches that could increase the agency's effectiveness through coordination with other state and local agencies where possible. Finally, the review examined various statutory changes needed to improve the commission's ability to administer its programs.

Discussions with USDA personnel, on-site examinations of agency activities and an analysis of the agency's deployment of staff were used to determine how effective the agency is at controlling and eradicating diseases affecting livestock and poultry. According to USDA personnel, the agency has adequate personnel at concentration points (livestock markets, feedlots) to detect and test for disease, specifically brucellosis. The review also indicated that the agency has deployed its field personnel in the areas of the state where the potential for disease outbreaks is the highest. For example, a significant percentage of the agency's inspectors are located in south and east Texas where brucellosis is more prevalent. In addition, the commission has developed an exemplary laboratory system that not only provides verification and support for field tests but also allows agency personnel to conduct supplemental tests as needed.

The review indicated that the commission is effective in treating disease and taking action to prevent future outbreaks once disease has been located. The review also indicated that, in most cases, the commission has adequate enforcement powers to ensure compliance with the commission's statute and its regulations. As a result, incidence of livestock and poultry disease throughout Texas has been effectively

reduced. For example, Texas has been free of hog cholera since 1974. Only two cases of psuedorabies were discovered in Texas in fiscal year 1987. Even though the threat of tick fever is always present, there has been no serious outbreak since 1985. Scabies mite infestation among cattle and sheep has been eliminated since the development of an injectable treatment. Currently, only one cattle herd is under quarantine for tuberculosis. The rate of infection for brucellosis has declined from 1.63 in 1985 to .72 as of March, 1988. Finally, the review found that interest groups affected by the commission widely support the commission and its functions. The review did determine, however that changes in two areas could produce a more effective enforcement framework. First, the commission in its inspection and compliance activity, lacks authority to obtain certain types of records needed to detect and locate disease and to conduct compliance investigations, specifically those involving brucellosis. Second, the commission's overall enforcement powers need to be strengthened. Recommendations to address these problems are set out below.

Inspections and Compliance

An important aspect of the commission's inspection and compliance efforts is the ability to successfully trace an outbreak of disease back to the herd of origin . This is especially important in the area of brucellosis control and eradication. The ability to conduct successful tracebacks allows the commission to locate and control brucellosis before it can spread. It also helps the commission with investigations of cases of non-compliance with the commission's statute and regulations. The agency's disease detection activities were reviewed to determine if they were sufficient to conduct successful tracebacks of brucellosis outbreaks and to support the commission's enforcement activities. These activities were also examined to see if they are sufficient to help the state achieve Class "A" status for its brucellosis program in by October 1, 1990. The review specifically examined the state's brucellosis program as compared to numerous USDA guidelines and brucellosis programs in other states.

The review findings indicated that the commission uses a system developed by the USDA to trace back outbreaks of brucellosis referred to as the Market Cattle Identification (MCI) program. The MCI program provides for the identification and testing of cattle at concentration points such as livestock markets and slaughter plants. Milk samples from dairies are also tested for brucellosis. As a result of this identification and testing process, the commission is generally able to trace brucellosis back to the herd of origin. In 1987, the commission conducted 9,256

successful tracebacks for brucellosis. However, a weakness was identified in the commission's ability to conduct tracebacks for brucellosis and to investigate cases of non-compliance with the commission's statute and rules. Specifically, the commission lacks the authority to require cattle dealers to maintain records relating to cattle transactions and movements. This problem is addressed by the following recommendation.

Recordkeeping Requirements for Cattle Dealers Should be Added to the Commission's Statute

Under USDA regulations, livestock markets and cattle dealers are required to keep records on cattle sales and movements. These records provide information that allows diseased animals to be traced back to their herd of origin. It also provides information needed to determine if non-compliance has occurred.

In Texas, livestock markets are required to maintain records of cattle movement and transactions. However, there is no requirement that cattle dealers keep records on cattle movements. The commission's ability to conduct tracebacks on diseased cattle sold by cattle dealers and to investigate cases of non-compliance with commission statute and regulations involving dealers is hampered by the lack of these records. The following recommendation addresses these problems.

<p>The commission's statute should be amended to require cattle dealers to keep records regarding livestock movements and transactions in accordance with commission rules.</p>

Cattle sold in Texas are handled primarily by cattle dealers and livestock markets. Currently, there are 160 cattle markets and approximately 419 cattle dealers. Livestock markets are places where livestock are concentrated for sale. Cattle dealers are individuals who buy or sell cattle independently or as an employee or agent of the seller or buyer. This does not include individuals that sell or buy livestock as part of a breeding, feeding, dairy, beef or slaughter operation.

Federal (USDA) recordkeeping requirements exist for markets and cattle dealers to ensure that disease outbreaks can be traced back to the herd of origin. The types of records that are useful include those that provide the address of the individual selling or buying cattle, a description of the cattle bought and sold, the date of delivery of the cattle and the name of the individual delivering the cattle.

These records allow the commission to more easily trace disease to the herd of origin. In 1987, the commission conducted 9,678 total tracebacks. Of the total, the commission conducted 9,256 successful tracebacks but was unsuccessful in 422 cases. Unsuccessful tracebacks involving cattle sold by cattle dealers involved 288 or 68 percent of the total number of unsuccessful tracebacks.

Tracebacks involving cattle dealers are often difficult to resolve because cattle dealers currently do not keep records of cattle movement or transactions that could be used by TAHC. Even though USDA regulations require that markets and cattle dealers keep these records the commission has no clear authority to enforce such a requirement for dealers. The commission has authority to establish rules regarding recordkeeping requirements for livestock markets. Other states have granted their animal health agency the authority to require and enforce recordkeeping requirements for cattle dealers. In a survey of eighteen states, fifteen states require cattle dealers to keep records for traceback purposes and fourteen of the states have similar requirements for livestock markets. Giving the commission the authority to impose recordkeeping requirements on dealers would bring the Texas program in line with federal requirements and other states' programs.

