

**TEXAS ANIMAL HEALTH COMMISSION**

**March 1994**



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***SUMMARY***



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## SUMMARY

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The Texas Animal Health Commission (TAHC) is subject to the Texas Sunset Act and will be automatically abolished unless statutorily continued by the 74th Legislature in 1995. The TAHC review included an analysis of agency operations with respect to the 13 statutory Sunset criteria, which are used to evaluate the agency's efficiency and effectiveness. Based on the assessment of these criteria, the staff report contains recommendations on whether the agency's functions continue to be needed; if benefits could be gained by reorganizing the agency; and if existing statutory policies should be changed to improve the agency's programs and functions. These recommendations are listed below.

### NEED FOR THE AGENCY

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The TAHC should be continued for 12 years and reviewed again in 2007. The review found that the agency's functions continue to be needed and are appropriately placed.

### REORGANIZATIONAL ALTERNATIVES

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No substantial benefits of reorganization were documented. As a result, the staff report does not contain recommendations for reorganizing the agency. However, one possibility for transfer was identified. The Texas Department of Agriculture (TDA) operates livestock export pens at the Texas-Mexico border. This function will be evaluated during the review of the TDA to determine whether a transfer to the TAHC is warranted.

### POLICYMAKING STRUCTURE

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The policymaking body for the TAHC currently consists of two public members and 10 members who represent various segments of the livestock industry. The commission currently does not have one-third public representation. However, our review concluded that the addition of public members would not improve the commission's ability to carry out its responsibilities.

### OVERALL ADMINISTRATION

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The administration efforts of the agency should be changed by:

- authorizing a cost recovery fee schedule to reduce the level of general revenue needed for animal health programs;

## EVALUATION OF PROGRAMS

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The agency's programs and functions should be changed by:

- requiring the registration of all livestock dealers;
- authorizing the use of administrative penalties to enforce the animal health rules and regulations; and
- expanding the statute to provide adequate authority for the regulation of exotic animal diseases.

## ACROSS-THE-BOARD RECOMMENDATIONS

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All of the appropriate Sunset across-the-board recommendations were applied to this agency. In almost all cases, the Sunset across-the-board language was placed in the agency's statute during the last Sunset review but needed updating to reflect its current form.

## FISCAL IMPACT

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Preliminary estimates indicate that the recommendations will result in a revenue gain to the state. However, the only fiscal impact that can be estimated relates to the recommendation requiring dealer registration. The recommendation related to fees for cost recovery cannot be estimated at this time. The revenue generated will depend on the percentage of cost recovery required by the Legislature through the appropriations process. The authority to assess administrative penalties will also result in a revenue gain, but the amount cannot be determined. The table below summarizes the known fiscal impact.

**Fiscal Impact of  
Dealer Registration**

Fiscal Year	Gain to General Revenue
1996	\$19,500
1997	\$1,000
1998	\$1,000
1999	\$1,000
2000	\$1,000

***BACKGROUND***



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## CREATION AND POWERS

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The predecessor to the Texas Animal Health Commission was established in 1893 by the 23rd Legislature as the Livestock Sanitary Commission. The commission was created to control the devastating effect of tick fever on the livestock industry in Texas. Comprised of three commissioners, the commission was charged with protecting domestic livestock from dangerous or contagious diseases, establishing quarantine lines, and developing rules and regulations. The commission was also authorized to seek criminal penalties for violations of the statute.

Tick fever was widespread during the mid-1800's and killed 50 to 90 percent of all Texas cattle being driven along the trail to northern markets. By 1855, 15 states had passed laws refusing entry to Texas cattle. In 1892, the U.S. Secretary of Agriculture quarantined parts of Texas because of the disease which had a damaging financial effect on the state's livestock industry. Tick fever was largely eradicated from Texas by 1943, except along the Mexican border from Del Rio to Brownsville.

As the threat of tick fever was reduced, the agency focused on other livestock diseases. During the late 1920's, the Legislature authorized the commission to regulate tuberculosis, brucellosis, sheep and cattle scabies, and foot and mouth disease. In 1949, the commission's authority was expanded to include all animal and poultry diseases that were dangerous and communicable and its name was changed to the Texas Animal Health Commission (TAHC). Beginning in 1959, the agency's primary focus began to shift to hog cholera, screwworm, scabies, and bovine brucellosis. During the 1960's, the control of bovine brucellosis was initiated by cooperating in the national state-federal brucellosis eradication program. By 1972, the U.S. Department of Agriculture (USDA) had brucellosis eradication programs in all 50 states. Federal funding became available through the cooperative effort allowing the commission to expand and improve its control efforts. In 1983, the Legislature expanded the commission's regulatory authority to meet newly adopted federal requirements. In 1989, the USDA provided additional funding for states that maintained Class B brucellosis status. The control of bovine brucellosis continues to be the agency's primary focus and the state is expected to achieve Class A status in March or April of 1994.

The commission is one of 12 independent agencies established among the states to regulate animal health. The other 38 states have placed animal disease control activities within a department of agriculture. The commission oversees the control and eradication of disease in traditional livestock, exotic livestock and fowl, and poultry. The commission operates programs to control and/or eradicate brucellosis, tuberculosis, tick fever, hog cholera, scabies, pseudorabies, equine infectious anemia, and various poultry diseases.

## POLICYMAKING STRUCTURE

The Texas Animal Health Commission is composed of 12 members appointed by the Governor with the advice and consent of the Senate to staggered six-year terms. The Governor also appoints the commission chair. The commission's composition is shown in Exhibit A.

Exhibit A  
**COMMISSION MEMBER CATEGORIES**  
Texas Animal Health Commission

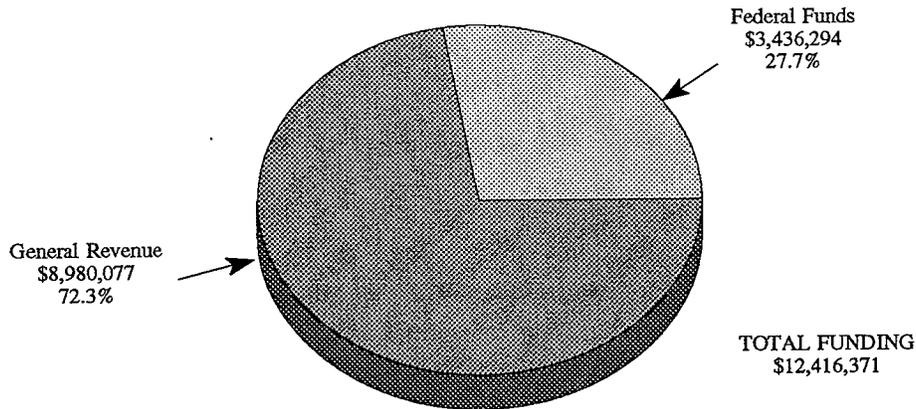
- Practitioner of veterinary medicine
- Dairyman
- Cattle raiser
- Hog raiser
- Sheep or goat raiser
- Poultry raiser
- Individual involved in the equine industry
- Individual involved in the feedlot industry
- Individual involved in the livestock marketing industry
- Individual involved in the exotic livestock or exotic fowl industry
- Two members of the general public

The commission establishes the rules and guidelines under which the agency's personnel and programs operate. The commission monitors and guides the agency's activities through the use of oversight subcommittees. The commission meets on an as needed basis and held five meetings in fiscal year 1993. The commission also conducts hearings upon an animal producer's request to determine whether the producer can justify an exception to a commission rule or a decision made by the executive director. In 1993, the commission held 11 of these hearings.

## FUNDING AND ORGANIZATION

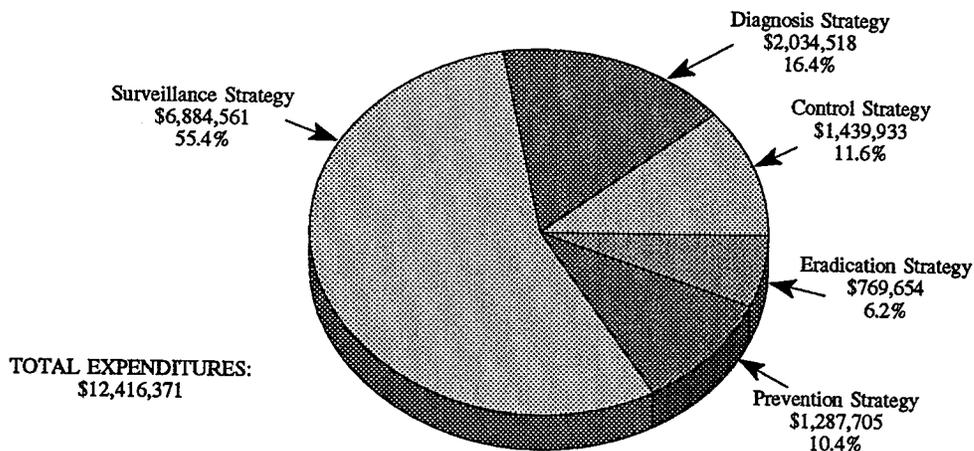
The fiscal year 1993 appropriation for the TAHC was \$12,571,060. The agency expended \$12,416,371 in fiscal year 1993, lapsing \$154,689 in general revenue funds. General revenue funds comprised \$8,980,077, or 72.3 percent of expenditures. The agency collects approximately \$25,000 in fees per year from the sale of Certificates of Veterinary Inspection which is deposited to the general revenue fund. Federal funding sources accounted for \$3,436,294, or 27.7 percent. Exhibit B shows the sources of agency funding for fiscal year 1993.

**Exhibit B**  
**SOURCES OF FUNDING**  
Texas Animal Health Commission  
Fiscal Year 1993



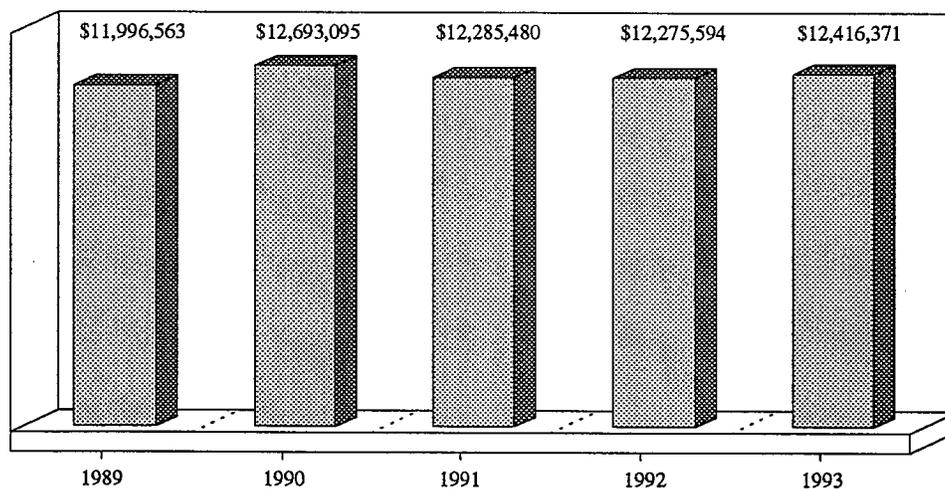
In previous years, the agency's budget was structured according its disease programs. Currently, the budget is organized to correspond with the legislature's strategic planning process and reflects five strategies for controlling livestock diseases. Exhibit C shows the percentages of expenditures for fiscal year 1993 by the commission's major functional or strategic areas.

**Exhibit C**  
**EXPENDITURES BY STRATEGY**  
Texas Animal Health Commission  
Fiscal Year 1993



The commission has maintained an even expenditure level over the past five years. Exhibit D shows a comparison of expenditures for fiscal year 1989 to fiscal year 1993. The level of funding for animal health programs administered through the TAHC has remained relatively constant over the past five years.

Exhibit D  
**HISTORY OF EXPENDITURES**  
Texas Animal Health Commission  
Fiscal Years 1989 - 1993



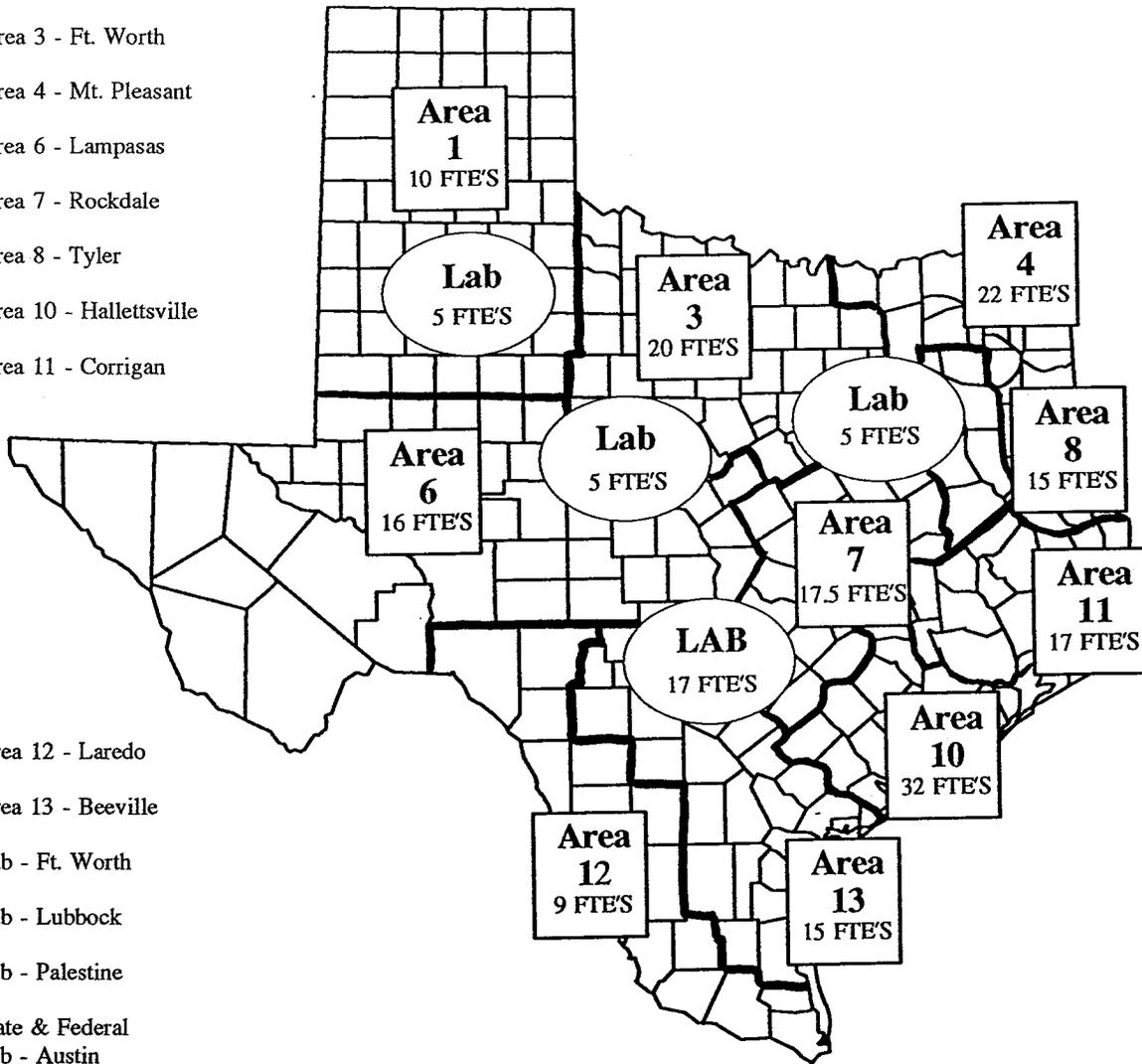
The TAHC is headquartered in Austin and has 10 field offices and four laboratories located throughout the state. Each field office is headed by a veterinarian and serves as the coordinating point for all animal health programs in the area. Exhibit E shows the location of the commission's area offices and laboratories. The agency had 275.5 full-time equivalent employees budgeted for fiscal year 1993, or 15 percent less than in fiscal year 1988. The agency employs 80 staff in Austin, or 29 percent, and 195.5 field staff outside of Austin, or 71 percent. Exhibit F shows the agency's current organizational structure for the commission.

The agency coordinates and administers its activities from a central office in Austin. However, the programs are implemented through the commission's area offices. The area offices conduct inspections at livestock markets and other points of livestock concentration, enforce commission regulations such as recordkeeping requirements and quarantines, and participate in first-point and area testing programs.

Exhibit G shows how the TAHC's work force has changed over a five-year period in different categories of employment and how it compares with minority employment goals established by the General Appropriations Act.

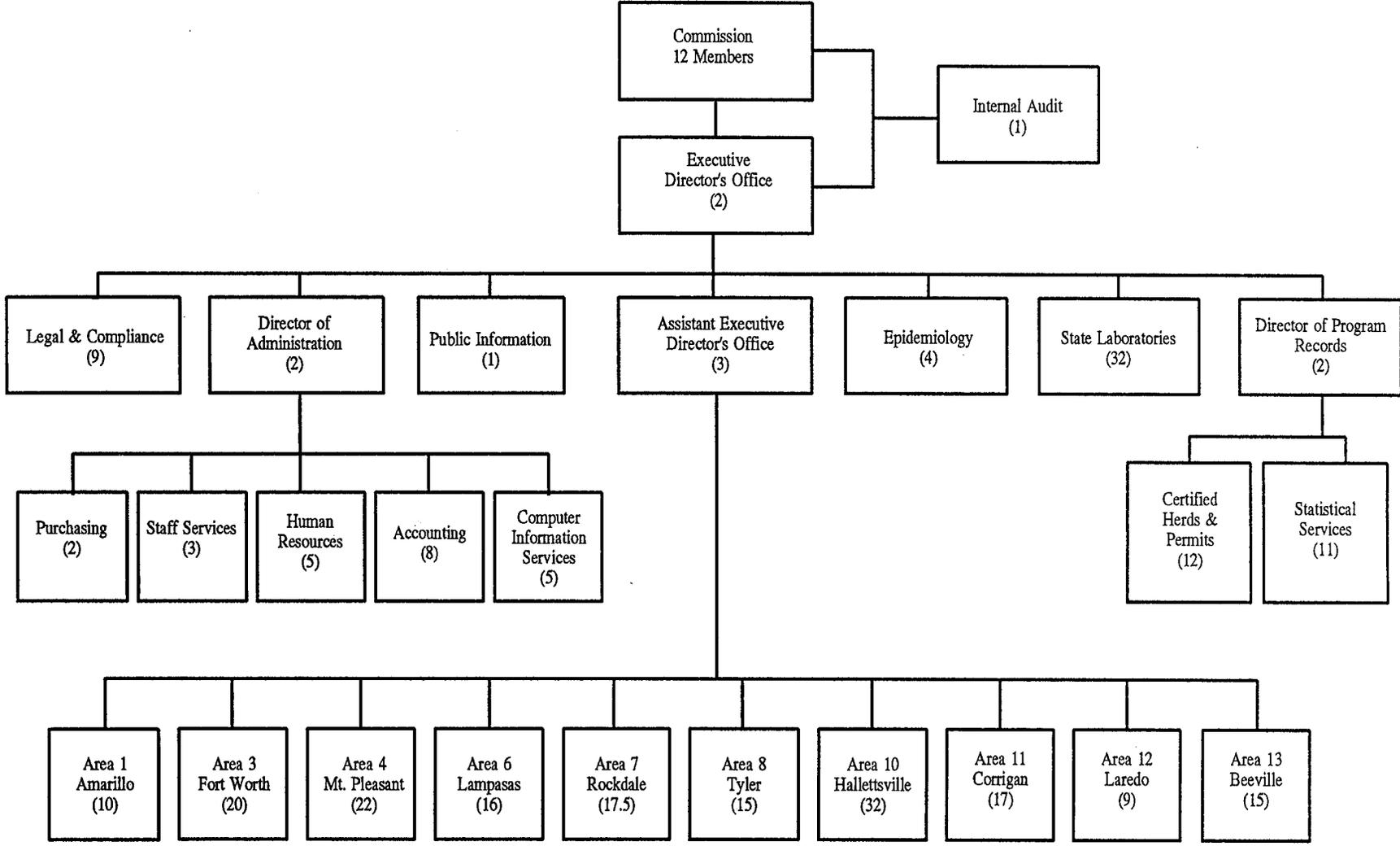
Exhibit E  
**AREA OFFICES AND LABORATORIES**  
Texas Animal Health Commission

- Area 1 - Amarillo
- Area 3 - Ft. Worth
- Area 4 - Mt. Pleasant
- Area 6 - Lampasas
- Area 7 - Rockdale
- Area 8 - Tyler
- Area 10 - Hallettsville
- Area 11 - Corrigan



- Area 12 - Laredo
- Area 13 - Beeville
- Lab - Ft. Worth
- Lab - Lubbock
- Lab - Palestine
- State & Federal  
Lab - Austin

**Exhibit F**  
**BUDGETED FTE ORGANIZATIONAL CHART**  
 Texas Animal Health Commission  
 October 1993



Total full-time equivalent employees: 275.5

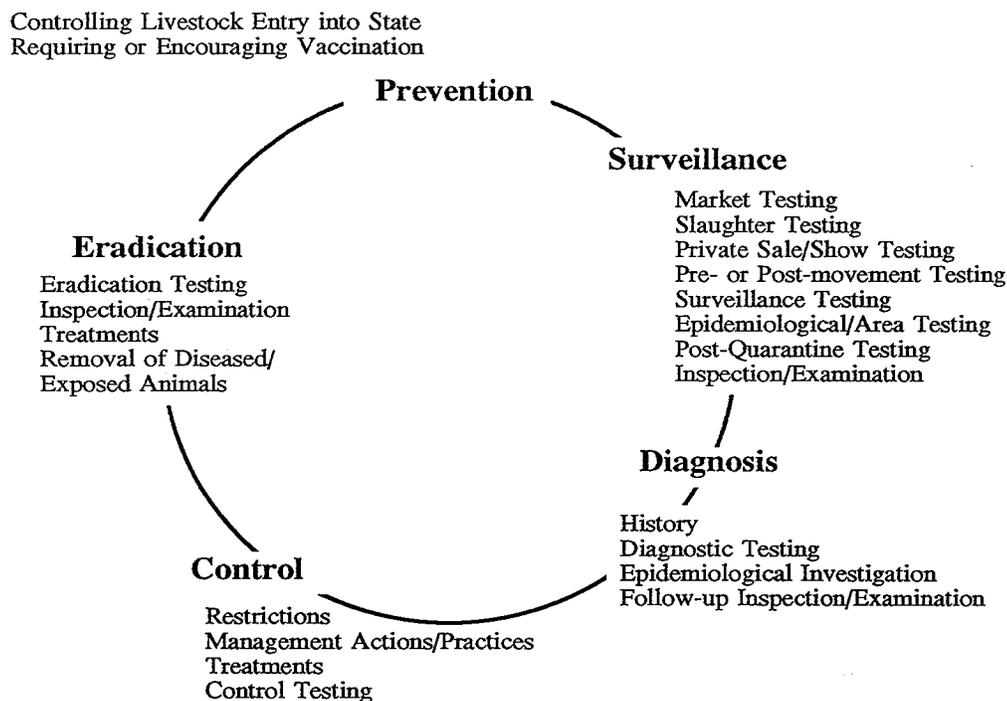
**Exhibit G**  
**PERCENTAGE OF MINORITIES IN AGENCY'S WORK FORCE**  
 Texas Animal Health Commission