Authorizing the agency to require these records from cattle dealers will not only improve the agency's overall ability to conduct tracebacks but will also assist the state in reaching class "A" status for brucellosis as required by USDA. To ensure that records regarding cattle movements and transactions are maintained by cattle dealers, the agency should be given clear authority to require that these records be maintained and that they be subject to periodic inspection by the agency. In addition, the agency should be authorized to enforce this requirement. A violation of this requirement should be a class "C" misdemeanor, which is consistent with the penalty relating to non-compliance with recordkeeping requirements found in the commission's statutes and regulations.

Enforcement Powers

The commission has three main enforcement tools to address non-compliance with commission statutes and regulations: quarantine, misdemeanor penalties and injunctive relief. Research was conducted to determine if the enforcement structure was sufficient to ensure compliance. The review indicated that in general the enforcement tools are adequate for most cases. For example, the incidence rate for brucellosis has dropped from 1.63 in 1985 to .72 as of, March 1988, in part because the commission's enforcement powers were sufficient to encourage overall

compliance. However, several problems were also identified. First, fines and penalties currently in statute are not commensurate with limits currently set out in the Penal Code. Second, when compliance cannot be achieved through quarantine and fines, the commission lacks the authority to seek injunctive relief in district court in Travis County. Third, the commission lacks the authority to enforce penalty provisions related to noncompliance with recordkeeping requirements for livestock markets and slaughter plants. Fourth, the commission is delegating its quarantine power to the A&M poultry inspectors without specific authority. Fifth, the commission needs additional assistance from law enforcement agencies in the enforcement of its laws and regulations. Finally, the commission needs the ability to commission its compliance personnel as peace officers.

The review focused on approaches to address these problems and to strengthen the commission’s overall enforcement powers. These approaches are outlined in the following recommendations.

Misdemeanor Penalties in the Commission’s Statute Should be Made Consistent with the Penal Code

Most of the penalties in the commission’s statute are considered misdemeanors because of the amount of the fine set in statute. However, the penalties and fines do not accurately match those set out for misdemeanors in the Penal Code. Because of the differences between the Penal Code and the commission’s statutes, there is potential for confusion as to which penalties and fines are applicable to a violation. Additionally, future changes by the legislature to the Penal Code will increase the disparity between the two misdemeanor penalty systems. The following recommendation addresses this problem.

The misdemeanor penalties in the commission’s statute should be made consistent with current fines and penalties in the Penal Code.

Most of the commission’s penalty provisions were put into statute before the current Penal Code was adopted. Exhibit 13 provides a listing of the various penalty provisions currently set out in the commission’s statute. Changing the penalty provisions to reflect current limits in the Penal Code would make them consistent throughout the commission’s statutes and would reduce any confusion relating to which set of penalties should be referred to when dealing with a violation. The current statutory language dealing with penalties would be replaced with either

Class "A", "B" or "C" misdemeanor where applicable. This would allow the penalties to reflect current penalties and future changes the legislature might make to the Penal Code. The misdemeanor penalties currently in the Penal Code are as follows:

- Class "A" misdemeanor - \$2,000 maximum fine and a maximum jail term of one year
- Class "B" misdemeanor - \$1,000 maximum fine and a maximum jail term of 180 days; and
- Class "C" misdemeanor - \$200 maximum, no jail term;

Those provisions relating to poultry and brucellosis do reflect the current Penal Code and would not need to be changed. Exhibit 13 shows how the penalty provisions would be changed by this recommendation. These changes would raise some penalties from the maximum amounts currently listed in statute but the increases are not significant in most cases.

Exhibit 13

<u>Current Statutory Penalty Provisions</u>	<u>Proposed Changes Based on Penal Code Provisions</u>
Chapter 161 - General Disease and Pest Control	
Subchapter H.	
161.135. Disposal of Diseased Carcass - misdemeanor \$25 - \$100	Class "C" misdemeanor (maximum \$200 fine)
136. Exhibition without certificate - misdemeanor \$25 - \$100	Class "C" misdemeanor (maximum \$200 fine)
137. Movement without certificate - misdemeanor \$25 - \$100	Class "C" misdemeanor (maximum \$200 fine)
138. Refusal to permit search - misdemeanor \$25 - \$100	Class "C" misdemeanor (maximum \$200 fine)
139. Refusal to permit inspection of shipment - misdemeanor \$25 - \$100	Class "C" misdemeanor (maximum \$200 fine)
140. Refusal to permit examination of livestock or carcass - misdemeanor \$100 - \$500	Class "B" misdemeanor (maximum \$1,000 fine, 180 days in jail)
141. Movement in violation of quarantine a. move livestock from quarantine - misdemeanor \$25 - \$100	Class "C" misdemeanor (maximum \$200 fine)