Job Category	1989 Total Work Force 303		1993 Total Work Force 262		1992-1993 Appropriations Act Statewide Goal for Minority Work Force Representation
	Total Positions	% Minority	Total Positions	% Minority	
Administrators	19	5%	33	6%	14%
Professionals	50	8%	31	16%	18%
Technicians	2	0%	2	0%	23%
Protective Service	158	13%	124	7%	48%
Para-Professionals	22	50%	24	29%	25%
Administrative Support	52	23%	48	19%	25%
Skilled Craft	N/A	N/A	N/A	N/A	29%
Service/Maintenance	N/A	N/A	N/A	N/A	52%

**PROGRAMS AND FUNCTIONS**

The agency's primary responsibility is to protect the state's livestock and poultry industry from disease. The TAHC has developed a five-part functional cycle to eradicate livestock disease. Regardless of the disease involved, the cycle is used to guide the agency's efforts. The five components of the cycle are illustrated in Exhibit H.

Exhibit H  
**CYCLE FOR ELIMINATING LIVESTOCK DISEASE**  
 Texas Animal Health Commission



## PREVENTION

The cycle's first phase, prevention, is intended to keep infected animals from entering the state and keep diseases from spreading. The agency's major prevention efforts include setting standards and processing health certification documents for entry into the state, issuing and verifying entry permits, inspecting livestock at entry points to the state, and vaccinating calves and adult animals.

The agency measures its performance in animal disease prevention by the number of animal inspections completed, entry permits issued, and vaccinations performed. In fiscal year 1993, the TAHC conducted 3,018 inspections of animals entering the state, issued 5,384 entry permits, and performed 45,656 vaccinations. However, 796,543 vaccines were performed by private veterinarians and paid for by the animal producer. Vaccines can be given to calves or adult animals by state or federal veterinarians.

## **SURVEILLANCE**

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The second phase of the disease cycle is surveillance. Surveillance activities constitute the principal effort of the commission. The agency uses the majority of its resources and staff time to identify the source of disease infection or exposure in livestock, poultry, and exotic animal populations. The TAHC conducts inspections at livestock markets and feedlots as part of its surveillance efforts. In fiscal year 1993, the agency inspected 7,584,032 animals at market.

The collection of samples at livestock markets, slaughter plants, dairies, premises, and by privately-paid veterinarians allows the TAHC to survey the livestock population at large for threatening diseases. Agency inspectors monitor the testing activity at markets to ensure compliance with established standards and requirements. Inspectors also test animals located on an individual's property or in herds adjacent to infected or suspect herds.

Testing is important to the commission's surveillance effort and is provided by four agency labs located throughout the state. The laboratory tests confirm the field tests performed by agency personnel and private veterinarians. The tests supplement the results of field tests to determine the exact source of a disease, such as vaccine-caused reactions versus field-strain. The agency also tests milk samples collected from dairies and blood samples from slaughter plants either to confirm the findings of previous tests or as initial screening tests. The laboratories analyzed more than 2.6 million surveillance samples in fiscal year 1993.

The agency also engages in area testing in regions of the state that have a high incidence of disease or parasite infestation. Field staff visually inspect animals and conduct testing in high risk locations to provide for the early detection of diseases and pests. In fiscal year 1993, the agency conducted 10 area test programs involving 157,892 head of cattle.

## **DIAGNOSIS**

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Diagnosis is the third phase of the disease cycle. If the TAHC, through its surveillance activities, suspects an animal or herd has been exposed to or infected by a disease, efforts are made to provide an accurate diagnosis. Diagnosis activities consist mainly of epidemiological research, consultations with herd owners, and the development of herd histories. These activities, referred to as epidemiological diagnostic support, include lab testing of blood samples and cultures to confirm the existence of infection. The agency staff also review of herd premises and evaluates herd size, sale history and individual animal health histories. In fiscal year 1993, agency staff spent 32,066 hours on epidemiological diagnostic support. If a disease is confirmed, agency staff discuss the prognosis with the producer and develop a herd management plan to improve herd management practices. In fiscal year 1993, the agency collected 107,165 samples for diagnosis purposes and completed 171,583 supplemental tests which include tissue and milk cultures.

## **CONTROL**

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The fourth phase of the disease elimination cycle is control. In this phase, the agency controls the spread of disease to other animals in the herd, but more importantly to other herds. To do this, the agency conducts traceback investigations on infected animals to locate the herd of origin. The TAHC completed 13,763 traceback investigations in fiscal year 1993. The agency also can implement herd management plans based on prior diagnosis to control the disease within the herd and prevent spreading to other herds. As part of the herd plan, the agency may place restrictions on the movement and disposition of the livestock in order to control the disease. The agency works with approximately 12,900 herds annually through herd management plans.

Another disease control mechanism used by the agency is a quarantine. Quarantines may be part of a herd plan, or used separately by the TAHC. In fiscal year 1993, the agency issued 860 quarantines. However, the agency also works to make sure that producers with diseased animals are not prohibited from the movement and sale of their animals. Before moving and selling animals that have been placed under control restrictions, producers must permanently identify the animals by tagging or branding so that anyone handling the infected or exposed animals will be aware of the threat of disease. The agency then helps direct the animals to quarantine feedlots or markets and slaughter facilities equipped to deal with diseased or exposed animals.

## **ERADICATION**

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The final phase of the agency's five-part cycle is eradication. The agency eradicates diseases by either treating or removing infected animals from the herd or flock. After removing all known diseased animals and vaccinating the remaining animals, the agency re-tests animals to ensure that the disease has been eradicated. In fiscal year 1993, the TAHC collected 70,094 samples in an effort to ensure removal of all infected animals. In some cases, depopulation of an entire herd or flock may become necessary. Producers can receive indemnification or payment for depopulated animals if the disease is part of a national program, such as bovine tuberculosis. In other instances producers must depopulate without any financial assistance. In fiscal year 1993, 68 herds were depopulated, numbering 4,914 head of cattle and 556 head of swine.

## **DISEASE CONTROL PROGRAMS**

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The agency administers several disease control programs using the five-part cycle approach including programs that focus on bovine and swine brucellosis, bovine tuberculosis, pseudorabies, tick fever, and poultry diseases. The commission also maintains a surveillance effort for scabies and hog cholera, but appears to have successfully eradicated these diseases from Texas. A discussion of each disease and major elements of the disease control programs are provided below.

► **Brucellosis**

Brucellosis is a bacterial disease that affects the reproductive ability of cattle. Infection causes the abortion of calves, weakened calves, or a reduction in milk production. The disease may be transmitted to other animals or humans in close contact with the infected animals. Animals with brucellosis are suitable for human consumption because the bacteria does not survive standard processing and food preparation procedures. However, humans can contract a disease known as undulant fever by consuming infected raw milk.

The USDA provides direct financial support of approximately \$3.4 million a year to the TAHC to partially fund the brucellosis eradication program. The USDA also furnishes laboratory support and field staff for the program worth approximately \$12 million per year. The USDA, through a cooperative program, maintains staff who work in the program under the TAHC's supervision.

Federal law requires all states to have a brucellosis program. The USDA has established standards to evaluate states and, if needed, may restrict the movement of cattle from those states that fail to meet the required minimum standard. In the bovine brucellosis program, a state is classified as either a Class "C," Class "B," Class "A," or a "Free" state depending upon the prevalence of brucellosis in its cattle population. Exhibit I shows the criteria for state brucellosis program classifications. Each state is judged according to two numerical ratings. The first rating, the accumulative herd infection rate, shows the percentage of herds that tested positive for brucellosis in the previous 12 month-period out of the state's total herd population. The second rating, the adjusted MCI reactor rate, shows the percentage of cattle that test positive for brucellosis at slaughter, livestock markets, shows, farms, and ranches in the previous 12 month-period. All states are required by the USDA to eventually achieve Free status. As of February 1994, 32 states have achieved Free status and 17 have achieved Class A status. Texas remains the only state classified as Class B.

**Exhibit I**  
**USDA STATE BRUCELLOSIS CLASSIFICATIONS**

<b>Classification</b>	<b>12-Month Accumulative Herd Infection Rate*</b>	<b>12-Month Adjusted MCI Reactor Rate**</b>
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 tested positive for brucellosis in the previous 12-month period 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 in the previous 12-month period. "MCI" stands for the Market Cattle Identification program.

As shown in Exhibit J, TAHC has made progress in reducing the incidence of bovine brucellosis. The indicators of brucellosis have continued to decrease and Texas now has an accumulative number of 323 brucellosis-infected herds with about 13,433 head of cattle as of February 1994. Texas had about 140,000 cattle herds at the close of fiscal year 1993.

For fiscal year 1994, the TAHC secured an additional \$395,000 in federal funding for bovine brucellosis to offset a reduction in state funding of \$350,000. The USDA had initially required all states to achieve Class A status by October 1990. Failure to reach this status could have resulted in restrictions on the movement of cattle both within and outside the state. Texas is not presently recognized as Class A. Texas applied for Class A status in February 1994 and expects approval in March of 1994.

Exhibit J  
**TREND IN THE INCIDENCE OF BOVINE BRUCELLOSIS**  
 Texas Animal Health Commission

<b>Progress of the Brucellosis Program Herd Infection Rate</b>									
	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94 YTD
Infected Herds	1,681	1,464	1,433	1,113	739	556	400	383	323
Accumulative Herd Infection Rate	1.07	1.03	0.98	0.77	0.52	0.41	0.30	0.27	0.23
Adjusted MCI Rate	0.29	0.31	0.22	0.13	0.09	0.09	0.07	0.02	0.01

### ► Tuberculosis

Tuberculosis is a disease of animals as well as humans that is characterized by a long incubation period and is considered incurable in livestock. Tuberculosis in livestock may present a human health concern and can be contracted through the consumption of infected meat or raw milk. However, while humans can contract the cattle form of the disease, this situation has been extremely rare with only one case reported in Texas in the past decade.

The USDA has primary responsibility for controlling tuberculosis in livestock. Meat inspections by USDA and Texas Department of Health personnel help to ensure the safety of food products. Slaughter inspection of carcasses is the most common method for detecting animals with tuberculosis. When the disease is diagnosed in the field, the infected animal is sent to slaughter under special written permits. These animals may be judged fit for human consumption depending upon the post mortem examination. While depopulation is the preferred response to infected herds, the level of federal and state funds allocated to indemnify producers is usually insufficient. In these instances, the producer may be required to quarantine the herd for a minimum of 10 months. The herd can only be released from quarantine after it passes numerous tests.

The disease has largely been controlled with only seven newly-infected herds found in the U.S. during fiscal year 1993. Three of the newly-infected herds are located in Texas and the

remaining four are located in other states. In total, Texas has five tuberculosis-infected herds containing an estimated 8,000 to 10,000 head of cattle. The disease has been centered in dairy herds, but indications are that the disease has infected a small number of beef cattle operations in the state. Further tests are being conducted to confirm the presence of the disease.

### ► Tick Fever

Tick fever is transmitted to cattle by fever ticks. Cattle that contract the fever suffer drastic weight loss and usually die quickly. Tick fever is not a human health concern, but can pose a threat to horses. The tick fever problem in the late 1800's was so severe it motivated the Legislature to create the agency. The disease carried by the fever tick has been under control in Texas since 1943 and has been eradicated from the United States, except for a buffer zone along the Texas-Mexico border running through eight counties along the Rio Grande from Del Rio to Brownsville. Mexico continues to have tick infestation problems and ticks are occasionally transported into the state on cattle from the border area. The last invasion of fever tick-infested cattle occurred in 1993.

The agency has a cooperative program with the USDA to ensure that the tick fever does not become a problem again in the United States. The USDA inspects 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 by checking cattle for ticks at markets and on private land. Inspecting for ticks involves a physical examination of cattle and horses. When ticks are found, the animal, its herd, premise of origin, and adjacent herds are quarantined. In fiscal year 1993, the agency inspected 285,000 animals for fever ticks and located nine infested premises.

### ► Pseudorabies

Pseudorabies is caused by a herpes virus found in both domestic and feral swine and can also be transmitted to some other animal species, but not to humans. The disease causes abortions and significant loss of life in suckling pigs. Pseudorabies is a major swine health problem in large pork-producing states of the Midwest; but it is not currently a major problem in domestic swine in Texas. However, the disease does exist in the feral swine population and occasionally spills over into domestic swine and cattle. When infection is found, the herd is quarantined and infected animals are slaughtered. The agency quarantined 14 herds numbering 495 animals in fiscal year 1993. Release of the quarantine order occurs once the herd has met testing requirements established by the agency.

### ► Equine Infectious Anemia

Equine infectious anemia (EIA) is a virus that is transmitted through infected blood. The disease is typically spread by insects but may also be carried by contaminated instruments and needles. This disease affects only horses and other equine species. The disease may take one of three forms: acute, chronic, and inapparent. An equine with acute EIA will experience fever and anorexia and may die. A chronic infection results in weight loss, anemia, and edema. However, most EIA-infected horses are inapparent carriers and show no clinical signs of the disease. Equine infectious anemia poses no human health threat.

The disease is typically identified through private diagnostic testing and is confirmed by blood tests. An infected equine must be quarantined by the owner and kept at a minimum of 200 yards from the nearest equine. Depopulation of infected animals is also encouraged. Any movement of a known infected animal must be done under permit. The agency issued quarantines for 265 animals in fiscal year 1993.

### ► Poultry Diseases

The regulation of poultry disease is a cooperative effort shared by several entities in Texas. The TAHC has general authority for the control of poultry disease and responds to diseased flocks by proposing vaccination, disinfection and depopulation when appropriate. The agency also monitors the poultry population for a range of poultry diseases including pullorum typhoid, laryngotracheitis, and exotic newcastle. The primary source of pullorum typhoid control is provided by the Texas Veterinary Medical Diagnostic Laboratory (TVMDL), where the National Poultry Improvement Plan is administered. The TVMDL also provides the majority of laboratory support for poultry disease work in Texas. This effort is a voluntary approach to animal disease regulation that is supported by the poultry industry. In addition, Texas A&M University's Agricultural Experiment Station, the Texas Poultry Federation, and the U.S. APHIS-Veterinary Service all help monitor and control poultry diseases in Texas.

## OTHER PROGRAM AREAS

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### ► Administration

Administration activities support the agency's operation of disease control programs. Basic administrative functions include oversight of the agency's field offices, cost control and efficiency studies, records maintenance, and overall monitoring of the agency's efforts. Accounting, personnel, purchasing, leasing, and processing functions are also provided. Finally, administrative personnel maintain a computer information system with the USDA called the Brucellosis

Recording and Reporting System (BRRS), which tracks key information related to brucellosis, tuberculosis, and pseudorabies disease control programs.

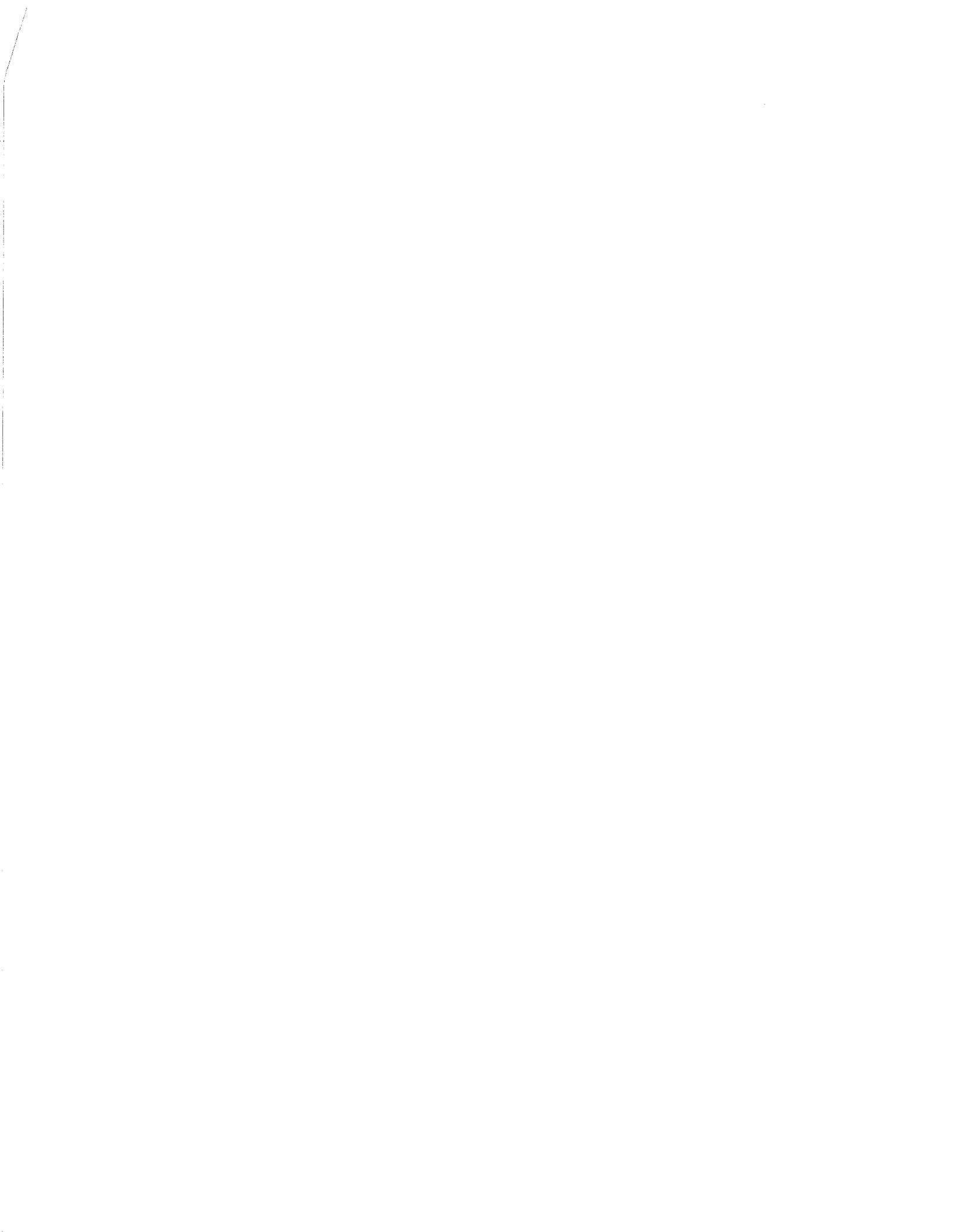
► **Education**

The agency provides educational programs and materials for producers, veterinarians, legislators, and the public. The agency's effort in this area focuses on defining animal diseases and teaching prevention and treatment. Agency staff produce educational videotapes, deliver public presentations, meet with animal producers, and attend exhibits and shows in their outreach efforts. In addition, the TAHC publishes a quarterly newsletter that has 7,000 subscribers, including out-of-state readers.

► **Legal and Compliance**

The agency's enforcement efforts are designed to ensure compliance with the state's animal health laws and agency rules and regulations. Agency personnel may quarantine animals that are infected or are suspected of having a disease. The TAHC also has the power of entry to any public or private property to enforce animal health laws and regulations. An animal owner can be required to test animals and follow specific treatment plans developed to deal with disease problems, but can request an informal hearing with the executive director for an exception. If not satisfied with the director's decision, the owner may request a formal administrative hearing with the State Office of Administrative Hearings (SOAH). If the animal producer rejects the decision proposed by the SOAH, the producer may file an appeal in the Travis County district court. The failure of an owner to comply with the agency's decision can result in the agency filing a criminal complaint in the county where the owner resides. Also, the agency may file an injunction in Travis County district court. The agency completed 70 compliance investigations resulting in 16 complaints filed in criminal district courts, five in justice of the peace courts, and one injunction during fiscal year 1993.

## **OVERALL APPROACH TO REVIEW**



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## OVERALL APPROACH

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The Texas Sunset Act requires the Sunset Commission to consider 13 specific criteria when reviewing an agency. These criteria are used to evaluate the agency's efficiency and effectiveness. The staff review of the Texas Animal Health Commission (TAHC) used these criteria to determine whether the agency's functions continue to be needed, if benefits could be gained by transferring the agency's functions to another agency or by moving another agency's functions to the agency being reviewed, and if the agency's statutes should be changed to improve its programs and functions.

An analysis of the need to continue the TAHC focused on whether continued state involvement in protecting the livestock industry from disease is necessary. The analysis also took into consideration whether benefits would result from combining the TAHC with any other state agency. In addition, the review included consideration of beneficial statutory changes if the TAHC is maintained in its current form.

To analyze each of these areas, the review team conducted a number of activities during the five-month review. These included:

- ▶ a review of the scope and results of the previous Sunset review of the agency;
- ▶ interviews with key agency staff in the central office and with field staff;
- ▶ review of agency documents and reports, state statutes, legislative reports, previous evaluations of agency activities, and literature containing background materials;
- ▶ review of past animal health legislation;
- ▶ personal and phone interviews with the U.S. Department of Agriculture;
- ▶ field visits with agency staff to observe animal disease efforts;
- ▶ attendance at public meetings of the Texas Animal Health Commission; and
- ▶ interviews and meetings with groups affected by or interested in the activities and policies of the agency including groups representing exotic livestock, independent cattle producers, and others.