- | | | |
|------|--|---|
| b. | move diseased animals from quarantine
- misdemeanor \$25 - \$100 | Class "C" misdemeanor
(maximum \$200 fine) |
| c. | violate quarantine involving foot and mouth
- misdemeanor \$500 - \$5,000, at least 6 months in jail | Class "A" misdemeanor
(maximum \$2,000 fine, one year jail term) |
| d. | Second or subsequent violations of (c)
- felony 2 - 5 years in TDC, fine up to \$10,000 | No change |
| 142. | Sale or movement of animal with glanders
(This section is recommended for repeal in the Minor Modifications recommendation) | |
| b. | violation of (a)(1) - failure to confine animal separately
- misdemeanor \$25 - \$100, 10 - 90 days in county jail | Class "C" misdemeanor
(maximum \$200 fine) |
| c. | violation of (a)(2) - sell, trade or offer for sale a diseased or suspected animal
- misdemeanor \$5 - \$100, 10 - 90 days in jail | Class "C" misdemeanor
(maximum \$200 fine) |
| d. | violation of (a)(3) or (a)(4) - take a diseased animal across a road (3), permit animal to run free (4)
- misdemeanor \$10 - \$200 | Class "C" misdemeanor
(maximum \$200 fine) |
| 143. | Importation of animals without health certificate
- misdemeanor \$25 - \$100 | Class "C" misdemeanor
(maximum \$200 fine) |
| 144. | Importation of animal without certificate.
- misdemeanor \$50 - \$200 | Class "C" misdemeanor
(maximum \$200 fine) |
| 145. | Failure of veterinarian to report diseased animals (requirements listed in Subchapter F)
- misdemeanor \$10 - \$100 | Class "C" misdemeanor
(maximum \$200 fine) |
| 146. | Compliance with livestock market regulation | |
| - | failure to comply with testing, inspection, disease control requirements, movement without required certificates
- misdemeanor \$25 - \$100 | Class "C" misdemeanor
(maximum \$200 fine) |

Chapter 162 - Tuberculosis Control

Penalty for failure to assemble cattle or provide required assistance
- misdemeanor \$25 - \$200

Class "C" misdemeanor
(maximum \$200 fine)

Chapter 163 - Brucellosis Control

Refusal to vaccinate female calves if required
Refusal of owner to assist
Refusal of entry
Movement of cattle in violation of commission rule
Failure to properly handle infected animals
Sale of infected cattle
Improper sale or use of vaccine or antigen
- Class C misdemeanor

No Change

Chapter 164 - Scabies Control

Failure to dip for scabies
- misdemeanor \$5 - \$200

Movement of infected, exposed, or quarantined animals
- misdemeanor \$10 - \$200

Refusal to permit entry or gather animals
- misdemeanor \$10 - \$200

Failure to disinfect shearing plant
- misdemeanor \$1 - \$100

Failure to properly disinfect quarantine premises
- misdemeanor \$25 - \$50

Importation without certificate or permit
- misdemeanor \$25 - \$100

Class "C" misdemeanor
(maximum \$200 fine)

Chapter 165 - Control of Diseases in Swine

Violation of a program established by the commission
- misdemeanor \$25 - \$200

Class "C" misdemeanor
(maximum \$200 fine)

Sale of unattenuated hog cholera virus
- misdemeanor \$25 - \$100

Class "C" misdemeanor
(maximum \$200 fine)

Chapter 167 - Tick Eradication

Subchapter F.

- | | | |
|------|--|---|
| 131. | Refusal of inspection
- misdemeanor \$25 - \$200 | Class "C" misdemeanor
(maximum \$200 fine) |
| 132. | Movement in violation of quarantine
- misdemeanor \$100 - \$500 | Class "B" misdemeanor
(maximum \$1,000 fine, 180-day jail term) |
| 133. | Movement of animals or commodities into Texas from quarantined area
- movement of livestock
- misdemeanor \$50 - \$200
- movement of goats, hogs, sheep exotic or circus animals, hay, grass, straw, other feed products
- misdemeanor \$100 - \$500 | Class "C" misdemeanor
(maximum \$200 fine)

Class "B" misdemeanor
(maximum \$1,000 fine, 180-day jail term) |
| 134. | Movement of livestock in violation of permit or certificate
- misdemeanor \$100 - \$500 | Class "B" misdemeanor
(maximum \$1,000 fine, 180-day jail term) |
| 135. | Failure to possess or exhibit permit or certificate
- misdemeanor \$100 - \$500 | Class "B" misdemeanor
(maximum \$1,000 fine, 180-day jail term) |
| 136. | Failure to make statement of possession and destination; false statement
- misdemeanor \$50 - \$200 | Class "C" misdemeanor
(maximum \$200 fine) |
| 137. | Failure to disinfect conveyance
- misdemeanor \$50 - \$100 | Class "C" misdemeanor
(maximum \$200 fine) |
| 138. | Use of sand as bedding
- misdemeanor \$50 - \$200 | Class "C" misdemeanor
(maximum \$200 fine) |
| 139. | Movement of commodities from quarantined area
- misdemeanor \$50 - \$200 | Class "C" misdemeanor
(maximum \$200 fine) |
| 140. | Improper handling and removal of livestock refuse or dead or injured livestock
- misdemeanor \$50 - \$200 | Class "C" misdemeanor
(maximum \$200 fine) |
| 141. | Failure to dip livestock
- misdemeanor \$25 - \$200 | Class "C" misdemeanor
(maximum \$200 fine) |
| 142. | Destruction of public dipping facilities
- misdemeanor \$200 - \$1,000
- 30 days to one year in county jail | Class "B" misdemeanor
(maximum \$1,000 fine, 180-day jail term) |

- | | | |
|------|--|---|
| 143. | Failure to provide tick-free stockyard facilities
- misdemeanor \$200 - \$500 | Class "B" misdemeanor
(maximum \$1,000 fine,
180-day jail term) |
| 144. | Refusal to permit search
- misdemeanor \$50 - \$200 | Class "C" misdemeanor
(maximum \$200 fine) |

Chapter 168 - Pullorum Disease and Fowl Typhoid Control

- | | |
|-----------------------|-----------|
| - Class C misdemeanor | No Change |
|-----------------------|-----------|

The Commission Should be Given Authority to Seek Injunctive Relief in Travis County

An important enforcement tool used by the commission is injunctive relief. It is used when quarantine and fines are not effective to force a violator to comply with the commission's statute or rules. Currently, the commission is authorized to seek injunctive relief in the county where the violation occurred. The review focused on the commission's use of injunctive relief to determine if it is effective in ensuring timely compliance with the commission's statute and regulations. The review indicated that the commission's current authority to seek injunctive relief only in the county where the violation occurred can be expensive, time consuming, and does not always allow for quick action needed to deal with a disease problem. The following recommendation addresses this problem.