Out of these activities, the overall focus of the review was shaped. The primary question asked and answered in the course of the review was whether the commission had adequate statutory authority to enforce current animal health rules and regulations. Staff reviewed the composition of the commission and concluded that the addition of public members would not improve the commission's ability to carry out its responsibilities.

The Texas Animal Health Commission was previously reviewed through the Sunset process in 1989. The agency was continued with modifications as a result of that review. The changes included: authorizing the commission to charge fees to offset the reduction of federal funding for brucellosis, requiring livestock dealers to keep records, providing for delegation of quarantine authority for poultry regulation, and making the commission's misdemeanor penalties consistent with the Penal Code. All applicable Sunset across-the-board recommendations were incorporated into the agency's statute. The agency has implemented the provisions resulting from the previous Sunset legislation.

The recommendations included in the report are only some of the issues that were raised during the review process. Some of the issues raised were outside the scope of a Sunset review and could not be resolved through a change in statute. These issues were left for consideration by other legislative oversight agencies. The issues in this report were selected to provide the agency with the appropriate statutory structure and level of authority needed to effectively perform its duties.

***FINDINGS AND  
RECOMMENDATIONS***



## **NEED FOR THE AGENCY**



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**Issue 1: The Texas Animal Health Commission should be continued for a 12-year period.**

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## **Background**

Protection of the state's livestock population began in 1893 with the creation of the Livestock Sanitary Commission. The commission was established in response to a tick fever epidemic that devastated the livestock industry and limited interstate movement of Texas cattle. During the late 1920's, the Legislature authorized the commission to regulate tuberculosis, brucellosis, sheep and cattle scabies, and foot and mouth disease. By 1943, the commission reduced the threat of tick fever and expanded its disease control efforts to include hog cholera and the screwworm. In 1959, the Texas Animal Health Commission was named as the successor to the Livestock Sanitary Commission and the commission's authority was broadened to address all animal and poultry diseases that were dangerous and communicable. However, brucellosis was clearly becoming the agency's most pressing concern.

During the 1960's, the agency concentrated on the control of bovine brucellosis by cooperating in the national state-federal brucellosis eradication program. By 1972, the U.S. Department of Agriculture (USDA) had eradication programs in all 50 states. Through the cooperative effort, federal funding became available, which allowed the commission to expand and improve its control efforts. In 1983, the Texas Legislature expanded the commission's regulatory authority to meet newly adopted federal requirements. In 1989, the USDA provided additional funding for those states that maintained a Class B brucellosis rating, including Texas. The control of bovine brucellosis continues to be the agency's primary focus and the state is expected to receive Class A status in March or April of 1994.

To justify the continuation of an agency, certain conditions should exist. First the agency's functions should continue to be needed. Second, the agency's functions should not duplicate those currently provided by any other state agency. Finally, the potential benefits of maintaining a separate agency must outweigh any disadvantages of transferring the agency's functions or services to any other state agency. Evaluation of the need to continue the agency's functions led to the following findings.

## **Findings**

- ▶ **The Texas Animal Health Commission continues to be needed to administer disease control programs in the state.**

- ▶ In fiscal year 1993, the livestock industry accounted for 58 percent of all cash receipts for agricultural commodities in Texas, or \$9.1 billion. Texas leads the nation in the number of ranches and farms and in the total value of cattle, calves, sheep, and goats. The state's livestock derived products are also an important aspect of the economy with Texas among the nations leaders in wool and egg production.
- ▶ The threat of disease to Texas livestock persists. Texas has 43 percent of all new bovine tuberculosis herds in the nation and is the last state to be rated Class B for bovine brucellosis with 323 accumulated infected herds. Fever tick infestations still occur in Texas with the latest incident taking place in fiscal year 1993. Other disease threats include avian influenza among exotic fowl, equine infectious anemia in horses, pseudorabies, and brucellosis in feral and domestic swine.
- ▶ The agency uses a five-part approach to disease control in an attempt to safeguard the livestock industry. This approach includes prevention, surveillance, diagnosis, control, and eradication of diseases.

In its prevention efforts, the agency keeps infected and exposed animals from entering the state or spreading disease. In fiscal year 1993, agency staff members issued 5,384 entry permits and administered 45,656 vaccinations to prevent the spread of disease.

Surveillance activities constitute the agency's principal effort and is completed mainly through inspections and testing at livestock markets and feedlots. In fiscal year 1993, field staff inspected 7,584,032 animals at market for surveillance purposes.

Diagnosis ensures the accurate detection of disease infection found through surveillance efforts. Follow-up diagnostic investigations are used to confirm or refute the existence of disease in a herd or individual animal. In fiscal year 1993, the agency collected 107,165 samples for diagnosis purposes and completed 171,583 supplemental tests which include tissue and milk cultures.

Control activities consist of herd management, traceback investigations, and quarantines and hold orders, which restrict the spread of disease to other herds. The agency works with the producers to develop plans to manage their herds using methods that enhance disease control and eradication. In fiscal year 1993, the agency established 12,915 herd management plans. The agency issued 2,125 quarantines and hold-orders in fiscal year 1993. Traceback investigations are also important to the control function and are done by tracing an infected or

exposed animal, through the various channels of movement, to its herd of origin. The agency completed 13,763 traceback investigations in fiscal year 1993.

Eradication of animal diseases is the agency's ultimate goal. The agency identifies infected animals and either treats or removes them from the herd or flock. Fifty-eight cattle herds and 10 swine herds were depopulated in fiscal year 1993.

- ▶ **An assessment of the TAHC and other existing state agencies did not reveal any beneficial alternatives for consolidation or transfer of functions.**
  - ▶ Although the Texas Animal Health Commission and the Texas Department of Agriculture (TDA) both perform functions related to agriculture, no duplication of effort is occurring between the two agencies. The TAHC is focused exclusively on the prevention and control of animal diseases. The TDA is multi-purposed and promotes Texas agriculture, improves the state's agricultural methods and practices, and operates numerous regulatory programs such as those for weights and measures and pesticides. The two agencies do not share similar functions. Consequently, a consolidation would result in minimal administrative savings with the potential for losing a focused and efficient effort to control and eradicate animal disease.
  - ▶ One function was identified where a transfer could be justified. The TDA currently operates six export pens on the Texas-Mexico border. These pens are used to hold animals for inspection to ensure that they meet export requirements established by the country of destination and the USDA. These functions may be more appropriately placed in the Texas Animal Health Commission. This option will be explored during the upcoming sunset review of the TDA.
- ▶ **Abolishing the TAHC could result in federal restrictions on the movement of Texas livestock.**
  - ▶ A state agency is needed to perform animal disease control. Without an agency to administer the cattle and swine brucellosis control program, the tuberculosis program, and the swine pseudorabies program, the federal government and other states would refuse to allow shipment of Texas cattle. If the state continued to decline responsibility for disease control, the USDA would eventually come into the state and take over the brucellosis, tuberculosis, and pseudorabies control and eradication functions currently assigned to the agency.

- ▶ Interstate and international trade of other types of animals such as poultry, sheep, goats, hogs, and nontraditional livestock could also be restricted if Texas fails to regulate animal diseases. Other states and countries expect Texas to have comparable disease control programs that issue health certificates for animals being transported across the state and national border.

### **Conclusion**

The functions assigned to the Texas Animal Health Commission continue to be needed and appear to be appropriately placed in the agency as currently structured. No other state agencies were identified that could assume the agency's functions with increased benefits to the state or at reduced costs. Abolishing the agency could result in a loss of federal funds and could also result in restrictions on interstate movement of livestock and other animals.

### **Recommendation**

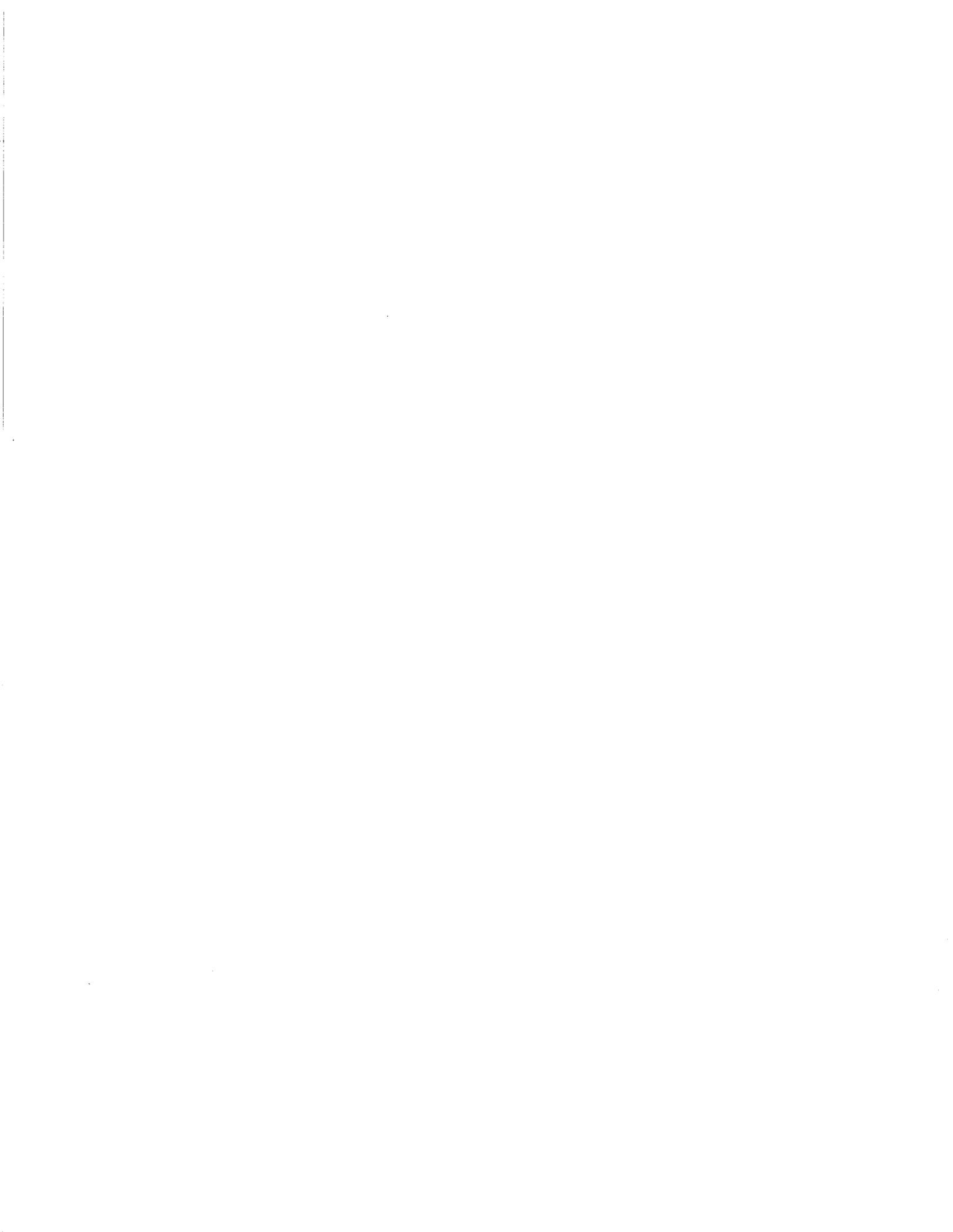
- **The Texas Animal Health Commission should be continued for 12 years.**

This recommendation would continue the agency for 12 years and would provide for Sunset review again in 2007. The agency would continue to perform its current statutory functions of protecting the state's livestock, domestic animals, domestic fowl, exotic livestock, and exotic fowl from disease.

### **Fiscal Impact**

If the commission's functions are continued through the existing organizational structure, its biennial appropriation of about \$8.9 million would continue to be required. Depending upon the availability of federal funds, the commission would continue to receive about \$3.4 million.

## **OVERALL ADMINISTRATION**



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**Issue 2: Provide the commission with fee authority and require development of a cost-recovery fee schedule.**

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**Background**

The Texas Animal Health Commission operates on a budget of approximately \$12.4 million annually. General revenue funds accounted for \$8,980,077, or 72.3 percent in fiscal year 1993. Federal funds amounted to \$3,436,294, or 27.7 percent of the commission budget. The federal funds are earmarked for bovine brucellosis control. The percentage of the budget funded through general revenue has remained steady over time. However, the continuance of federal funding for the bovine brucellosis program is uncertain as other states and Texas continue to make progress toward eradicating the disease.

The agency's budget is devoted to five functions for controlling the spread of animal diseases: prevention, surveillance, diagnosis, control, and eradication. The chart below shows how the commission has focused its efforts with the strongest emphasis being placed upon surveillance activities.

**TAHC Expenditures by Function**

<u>Function</u>	<u>FY 1993 Expenditure</u>	<u>Percent of Expenditures</u>	<u>Activities</u>
Prevention	\$1,287,705	10.4	entry permits, vaccinations
Surveillance	\$6,884,561	55.4	first-point and area testing
Diagnosis	\$2,034,518	16.4	epidemiological investigations
Control	\$1,439,933	11.6	quarantines, hold orders
Eradication	\$769,654	6.2	depopulation, indemnification

Currently, the agency has limited fee authority. The statute requires the agency to collect a fee for issuing Certificates of Veterinary Inspections, also called health certificates. The certificates are issued by federally-accredited private veterinarians and certifies that the animals meet general health standards and are suitable for exhibition at interstate livestock shows and movement across state borders. Additionally, the agency has the authority to establish fees in amounts necessary to cover costs for brucellosis control when combined with funds from other sources. To date, the agency has not implemented any user fees to recover the costs of administering the brucellosis control program.

A review of the agency's fee authority focused on the commission's ability to charge fees, the appropriateness of cost recovery through fees, and interest in establishing a fee system. The results of the review are contained in the following findings.

## Findings

- ▶ **The legislature has recently demonstrated an interest in recovering general revenue costs for animal health regulatory programs.**
  - ▶ In 1985, the 69th Legislature passed a bill requiring the commission to collect fees for issuing animal health certificates. The commission collects approximately \$25,000 annually from the sale of certificates.
  - ▶ In 1993, the 73rd Legislature directed the commission, through an appropriations bill rider, to study and develop a fee-based cost recovery system that will provide sufficient revenue to offset the state's cost of administering animal health and disease-related prevention, surveillance, diagnosis, control, and eradication programs.
  
- ▶ **Past reviews of the Texas Animal Health Commission have recommended that general revenue funding be replaced with fee revenue.**
  - ▶ In 1988, the Sunset Commission recommended changing the commission's statute to authorize fees to offset the reduction or elimination of federal funding and support of the bovine brucellosis program. The statute was changed by the 71st Legislature to incorporate the recommendation.
  - ▶ The state Comptroller recommended in 1991 that 25 percent of the agency's general revenue funding be replaced with user fee revenue. The proposal was not passed by the Legislature.
  - ▶ The Legislative Budget Board (LBB) concluded in the *Staff Performance Report to the 73rd Legislature* that the agency's need for general revenue funding could eventually be eliminated by charging fees for animal disease control and eradication services. The LBB recommended that the commission establish and collect fees to recover all costs of agency services by fiscal year 1995.
  
- ▶ **Although cost recovery levels vary, many other states' animal health agencies currently have fee authority.**

- ▶ Of 23 state responses to an agency fee survey, 14 have authority to collect fees for animal health programs, or 70 percent.
  - ▶ Of those states surveyed, most averaged a cost recovery of approximately five to six percent of their animal health budget. Kansas, a large livestock-producing state, collected the largest percentage of their animal health budget through fees at 50 percent. Most states that collect fees for animal health programs and services deposit the revenue into general revenue accounts.
- ▶ **The commission does not currently have adequate authority to charge fees to recover the cost of all services being provided.**

### \_\_\_\_\_ **Conclusion** \_\_\_\_\_

Increased legislative interest in replacing general revenue funding of agencies, along with the uncertain status of continuing federal funds for animal health programs such as bovine brucellosis, necessitates that the commission explore alternative funding structures. The commission currently does not have authority to charge fees to recover costs.

### \_\_\_\_\_ **Recommendation** \_\_\_\_\_

- **The statute should be changed to:**
  - **provide the commission with authority to charge fees for all services provided;**
  - **require the commission to develop a cost recovery fee schedule to accompany its legislative appropriations request;**
  - **specify that fees collected shall recover the level of agency funding set through the appropriations process; and**
  - **allow the commission to exempt specific programs from cost-recovery requirements.**

This approach would provide the commission with the ability to structure a cost recovery fee system. The fees charged would depend on the level of funding recovery required from fee revenue, which would be determined by the legislature through the appropriations process. Once

the percentage is set, then the commission would have the discretion to establish fees in whichever programs it felt was most appropriate.

**Fiscal Impact**

The fiscal impact of the recommendation cannot be estimated. The fee revenue generated will depend on the required level of cost recovery. The agency will incur administrative costs associated with the collection of fees, however those costs cannot be estimated at this time. The following chart, based on current agency appropriations, illustrates possible percents of cost recovery and revenue generated. The amounts reflect net revenue and do not include the undetermined administrative costs.

<b>Percent of Cost Recovery</b>	<b>Revenue Generated</b>
25	\$2,243,917
50	\$4,487,835
75	\$6,731,752

# **EVALUATION OF PROGRAMS**



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**Issue 3: Require all livestock dealers to register with the commission to improve animal disease control efforts.**

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**Background**

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Livestock dealers are a fundamental element to the livestock industry in Texas. Dealers facilitate the movement and eventual sale of livestock through either private sale or market. The TAHC estimates that there are 671 cattle dealers and 109 swine dealers in the state, but the exact number is unknown because no mechanism exists to identify dealers. While a majority of all livestock that are bought and sold in Texas come through livestock markets, approximately 13 percent of livestock transactions are brokered by dealers and are considered private sales.

A livestock dealer is defined in the statute as a person engaged in the business of buying or selling animals in commerce: 1) on the person's own account; 2) as an employee or agent of a vendor, purchaser, or both; or 3) on a commission basis. Although an individual who buys or sells animals as part of the person's bona fide breeding, feeding, dairy, or stocker operations is not considered a dealer by the agency, livestock markets and commission merchants are included in the definition. Many dealers are small-scale, may or may not specialize in particular animals, and typically sell animals on a short turnaround schedule.

The statute authorizes the agency to require a livestock or domestic fowl dealer to maintain records of all livestock or domestic fowl transactions handled by the dealer. The records maintained by the livestock dealers are intended to track the movement and destination of livestock being bought and sold. This information is crucial when the agency conducts its traceback investigations to locate herds or flocks of origin for diseased animals.

A typical traceback investigation begins with the identification of a diseased animal either at a market, private-sale, or slaughter. Once an animal is confirmed as being infected with a commission-regulated disease, an agency employee attempts to locate the animal's herd of origin by reviewing dealer or market records. Once located, the records are supposed to identify the original owner of the animal so further testing can be performed to determine the disease status of the herd of origin and the need for further action by the agency.

If a dealer fails to comply with recordkeeping requirements and an investigation is warranted, the agency is significantly limited in its efforts to locate the herd of origin. Failure to meet dealer record requirements can result in a "demand" letter being sent by the agency setting a specific date and time for agency personnel to inspect the records at the dealer's place of business. If the records are not produced or fail to meet recordkeeping requirements, the agency

has three options to pursue. First, a warning letter may be sent notifying the dealer of the requirements and stating that subsequent failure to maintain or produce records may result in the filing of criminal complaints. Second, a criminal complaint may be filed that carries a Class B misdemeanor penalty. Third, the agency may file a petition in Travis County for an injunction.

The review of current recordkeeping requirements focused on the TAHC's ability to identify livestock dealers and ensure that records are properly kept. The results of the review follow.

## Findings

- ▶ **The commission's disease control efforts are threatened by its inability to track diseased animals when provided insufficient identification by livestock dealers.**
  - ▶ Current statutory provisions for regulating livestock dealers do not provide a mechanism to ensure dealers are accurately identified by the TAHC or that information given by dealers at the time of transaction is complete or reliable.
  - ▶ According to agency staff, dealers are able to provide false information at the time of transaction at markets and fail to notify the TAHC of private sales, which remains unknown until a traceback investigation becomes necessary.
  
- ▶ **Dealer records are not consistently kept because the commission does not prescribe the form of the records.**
  - ▶ The commission by rule, may adopt the form and content of transaction records maintained by livestock dealers.
  - ▶ The TAHC only prescribes the content of the information to be maintained. Transaction records kept by livestock dealers must contain the buyer's and seller's name and address, county of origin, number of animals, and a description of each animal, including identification tags or brands. Records at livestock auctions or markets must show the delivery vehicle license number. All dealer records must be maintained for a minimum of two years.
  - ▶ Livestock dealers are not required by the commission to keep transaction records in any specific form, which can lead to problems in completing successful traceback investigations because dealers often fail to locate individual records requested by the agency, keep inconsistent records, or do not maintain files for two years.

- ▶ **Texas has the largest number of livestock dealers in the country, which highlights the need to be able to accurately identify dealers and track their livestock transactions.**
  - ▶ The estimated number of cattle dealers in Texas leads the nation. This number has increased approximately 60 percent since 1987, or from 419 to 671, as the agency has been able to identify dealers. The large number of dealers strains agency resources dedicated to maintaining dealer compliance with animal health regulations, including recordkeeping requirements.
  
- ▶ **Traceback of diseases is critical to an effective disease control program. Although the commission maintains a high success rate for traceback investigations, those traceback investigations that fail are frequently because of poor dealer records.**
  - ▶ The TAHC, through the first-point testing program, conducted 3,659 traceback investigations for fiscal year 1993. Of these investigations, 20 were unsuccessful, with half of the failed tracebacks directly attributed to dealers. The number of unsuccessful traceback cases over the past three fiscal years represents 79 head of cattle likely to spread disease. The primary reason for failed investigations, according to agency staff, is inadequate or false information submitted by the dealer at the time of transaction.
  