The commission's statute should be amended to give it the authority to seek injunctive relief in Travis County.

The commission seeks injunctive relief when its enforcement efforts are not sufficient enough to force compliance with the commission's statute and regulations. The commission typically has sought injunctive relief when individuals in the livestock industry have failed to brand brucellosis suspects or reactors, refused to have their cattle tested for brucellosis, failed to maintain property records and attempted to screen blood drawn for brucellosis testing purposes. "Screening" blood involves the substitution of blood that is drawn from a healthy cow for the blood drawn from the infected cow being tested.

Currently, the commission can only seek injunctive relief in the county where the violation occurred. The state's approach to establishing venue for injunctive

relief varies. The review identified 30 agencies that have the authority to seek injunctive relief in Travis County. These agencies include the Texas Commission on Alcohol and Drug Abuse, the Texas Railroad Commission and Texas Banking Commission. Since these agencies are headquartered in Austin, seeking injunctive relief in Travis County greatly reduces the burden on agency personnel and the attorneys from the attorney general's office that represent the agencies. In the area of animal health regulation, the attorney general's office estimated that it currently takes as many as 20 court appearances to obtain an injunction. These trips cost the state at least \$100 per day for the attorney and commission employees to go before the court. Also, in some counties, the district court may not be as knowledgeable as the district court in Travis County in dealing with actions initiated by the state. Allowing the commission to seek injunction in Travis County would allow the commission to seek injunctive relief in a more timely and cost effective manner. Although the travel burden would be increased for the offender, prompt and efficient enforcement action by the courts is an important component of the state's animal health regulation and its efforts to reach class "A" status in the brucellosis program.

The Commission Should be Given Authority to Enforce Penalty Provisions Relating to Recordkeeping Requirements for Livestock Markets and Slaughter Plants.

State statutes currently require livestock markets and slaughter plants to keep records relating to cattle movements and transactions. The commission has the authority to prescribe the recordkeeping requirement for livestock markets. The commission also has the responsibility to see that slaughter plants are aware of and are complying with the recordkeeping requirements applicable to them. These records are important to the commission for traceback purposes and for use in compliance investigations. There are penalty provisions in statute to ensure compliance with requirements. However, the statute is silent as to whether the commission has authority to enforce them. The following recommendation addresses this problem.

The commission should be given the authority to enforce penalty provisions relating to non-compliance of recordkeeping requirements for livestock markets and slaughter plants.

As mentioned earlier, the ability to obtain records from livestock markets relating to cattle transactions is needed to conduct successful tracebacks for brucellosis. Recordkeeping related to animals slaughtered is also important for traceback purposes. There are currently 160 livestock markets and 315 slaughter plants in Texas. Approximately 6,380,000 cattle moved through livestock markets in fiscal year 1987. Of these, 1,248,941 were test eligible for brucellosis. Also, in fiscal year 1987, over 6,155,000 cattle were sent to slaughter establishments.

In state statute, livestock markets are required to keep records of transportation that provide a record of the motor vehicle and trailer or semi-trailer on which livestock is transported. The commission is authorized, in statute, to prescribe the form in which records of transportation are to be maintained. In addition, the commission requires, in its regulations, that livestock markets keep records of all tests, treatments and vaccinations of livestock and the disposition of diseased animals. The review indicated that the commission can enforce the recordkeeping requirements set by rule, but it does not have the authority to enforce the penalty provisions related to market records of transportation. The commission is authorized to seek a fine in cases where a livestock market fails to maintain records required by commission rule relating to tests, treatments and vaccinations and the disposition of diseased animals. Violations of this provision is punishable by a fine of \$25 to \$100. However, the statute is silent concerning what agency is responsible for enforcing the penalty provisions relating to failure to maintain records of transportation required by statute. If such records are missing, diseased cattle can be difficult to trace back to the herd of origin.

The county in which the livestock market operates could enforce these penalty provisions because livestock markets are currently required to register and to meet bonding requirements with the county in which they are located. However, the commission appears to be the more logical choice for enforcing the penalty provisions relating to maintaining records of transportation because it is specifically authorized to prescribe the form in which the records are to be maintained. Also, transportation

records provide information needed by the commission to carry out its disease control functions. Currently, failure to maintain these records is a class "C" misdemeanor punishable by a fine of not more than \$200.

A similar situation exists with slaughter plants. Slaughter plants are required to keep records of all cattle, horses, hogs, sheep and goats purchased or slaughtered. Slaughter plants are also required to keep records that provide:

- a description of the livestock by kind, color, sex, probable age, any marks and brands, and the location of any marks and brands;
- the name and address of the person from whom the livestock was purchased or acquired or for whom the livestock was slaughtered;
- the name and address of the individual delivering the livestock and the make, model, and license plate number of the vehicle in which the livestock was delivered if the livestock is delivered to the slaughterer by someone other than the slaughterer or the slaughterer's agent, and
- the date of delivery of the livestock to the slaughterer.

Even though slaughter plants are regulated by the Packers and Stockyard Administration of the USDA, the commission is responsible for informing these establishments of the recordkeeping requirement and for conducting occasional spot checks to determine if they are in compliance with these requirements. A violation of the recordkeeping provisions relating to slaughter plants is a class "C" misdemeanor punishable by a fine up to \$200. But, as in the case with livestock markets, the statute is silent concerning which agency has authority to seek the penalty for non-compliance.

The commission's lack of authority to enforce the recordkeeping requirements for livestock markets and slaughter plants undermines its disease control efforts. Without accurate information, the commission cannot in many cases, trace disease back to the herd of origin. In fiscal year 1987 there were 130 unsuccessful tracebacks involving livestock markets and slaughter plants. The commission attempts to get markets and slaughter plants to keep records through requirements in its rules and voluntary cooperation. However, giving the commission authority to enforce these penalty provisions would help ensure that proper records are maintained by livestock markets and slaughter plants so that the commission can conduct successful tracebacks.

Authority is Needed for Delegation of Quarantine for Poultry Diseases

Responsibility for control of poultry diseases is split between the commission, the Texas A&M University Experiment Station and the poultry industry. The industry provides much of the effort through participation in a voluntary national disease control program. The Experiment Station has responsibility for administration of a disease program for poultry owners that are not participants in the national program. The commission has overall responsibility for poultry disease control including quarantine power over diseased flocks. The commission and the Experiment Station coordinate their disease control effort adequately, however one statutory change is needed to ensure that current methods of coordination continue.

The commission's statute should be modified to authorize the delegation of quarantine power to A&M inspectors.

The Texas A&M Experiment Station is required by statute to operate a program for the poultry disease called pullorum typhoid. This disease is very contagious among poultry and results in high death rates. The disease can be transmitted to humans and is known by its generic name -- salmonella. The A&M program is aimed at controlling the disease among poultry of owners that are not participants in the national disease program, generally owners of flocks with less than 50 birds. Texas A&M operates the pullorum-typhoid program because of its expertise in poultry and poultry diseases and its laboratory facilities.

The A&M disease programs operates on a budget of \$196,000 for 1988 which includes the salaries of four full-time inspectors. Activities performed in the program involve inspection and testing of poultry at shows, exhibitions, flea markets and at locations where owners raise poultry. Blood samples are taken and tests are conducted for disease detection at laboratories operated by A&M. When disease is found or suspected, an A&M inspector will issue a quarantine of the flock involved on behalf of the commission. This procedure allows for quick action to prevent the movement of a diseased flock and spread of the disease. Once a quarantine is issued, the commission has the responsibility to develop a plan to deal with the disease problem. The commission decides the course of action needed for the owner to gain release of the quarantine. The plan can include the destruction of the infected poultry if necessary to eliminate the disease problem. The procedures used by the

two agencies provides an efficient, coordinated disease control effort. The review indicated that 67 quarantines were issued and/or released during 1987 affecting 3,040 birds. However, the review also indicated that the commission does not have specific authority to delegate its quarantine power to A&M inspectors. Delegation of enforcement power is normally formalized to avoid problems if the process is challenged. For example, during the 68th legislative session, legislation was adopted which clarified the State Board of Health's ability to delegate many of its enforcement powers to the commissioner of health. This was done to ensure that challenges to an enforcement action cannot be successfully argued merely on technical grounds such as the lack of proper delegation authority. To ensure that the current procedure used by the commission and the Experiment Station is not challenged on this basis, the commission should be given specific authority to delegate its quarantine power.

Assistance from Law Enforcement Agencies Should be Increased

The commission currently has personnel involved in stopping vehicles bringing livestock vehicles into the state (roadblocks) to ensure compliance with entry requirements for the animals. These efforts are limited because of the large number of interstate highways crossing the state and the small number of commission personnel available to perform the activity. The review found that steps should be taken to formalize mechanisms that can gain the assistance of law enforcement officials located in areas where roadblocks are conducted.

The commission's statute should be modified to provide for the following arrangements with law enforcement officials:

- **the commission and the Department of Public Safety should establish an interagency agreement to improve coordination in enforcing the state's animal health laws; and**
- **the commission should attempt to develop a similar agreement with selected county sheriff's departments.**

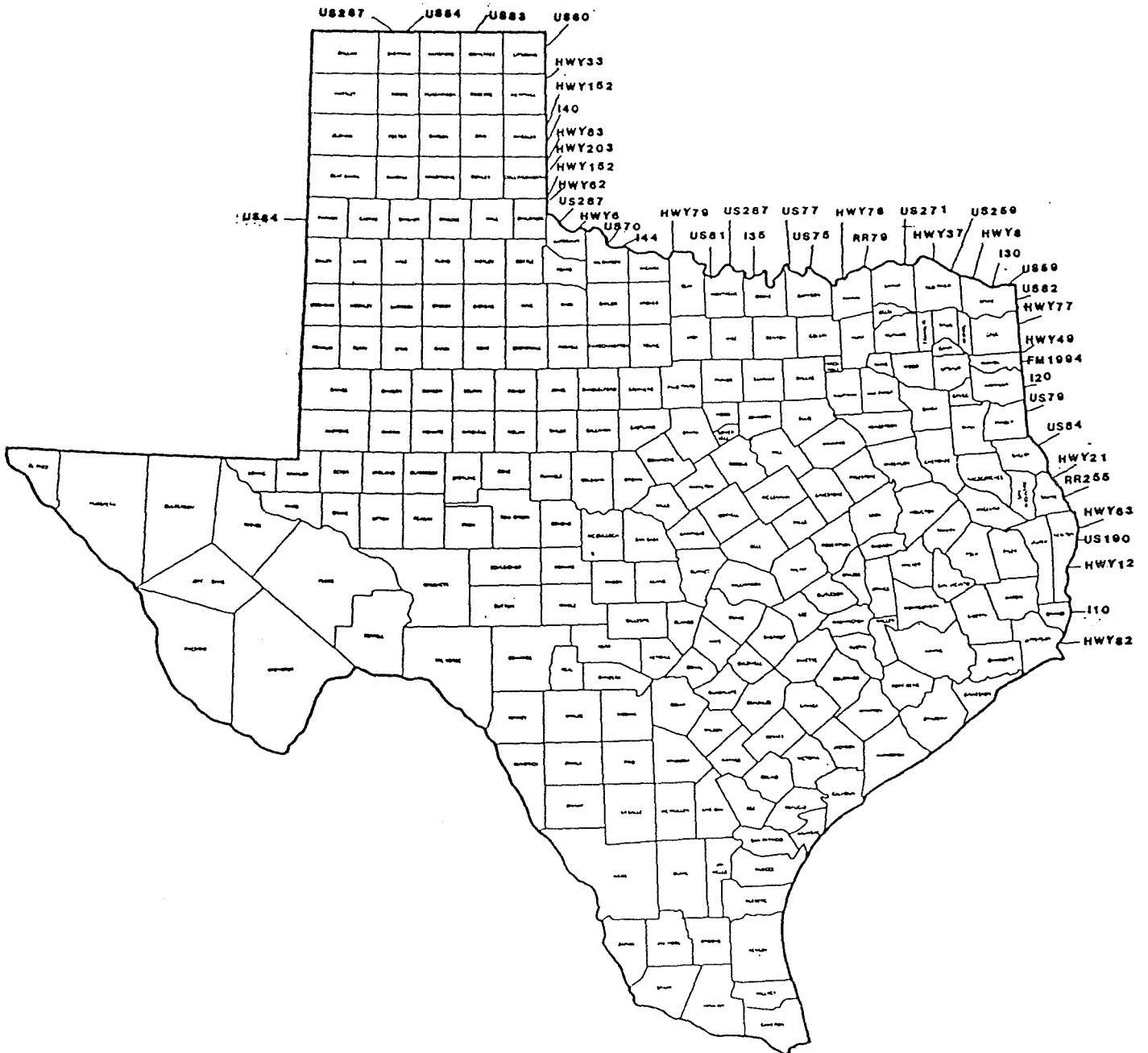
The commission currently has six employees working full-time on roadblock activities. During a roadblock operation, commission compliance officers establish a stop point on the highway and post signs requesting that all vehicles transporting livestock stop at the designated point. Once a vehicle has stopped, the compliance officer checks to see that the driver has health papers for all the animals. The

papers, called certificates of veterinary inspection, must indicate that each animal has been properly tested by a veterinarian as required by the commission's entry requirements. The compliance officer also determines if any required movement permits have been obtained for the animals. Compliance with the entry requirements is for disease control. Animals brought into the state must be tested to help ensure that diseases are not transported into the state. Also, the movement permit requirements provide information to commission staff that is needed in the event that tracking the animals is necessary.

The commission's compliance officers attempt to cover all of the highways coming into the state that have significant livestock movement. Exhibit 14 indicates the highways where roadblocks were conducted during the last year. Basically, roadblocks are used along the north border of the state in 28 counties on 44 different highways. The 44 highways covered represent those where livestock traffic was significant enough to warrant the commission's attention. Based on an average, each of the commission's compliance officers is responsible for covering seven or eight highways, 24 hours a day, seven days a week. While roadblocks are conducted by the compliance officers on different roads, at random intervals, both day and night, coverage is not sufficient to adequately check animals transported into the state. The review focused on ways to increase coverage of the targeted highways.

One way identified to increase coverage of livestock movement was to solicit assistance from state and local law enforcement personnel located in the 28 counties where livestock movement is significant. Assistance is currently provided in some areas on an informal basis. Some compliance officers have working arrangements with local sheriff's departments for assistance. These arrangements range from receiving actual assistance conducting road blocks to being provided radios to monitor law enforcement frequencies. Where radios are furnished, compliance officers can also transmit on the county frequencies and ask for assistance when needed. Local law enforcement officers also occasionally check for the commission's animal health requirements when a vehicle is stopped for other reasons and the sheriff will contact a commission compliance officer if a problem is found. Discussions with compliance officers indicated that they currently have some type of working arrangement with sheriff's departments in six counties. Although less frequent, some compliance personnel also receive assistance from DPS officers including pursuit of livestock vehicles that fail to stop at a roadblock. While these arrangements have proven beneficial, no mechanism exists to formalize them and to establish others needed to increase coverage of other areas.

Exhibit 14
Highways Covered by Roadblocks



As part of the survey of 18 other states conducted during the review, several states were identified in which law enforcement personnel assist with the enforcement of animal health laws. Florida, Nebraska, Oklahoma, and Tennessee have statutory provisions which require assistance from law enforcement personnel. In Wisconsin, animal health personnel receive assistance through formal agreements with state and local law enforcement agencies. Also, four other states -- Colorado, Kansas, Mississippi, and New Mexico have informal agreements which provide for assistance when needed. The review concluded that formal agreements with state and local law enforcement agencies would be beneficial to Texas' animal health control efforts. Discussions with staff of the Department of Public Safety indicated that, with existing personnel, it could not make a major commitment to enforcing animal health laws without adversely affecting other law enforcement efforts. However, a procedure was identified which could be used to improve assistance from DPS. An interagency agreement should be established between the commission and DPS to provide the following:

- DPS officers would perform a cursory check for health papers and permits when a livestock vehicle is stopped for other reasons in the regular course of their duties;
- DPS staff would report potential problems found to commission staff;
- Commission staff would investigate the possible violations;
- DPS officers would offer assistance whenever possible;
- Commission compliance personnel would notify DPS officers as to the location of roadblocks, particularly special or night operations; and
- Commission staff would provide basic training to DPS regarding the requirements to check for.

As expressed in the recommendation, an agreement between the agencies would be required by statute. Similar agreements should also be pursued by the commission with sheriff's departments in counties with significant movements of livestock. Because sheriff's departments are operated by county governments, requiring agreements between them and the commission was determined to be difficult to enforce. However, the commission should be required to establish agreements similar to the one described above wherever possible.

Authority is Needed to Commission Compliance Personnel as Peace Officers

As mentioned in the previous recommendation, the commission has personnel conducting roadblocks on certain highways where livestock are transported into the state. The use of roadblocks is important for disease control. Animals entering the

state must be tested to ensure that disease is not being brought into the state. Also, movement permits are necessary to ensure that animals can be traced back to their origin and to their destination if a disease problem is identified. Inspections at roadblocks serve as a check on these two disease control requirements. Roadblock activities, however, involve actions that can be construed as law enforcement efforts that should be performed by peace officers. Also, compliance officers are faced with the possibility that their safety could be in jeopardy while conducting a roadblock. Finally, compliance officers are often involved in situations where action taken can place the officers and the state in a position of liability for those actions. The review concluded that a change was needed to address these problems.

The commission should be authorized to commission its compliance officers as peace officers.

The commission has specific authority to stop and inspect a shipment of livestock or livestock products being transported into the state. The inspections are used to determine compliance with the commission's law and its regulations. The commission has the authority to post signs and use signaling devices, including red lights, to effectively signal and stop vehicles for inspection. Procedures used to stop a vehicle for inspection (roadblock) are described in some detail in the previous recommendation. Briefly summarized, a road block involves setting up a stop point where all vehicles carrying livestock are stopped and the animals are checked for proper tests and movement permits. This roadblock process is very similar to activities conducted by DPS law enforcement officers making routine traffic stops or operating a weigh station where vehicles are checked for compliance with weight laws. Compliance officers must also check the driver's identification for traceback purposes in the event that the animals need to be traced to their point of origin or to their destination. This process is similar to law enforcement officers checking driver's licenses for identification purposes. Compliance officers are also involved in pursuing vehicles that fail to stop at a roadblock which, again, is similar to action taken by a law enforcement officer. Finally, when a violation is detected, compliance officers accompany the driver of the vehicle to the nearest justice of the peace court where the officer presents the alleged misdemeanor complaint to a justice of the peace and the driver, in most cases, receives a fine for the violation. This action is also similar to those taken by a law enforcement officer. While state statute does not

specifically provide a definition of law enforcement activity which should be performed by a peace officer, the review concluded that the activities of the commission's compliance personnel are similar to those performed by peace officers involved in law enforcement.

A number of state agencies and entities have the authority to commission peace officers to perform enforcement activities. A partial listing of these agencies indicates the diversity of agencies given authority:

- The Department of Public Safety
- The Alcoholic Beverage Commission
- The State Purchasing and General Services Commission
- The Parks and Wildlife Commission
- Texas State Board of Medical Examiners
- Texas Racing Commission
- Texas State Board of Pharmacy
- Governing boards of regional transit authorities
- Governing boards of institutions of higher education, public junior colleges,
- Texas State Technological Institute
- Water control and improvement districts.

The review indicated that the commission's compliance efforts are similar to those of agencies listed. For example, the Parks and Wildlife Commission employs peace officers to enforce the state's game and fish laws. The Board of Pharmacy uses peace officers for investigations to enforce its statute and related drug enforcement laws. The Department of Public Safety, of course, uses peace officers to enforce laws for which it has responsibility. Many of these laws do not involve violations which are considered criminal in nature such as compliance with highway weight laws. Giving the commission the ability to employ peace officers for its enforcement efforts would be in line with authority given to other agencies with similar enforcement responsibility.

Peace officers status would also provide compliance officers with the authority and training to deal with situations where their safety is threatened. Compliance personnel are constantly faced with the possibility that their safety could be in jeopardy while conducting a roadblock. Stopping vehicles and, in some cases, pursuing vehicles that fail to stop can place personnel in a position where they are threatened with physical harm. Interviews with compliance personnel indicated that violence has been threatened on occasion. Compliance officers are not fully

trained to deal with these situations and do not have the authority to take action needed. Law enforcement officers have been used in cases involving potentially dangerous situations. Having peace officers performing the roadblock function would provide the necessary training and authority to respond in potentially dangerous situations.

Additionally, peace officer status for compliance personnel would alleviate the potential of liability for the officer and the state that could result from action taken by the officer. When a compliance officer detains someone and persuades them to go to the nearest justice of the peace court, the action could be construed as arrest by the person being detained. As with the definition of law enforcement activities, state statutes do not clearly define arrest and courts are left to decide what action constitutes arrest. Therefore, a compliance officer could be judged as having committed a false arrest and the officer and the state could be held liable for the action. Another area of liability relates to any force the compliance officer might use for protection in cases involving threats or actual violence by a person being stopped. Without peace officer status, and the authority that goes with it, the compliance officer and the state could be held liable for any action taken.

Based on the points discussed above, the review findings concluded that the commission would benefit if given the authority to commission peace officers for its enforcement activities. The commission currently has six employees working full-time conducting roadblocks. Any additional personnel assigned by the commission to the compliance activity would also be given peace officer status.

To accomplish this recommendation, changes are needed in the commission's statute and other state laws and certain other requirements will need to be met. The commission needs to have the authority to commission peace officers clearly stated in its statute. Also, the commission needs to be included in the listing of agencies in Article 2.12, Code of Criminal Procedure which defines peace officers and specifies agencies with the authority to commission peace officers. The commission also needs to be included in Article 6252-20b, V.T.C.S., which specifies agencies that have the authority to pay peace officers hazardous duty pay. Peace officers are entitled by state statute to hazardous duty pay of \$7 per year of service in lieu of longevity pay provided for other state employees. The employees commissioned as peace officers must meet the training and licensing requirements of the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE). Regarding the use of firearms, peace officers are authorized to carry firearms by virtue of the title. The commission must meet TCLEOSE requirements regarding firearms proficiency of its

officers which involves instituting procedures to, at least annually, check the proficiency of the officers on the use of firearms.

This recommendation has a fiscal impact of approximately \$6,000 for the initial certification and licensing of the six employees currently involved in roadblock compliance activities. A maximum of \$2,500 per year for hazardous duty pay is also anticipated. Costs associated with the commissioning of additional employees, uniforms, equipment and firearms were not estimated because of the uncertainty as to how many additional employees might be commissioned and what equipment the commission may wish to provide its officers. The commission has the flexibility to determine how this recommendation will be implemented.

OTHER CHANGES

Minor Modifications of Agency's Statute

Discussions with agency personnel concerning the agency and its statute indicated a need to make minor statutory changes. The changes are non-substantive in nature and are made to comply with federal requirements or to remove out-dated references. The following material provides a description of the needed changes and the rationale for each.

**Minor Modifications to Texas Animal Health Commission Statute
(Chapters 148, 161 and 164 - Agriculture Code)**

Change	Reason	Location in Statute
Add a provision requiring slaughter plants to collect blood for testing.	To ensure that slaughter plants participate in the brucellosis program. Currently a federal requirement and a commission rule.	Section 148.011
Remove language relating to the responsibilities of county commissioner's courts regarding scabies control.	To remove outdated language.	Section 161.003
Remove the word "practical" from the definition of commission members representing cattle and swine.	To remove language which is unnecessary.	Section 161.021
Remove the bonding requirement for commission members.	To remove language which is unnecessary.	Section 161.023
Remove the language specifying per diem for commission members.	To remove language which is unnecessary. Per diem for commission members is specified in the appropriation bill.	Section 161.026
Remove the requirement that commission rules must be "proclaimed" by the governor.	To remove outdated language. Rulemaking is covered by the Administrative Procedure and Texas Register Act.	Section 161.045
Remove language related to compensation for animals destroyed with "glanders".	To remove outdated language.	Section 161.066
Substitute the word "recognized" for "accredited" in the definition of veterinarian.	To accurately define a veterinarian authorized by the federal government to participate in federal disease control programs.	Sections 161.081 and 161.083
Add the commission to the list of those with authority to seek injunctive relief for violation of the TAHC statute.	To ensure that the commission has specific power to seek injunctive relief.	Section 161.131
Remove the permit requirements for the interstate movement of sheep.	To remove language that addresses a scabies problem that no longer exists.	Section 164.062
Add a provision allowing private veterinarians to issue health permits for sheep.	Authorizes a procedure for sheep currently allowed for cattle and other livestock in Texas and other states.	Section 164.062

Across the Board Recommendations

From its inception, the Sunset Commission identified common agency problems. These problems have been addressed through standard statutory provisions incorporated into the legislation developed for agencies undergoing sunset review. Since these provisions are routinely applied to all agencies under review, the specific language is not repeated throughout the reports. The application to particular agencies are denoted in abbreviated chart form.

Texas Animal Health Commission			
Applied	Modified	Not Applied	Across-the-Board Recommendations
			A. GENERAL
		*	1. Require public membership on boards and commissions.
X			2. Require specific provisions relating to conflicts of interest.
X			3. Provide that a person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
X			4. Require that appointment to the board shall be made without regard to race, color, handicap, sex, religion, age, or national origin of the appointee.
X			5. Specify grounds for removal of a board member.
X			6. Require the board to make annual written reports to the governor, the auditor, and the legislature accounting for all receipts and disbursements made under its statute.
X			7. Require the board to establish skill-oriented career ladders.
X			8. Require a system of merit pay based on documented employee performance.
X			9. Provide that the state auditor shall audit the financial transactions of the board at least once during each biennium.
X			10. Provide for notification and information to the public concerning board activities.
		*	11. Place agency funds in the treasury to ensure legislative review of agency expenditures through the appropriation process.
X			12. Require files to be maintained on complaints.
X			13. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
	X	X	14. (a) Authorize agencies to set fees. (b) Authorize agencies to set fees up to a certain limit.
X			15. Require development of an E.E.O. policy.
X			16. Require the agency to provide information on standards of conduct to board members and employees.
X			17. Provide for public testimony at agency meetings.
X			18. Require that the policy body of an agency develop and implement policies which clearly separate board and staff functions.
		X	19. Require development of accessibility plan.

*Already in statute.

Texas Animal Health Commission
(cont.)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
		X	2. Provide for notice to a person taking an examination of the results of the exam within a reasonable time of the testing date.
		X	3. Provide an analysis, on request, to individuals failing the examination.
		X	4. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
		X X	5. (a) Provide for licensing by endorsement rather than reciprocity. (b) Provide for licensing by reciprocity rather than endorsement.
		X	6. Authorize the staggered renewal of licenses.
		X	7. Authorize agencies to use a full range of penalties.
		X	8. Specify board hearing requirements.
		X	9. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		X	10. Authorize the board to adopt a system of voluntary continuing education.