  - ▶ The TAHC requested 1,354 compliance investigations for violations of its statute since fiscal year 1989. These violations ranged from failure to handle infected animals according to commission rules to failure to maintain dealer records. A review of TAHC records show that approximately 10 percent of agency requests for investigations were for dealers who failed to produce records or maintained inadequate records of livestock transactions. Approximately one-third of these dealers were repeat offenders who have demonstrated a continued inability to meet agency recordkeeping requirements.
  
- ▶ **The commission's failure to meet U.S. Department of Agriculture regulations requiring the registration of livestock dealers could hamper the state's ability to upgrade the classification for its bovine brucellosis program.**
  - ▶ The USDA has a long-standing program that places cattle-producing states into various classifications that reflect the status of their brucellosis programs. This classification affects, among other things, movement of cattle in or out of a state.

- ▶ Compliance with federal livestock dealer requirements is one factor used to determine a state's bovine brucellosis classification. The commission currently satisfies the federal recordkeeping requirement but not the requirement that dealers be registered or licensed with the appropriate state agency.
- ▶ While the USDA has unofficially indicated that current commission regulations meet the intent of the federal requirements, they also indicated that a dealer registration requirement would enhance the commission's ability to conduct traceback investigations and meet and maintain the requirements for a Class A bovine brucellosis program.
- ▶ **Livestock dealers are routinely registered or licensed in other livestock producing states.**
  - ▶ According to the USDA, more than half of the states require dealers to be registered, licensed, and/or bonded with the responsible animal health agency in the state.
- ▶ **Increasing the commission's regulation of livestock dealers through registration would strengthen control over the transmission of livestock diseases such as brucellosis and tuberculosis.**
  - ▶ Accurate dealer records are essential in tracing diseased animals to their herd of origin so proper treatment of the herd can take place. The registration of livestock dealers would improve the agency's ability to locate and identify dealers and their sales records.
  - ▶ The registration of dealers will improve the agency's ability to enforce dealer recordkeeping requirements, especially if the commission is given the authority to remove a registration for falsifying records.
  - ▶ Tracing disease to its origin is critical to allow the commission to control bovine brucellosis at the levels required to achieve and maintain the Class A designation.

## \_\_\_\_\_ Conclusion \_\_\_\_\_

The agency's disease control efforts are hampered by insufficient identification of livestock dealers. The agency's control of animal disease is dependent on the accurate identification of livestock dealers and complete records maintained by the dealer. The current regulations do not provide adequate control to ensure dealers are accurately identified and records maintained. In addition, the commission does not meet federal dealer registration requirements.

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## Recommendation

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- **The statute should be changed to:**
  - **require that livestock dealers must register with the Texas Animal Health Commission to engage in the business of buying and selling livestock;**
  - **specify that registration requires proof of identification and a business address, and require livestock dealers to notify the commission of any changes in identification or business address;**
  - **require the commission to prescribe the form in which livestock dealer information is maintained;**
  - **require a unique registration number for each individual dealer and require that all sale or transaction records contain the registration number of the seller;**
  - **require the commission to collect a registration fee to cover the cost of registration; and**
  - **specify that the commission can revoke the registration for false information provided by a dealer at registration and for knowingly and willfully falsifying required livestock transaction records.**

This recommendation would improve the commission's disease control efforts. Livestock dealer registration would increase the reliability of dealer identification and records. In addition, dealer registration would improve the commission's ability to meet and maintain the federal criteria for Class A or Free status for bovine brucellosis by strengthening its capability to conduct successful traceback investigations, thus lowering the incidence of the disease.

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## Fiscal Impact

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No additional general revenue appropriation will be required to operate the registration of livestock dealers. Fee revenue will be collected as a result of this recommendation to cover agency costs associated with operating the dealer registration program. The cost associated with, and the revenues collected for, dealer registration will primarily occur in the first year of implementation. Thereafter, the TAHC would collect revenue from newly registered dealers, but would not have significant administrative costs associated with the program.

<b>Fiscal Year</b>	<b>Estimated Number of Dealers*</b>	<b>Proposed Fee**</b>	<b>Gain To General Revenue</b>
1996	780	\$25	\$19,500
1997	40	\$25	\$ 1,000
1998	40	\$25	\$ 1,000
1999	40	\$25	\$ 1,000
2000	40	\$25	\$ 1,000

\* The estimated number of dealers in 1996 is based on the number of cattle and swine dealers estimated by the agency to be operating in fiscal year 1993. After the initial registration period, the agency would register an estimated 40 new dealers annually, or five percent of the total number of dealers registered in 1996.

\*\* The proposed fee is based on dealer registration fees in other states.

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**Issue 4: Strengthen the commission's enforcement authority by authorizing the use of administrative penalties for violations of animal health regulations.**

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**Background**

The Texas Animal Health Commission's mission is to protect the livestock, poultry, and exotic livestock industries from the spread of disease by enforcing animal health statutes and rules. The commission is responsible for enforcing regulations that control livestock entry into Texas, ensuring that adequate testing of livestock occurs and that proper records are maintained on movement of livestock in and out of Texas.

The commission's enforcement authority consists of the power to obtain court-ordered injunctions and the ability to seek civil and criminal causes of action in court. The agency, even by aggressive enforcement action through the courts, is often limited in addressing violations of animal health regulations. The court system, by its nature, often allows for time delays in reaching decisions. Delays in gaining compliance to animal health regulations can seriously impact the overall health of livestock in the state by increasing the potential for exposure and infection.

State policy, in general, is to provide regulatory agencies with sufficient enforcement powers to ensure compliance. These powers include the power to obtain court-ordered injunctions, the ability to seek civil and criminal causes of action in court, and the authority to assess administrative fines.

The review compared the agency's current enforcement authority with the usual range of sanctions provided to regulatory agencies. The results of the review follow.

**Findings**

- ▶ **The commission's current enforcement authority results in a small number of court actions taken against violators.**
  - ▶ The agency must prioritize the cases on which it seeks court action. Of the 1,354 investigations requested from fiscal year 1989 to fiscal year 1993, the TAHC sought court action on only 193, or 14.3 percent.

- ▶ Another 392 cases resulted in warning letters. These cases involved violations but the agency chose not to seek court action. The only current enforcement option is a warning letter.
- ▶ **Current enforcement tools available to the commission do not adequately deter individuals from repeatedly violating the commission's statute and rules.**
  - ▶ In fiscal year 1993, the agency had requests to investigate 200 violations of the statute or rules. Of these investigations, 27 percent involved individuals with past violations.
- ▶ **Other regulatory agencies in Texas have a broader scope of enforcement authority to address violations of their rules and regulations.**
  - ▶ Most major regulatory agencies have a range of available sanctions including court actions, suspension and revocation, and administrative penalties. Agencies with administrative penalty authority include the Texas Department of Agriculture, the Texas Department of Health, the Texas Railroad Commission, and almost every occupational licensing agency.
  - ▶ The Sunset Commission has routinely recommended the use of administrative penalties by regulatory agencies. In most cases, the legislature has included the authority in legislation passed to re-create the agencies.
- ▶ **Administrative penalty authority would provide the commission flexibility to address less severe violations of the statute.**
  - ▶ As mentioned previously, of 1354 investigation requests from 1989 to 1993, 392 resulted in a warning letter to the violator. Administrative fines could have been considered as an appropriate response to many of these violations.
  - ▶ The agency has become increasingly reliant upon warning letters for violations of its rules and regulations. The percentage of investigation requests resulting in a warning letter has increased from 11.4 percent in fiscal year 1989 to 43 percent in fiscal year 1993. The increased use of warning letters suggests additional enforcement mechanisms may be required to effectively address violations.

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## Conclusion

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An essential element in the process of state regulation is adequate enforcement authority to deter violations of state laws and regulations. Currently, the commission must rely primarily on the local courts for penalties to gain compliance. Compared to other state regulatory agencies, the commission has limited enforcement powers. The commission needs administrative penalty authority to penalize and control violations of the state's animal health laws and regulations. The lack of administrative penalty authority impedes the commission's ability to address less serious violations of the statute and control the number of repeat violators.

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## Recommendation

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- **The statute should be changed to:**
  - **authorize the commission to assess administrative penalties of up to \$1,000 per violation per day for violations of its rules and regulations;**
  - **require the commission to establish criteria on which the amount of penalty for each type of violation is based; and**
  - **require all penalties to be deposited in the general revenue fund.**

The commission's administrative penalty authority would be modeled after the standard sunset approach used in the past for other regulatory agencies. This approach would provide an administrative review process to ensure each complainant is afforded due process. The statute would contain guidelines the TAHC would use when determining the amount of a penalty. The commission would be authorized to set penalties to fit the severity of the violation, taking into account the past history of the violator and the extent to which the violator may have acted without knowledge or intent to violate the law. The commission would be required to establish a standard method for using administrative penalties, including penalty ranges for different types of violations.

The \$1,000 penalty limit was based on a comparison of the seriousness of violations when compared to the limits provided for other agencies. In addition, the penalty amount was compared to current criminal penalty limits specified for violations of the commission's statute and rules. The \$1,000 limit will allow the commission to assess penalties that fit the seriousness of each violation and deal with repeat offenders.

**Fiscal Impact**

This recommendation would result in a positive fiscal impact. The authority to levy administrative penalties would result in increased revenue to the general revenue fund. The exact amount cannot be estimated at this time due to the lack of information on how often and in what amounts the commission would levy such penalties. However, the revenue generated should be sufficient to cover costs to general revenue for conducting administrative hearings on appeals of penalty decisions.

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**Issue 5: Provide the commission with adequate authority for the regulation of exotic livestock and fowl diseases.**

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**Background**

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The exotic livestock industry in Texas is the state's fastest growing agricultural enterprise and the largest in the United States. The two primary classes of exotic livestock that are farmed or ranched are captive cervidae, which include fallow deer, axis deer, sika deer, red deer, elk, and black buck antelope; and ratites, which include ostriches, emus, and rheas. The state's cervidae producers indicate that they are currently raising approximately 13,500 elk and 250,000 deer including axis, sika, fallow, and red deer. Exact figures on the number of exotic fowl are not currently available although census efforts are currently underway to determine accurate numbers. Producers make a sizeable investment when buying nontraditional livestock and fowl. For example, the cost to purchase an ostrich or emu can range from \$5,500 to \$40,000 depending on the bird's age and breeding capability. Producers of nontraditional livestock and fowl are working to expand the state's agricultural industry with the production of food and other products derived from these animals.

Concern about the exotic livestock industry is growing because diseases such as brucellosis, tuberculosis, and avian influenza have been documented in the nontraditional livestock and fowl species. Exotic livestock and fowl are susceptible to many traditional livestock diseases that are currently being regulated by the Texas Animal Health Commission. In addition, as the state continues to import new types of exotics for production in Texas, the threat of new diseases and serious outbreaks increases. The commission currently has limited regulatory authority over exotic livestock and fowl. The commission is authorized to issue rules concerning the testing, movement, inspection, and treatment of exotic animals, but lacks specific control and eradication authorities.

State regulation of animal diseases is an important protection to individual animal producers, the agricultural industry, and the public. The limited regulation of exotic livestock by the commission was analyzed to determine if changes were needed to provide an adequate level of disease control. The analysis resulted in the following findings and conclusions.

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**Findings**

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- ▶ **Exotic livestock and fowl carry diseases that directly threaten the health of traditional livestock and the state's wildlife population.**

- ▶ Exotic livestock contract and carry diseases that the industry, state and federal government have spent millions of dollars attempting to control and eradicate. Captive cervidae carry both bovine brucellosis and bovine tuberculosis and can infect traditional livestock with these diseases. Ratites are susceptible to diseases that pose threats to the commercial poultry industry where large investments have been made to fight diseases such as avian influenza and newcastle disease.
- ▶ For example, in July of 1993, the agency worked with the U.S. Department of Agriculture (USDA) in the investigation and control of a potentially dangerous outbreak of avian influenza that was detected in emu and rhea chicks in central and east Texas. Emergency disease control measures were implemented to protect both traditional and exotic fowl threatened by this disease outbreak that turned out to be the first avian influenza diagnosis in ratites in the United States.
- ▶ The state's wildlife population is susceptible to diseases carried by non-traditional livestock and fowl. For example, the increasing threat of bovine tuberculosis is of concern because farmed or ranched deer and elk are susceptible to the disease. From January 1991 through September 1993, bovine tuberculosis was found in 24 captive deer and elk herds located throughout the United States, two of which are located in Texas. The potential for wild deer and elk to contract tuberculosis through captive deer and elk is a concern, particularly with the increasing number of game ranches in Texas.
- ▶ **The commission's current statutory authority for the regulation of exotic livestock and fowl is insufficient to adequately control exotic animal diseases in Texas especially when compared to its authority to regulate traditional livestock diseases.**
  - ▶ Currently, the statute generally authorizes the commission to issue rules related to the testing, movement, inspection and treatment of exotics. The statute provides quarantine authority to the commission for traditional livestock, but this authority does not clearly cover quarantines for exotics in the case of a disease outbreak. The commission lacks specific movement and control authority, certain types of inspection authority, and market testing authority. The commission also lacks the authority to require recordkeeping of exotic livestock sales, conduct lab tests, and penalize individuals who violate the commission's law or rules.
  - ▶ Based on specific statutory authority, the Texas Animal Health Commission has been able to develop a standard approach consisting of five major strategies to regulate animal diseases in traditional livestock. These strategies — prevention, surveillance, diagnosis, control and eradication — serve as the state's

fundamental approach to eliminating animal diseases. (These strategies are described in detail in the background section of this report.) The commission lacks the authority to implement a similar approach for the control of exotic livestock and fowl diseases.

- ▶ **The state cannot rely on the federal government to establish regulations for the control of exotic animal diseases because the federal government currently has little or no authority to regulate these diseases, particularly for ratites.**
  - ▶ The USDA focuses its exotic animal disease control efforts on foreign animals being imported to the United States. The USDA through the Animal and Plant Health Inspection Service (APHIS) sets the minimum requirements for the entry of exotics from other countries and conducts inspections of imported animals. Some regulations on bovine tuberculosis in cervidae have been developed, but the USDA has limited resources in this area.
  - ▶ The federal government can respond to an emergency disease outbreak, but only after the situation has been declared an actual emergency by the U.S. Secretary of Agriculture and funding and resources have been made available. The federal response may take a significant length of time. Consequently, in an emergency, the Texas Animal Health Commission must take the initiative to respond with emergency disease control measures.
- ▶ **The 72nd Legislature proposed a specific regulatory program for exotic livestock and fowl that was studied and debated during the legislative session in 1991. This legislation could serve as the basis for a recommended regulatory structure.**
  - ▶ Senate Bill 309 by Senator Bill Sims and Representative Bruce Gibson was passed by the Senate and reported favorably out of House committee in May 1991. The bill was sent to the Local and Consent Calendar but failed to make it to the house floor.
  - ▶ The bill provided new statutory authority for the TAHC specifically addressing the regulation of exotic animal movement, exotic dealer recordkeeping, inspection of exotic livestock at the market, and misdemeanor penalties for violations of commission regulations.
- ▶ **In developing a comprehensive program of exotic animal disease control, the Texas Animal Health Commission may require the use of ad hoc committees composed of exotic livestock and fowl producers to provide needed technical expertise.**

- ▶ Establishing the regulation of nontraditional livestock and fowl will require specific rules on items such as methods of permanent identification, procedures for disease testing, certification requirements, and requirements for the handling and slaughter of infected animals. Expert input from veterinarians, producers and others could provide the commission with invaluable information and perspective in developing the state's policies in this area.

## \_\_\_\_\_ Conclusion \_\_\_\_\_

The exotic livestock and fowl industry is growing rapidly and disease outbreaks have led to concerns about the commission's ability to establish regulations to control such diseases. Exotic livestock and fowl carry diseases that can threaten traditional livestock, the state's wildlife population, and the exotic livestock industry itself. The commission's statute provides some general regulatory authority, but current law is not adequate to set up a sufficient disease control program. In addition, federal regulation and oversight in this area is minimal, making disease control for nontraditional livestock the state's responsibility.

## \_\_\_\_\_ Recommendation \_\_\_\_\_

- ▶ **The statute should be changed to provide the TAHC with adequate authority to regulate exotic livestock and fowl diseases in Texas. The specific statutory changes are shown in the chart on page 43.**

This proposal would authorize the Texas Animal Health Commission to effectively regulate and control diseases associated with nontraditional livestock and fowl. The commission's authority would become clearly defined in law and consistent with its current authority for regulating traditional livestock and fowl. This approach ensures that the commission is able to respond to emergency disease outbreaks and could allow the commission to take action against individuals who violate state laws and regulations. This recommendation also provides for input from exotic livestock and fowl producers who are most affected by the development of new commission regulations in the area of exotic livestock production.

The changes recommended on page 43 were developed using S.B. 309 (by Senator Sims and Representative Gibson from the 72nd Legislature) as the basic structure to formulate the specifics of the approach. Discussions with representatives of the exotic livestock industry and the agency also helped in creating the proposed regulatory program.

**Recommendations for the Regulation of Exotic Animal Diseases  
Texas Animal Health Commission**

- 1. Authorize the TAHC to inspect and detain shipments of exotic livestock and fowl and exotic livestock and fowl products.**
- 2. Authorize the commission to require producers to use a standard method of identifying exotic livestock and fowl.**
- 3. Require dealers of exotic livestock and fowl to keep records and allow the agency to inspect and copy those records.**
- 4. Specify that exotic livestock and fowl are included in the commission's current quarantine authority.**
- 5. Require veterinarians to report the existence of diseases among exotic livestock and fowl including the name and address of the producer and the location of the animals involved.**
- 6. Allow the agency to inspect exotic livestock and fowl at a livestock market or other place of sale.**
- 7. Authorize the commission to adopt rules for testing, immunizing, dipping, and permitting exotic livestock and fowl that are moving to and from livestock markets.**
- 8. Authorize the commission to require a certificate, vaccination, test, or permit for entering exotic livestock and fowl in an exhibition and provide a Class C misdemeanor penalty for violating such a requirement. Class B penalties should be applied for repeat offenders.**
- 9. Authorize a Class C misdemeanor penalty for exotic livestock and fowl producers that refuse to permit inspection of an animal shipment. Class B penalties should be applied for repeat offenders.**
- 10. Authorize a Class C misdemeanor for any person who refuses to allow the commission to examine an exotic animal carcass or part of an exotic animal carcass that is believed to be affected by a disease. Class B penalties should be applied for repeat offenders.**
- 11. Authorize a Class C misdemeanor for movement of exotic livestock and fowl in violation of an established quarantine. Class B penalties should be applied for repeat offenders.**
- 12. Authorize the commission to establish ad hoc committees as needed to develop proposed rules for the regulation of exotic livestock and exotic fowl.**

**Fiscal Impact**

Minimal additional costs may be associated with this recommendation. If the commission chooses to establish an ad hoc advisory committee, the commission would likely expend a minimum amount of funds to support the committee's effort. However, the agency's current budget should be sufficient to cover any additional costs.

***ACROSS-THE-BOARD  
RECOMMENDATIONS***

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*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 is denoted in abbreviated chart form.*

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<b>TEXAS ANIMAL HEALTH COMMISSION</b>	
<b>RECOMMENDATIONS</b>	<b>ACROSS-THE-BOARD PROVISIONS</b>
	<b>A. GENERAL</b>
Apply/Modify	1. Require at least one-third public membership on state agency policymaking bodies.
Already in Statute	2. Require specific provisions relating to conflicts of interest.
Already in Statute	3. Prohibit persons required to register as a lobbyist from acting as general counsel to the agency or policymaking body or serving as a member of the policymaking body.
Update	4. Require that appointment to the policymaking body be made without regard to the appointee's race, color, disability, sex, religion, age, or national origin.
Update	5. Specify grounds for removal of a member of the policymaking body.
Update	6. Require agencies to prepare an annual financial report that meets the reporting requirements in the appropriations act.
Update	7. Require the agency to establish career ladders.
Update	8. Require a system of merit pay based on documented employee performance.
Already in Statute	9. Provide for notification and information to the public concerning agency activities.
Apply	10. Require that all agency funds be placed in the treasury to ensure legislative review of agency expenditures through the appropriations process.
Apply	11. Require information to be maintained on complaints.
Update	12. Require that all parties to written complaints be periodically informed in writing as to the status of the complaint.
Update	13. Require development of an E.E.O. policy.
Already in Statute	14. Require that information on standards of conduct be provided to members of policymaking bodies and agency employees.
Already in Statute	15. Provide for public testimony at meetings of the policymaking body.
Update	16. Require the agency's policymaking body to develop and implement policies that clearly separate the functions of the policymaking body and the agency staff.
Apply	17. Require development of an accessibility plan and compliance with state and federal accessibility laws.
Update	18. Provide for the Governor to designate the presiding officer of a state agency's policymaking body.
Apply	19. Require the agency to comply with the state's open meetings law and administrative procedures law.
Apply	20. Require training for members of policymaking bodies.

<b>TEXAS ANIMAL HEALTH COMMISSION</b> (cont.)	
<b>RECOMMENDATIONS</b>	<b>ACROSS-THE-BOARD PROVISIONS</b>
	<b>B. LICENSING</b>
Not Applicable	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
Not Applicable	2. Provide for notice to a person taking an examination of the results of the examination within a reasonable time of the testing date.
Not Applicable	3. Provide an analysis, on request, to individuals failing the examination.
Not Applicable	4. Authorize agencies to establish a procedure for licensing applicants who hold a license issued by another state.
Not Applicable	5. Authorize agencies to issue provisional licenses to license applicants who hold a current license in another state.
Not Applicable	6. Authorize the staggered renewal of licenses.
Not Applicable	7. Authorize agencies to use a full range of penalties.
Not Applicable	8. Specify disciplinary hearing requirements.
Not Applicable	9. Revise restrictive rules or statutes to allow advertising and competitive bidding practices that are not deceptive or misleading.
Not Applicable	10. Require the policymaking body to adopt a system of continuing education.

**TEXAS ANIMAL HEALTH COMMISSION**

**Report prepared by:**

**Charla Ann Baker**

**Jay Schmidt**

**Barbara Hunley**

**Joey Longley**

**Sunset Advisory Commission**

**P.O. Box 13066**

**Austin, Texas 78711**

**(512) 463-1300**

