

# SUNSET ADVISORY COMMISSION

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STAFF REPORT WITH FINAL RESULTS



**Texas Animal  
Health Commission**

**2020–2021**

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**87TH LEGISLATURE**

# SUNSET ADVISORY COMMISSION



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*Cover photo: The Texas Capitol is a marvel of craftsmanship down to the smallest details. Elaborate, custom-designed hardware accentuates the beautifully carved wooden doors. The Sargent and Co. of New Haven, Connecticut created the glass molds especially for the building in the 1880s. The Capitol hardware features incised designs of geometric and stylized floral motifs. This reflects the shift from the Renaissance Revival style of the building's interior architecture to the simpler Aesthetic Movement for its decorative details. Photo credit: Janet Wood*

# TEXAS ANIMAL HEALTH COMMISSION

SUNSET STAFF REPORT WITH FINAL RESULTS

2020–2021

87TH LEGISLATURE

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## HOW TO READ SUNSET REPORTS

For each agency that undergoes a Sunset review, the Sunset Advisory Commission publishes three versions of its staff report on the agency. These three versions of the staff report result from the three stages of the Sunset process, explained in more detail at [sunset.texas.gov/how-sunset-works](http://sunset.texas.gov/how-sunset-works). The current version of the Sunset staff report on this agency is noted below and can be found on the Sunset website at [sunset.texas.gov](http://sunset.texas.gov).

### **Sunset Staff Report**

The first version of the report, the Sunset Staff Report, contains Sunset staff's recommendations to the Sunset Commission on the need for, performance of, and improvements to the agency under review.

### **Sunset Staff Report with Commission Decisions**

The second version of the report, the Sunset Staff Report with Commission Decisions, contains the original staff report as well as the commission's decisions on which statutory recommendations to propose to the Legislature and which management recommendations the agency should implement.

### **CURRENT VERSION: Sunset Staff Report with Final Results**

The third and final version of the report, the Sunset Staff Report with Final Results, contains the original staff report, the Sunset Commission's decisions, and the Legislature's final actions on the proposed statutory recommendations.

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# FINAL RESULTS

## Senate Bill 705 Lucio (Cyrier)

### Summary

The Texas Animal Health Commission (TAHC) works to ensure the health and marketability of the state's animal agriculture industry by protecting livestock and fowl from foreign and domestic diseases, and controlling the spread of outbreaks that occur. Senate Bill 705 continues TAHC for 12 years and contains provisions to bring TAHC's statute and operations in line with current best practices for disease and pest management. Because of a drastic workload reduction associated with the near elimination of cattle brucellosis, along with other inefficiencies and problems, S.B. 705 designates the Texas A&M Veterinary Medical Diagnostic Laboratory (TVMDL), rather than TAHC's lab, as the state's regulatory animal health lab. Finally, provisions in S.B. 705 strengthen and improve the consistency of TAHC's investigation and enforcement activities across its six regions so it can better mitigate the risk of disease outbreak in Texas.

The following material summarizes results of the Sunset review of TAHC, including management actions directed to the agency that do not require legislative action..

### ISSUE 1— Animal Health Laboratory

**Recommendation 1.1, Adopted** — Require TAHC to close its lab and designate TVMDL as the state's regulatory animal health lab in statute to the extent testing is available, efficient, and cost effective. For a test not offered by TVMDL, authorize TAHC to use other labs if cost-effective. TVMDL would provide TAHC access to all necessary disease testing data, including both positive and negative test results. Upon request by the TAHC Executive Director or their designee, TVMDL would provide regulatory disease records and statistical and survey information related to regulatory, reportable, and other diseases or pests of concern that affect livestock or poultry, in a timely manner.

### ISSUE 2 — Enforcement and Animal Health Programs

**Recommendation 2.1, Adopted** — Require TAHC to regularly conduct trend analysis of its compliance data.

**Recommendation 2.2, Adopted** — Direct TAHC to complete and implement its penalty matrix by February 1, 2021. (Management action – nonstatutory)

**Recommendation 2.3, Adopted** — Direct TAHC to include explicit guidance in all field manuals on documenting incidents of noncompliance and corresponding educational conversations. (Management action – nonstatutory)

**Recommendation 2.4, Adopted** — Direct TAHC to share its compliance database with regional office staff to facilitate information flow between Austin and the field by February 1, 2021. (Management action – nonstatutory)

**Recommendation 2.5, Adopted** — Direct TAHC and the Texas Department of Agriculture to enter into a memorandum of understanding to ensure TAHC is notified when animals are rejected at state animal export facilities by February 1, 2021. Additionally, direct TAHC to work with the Texas Department of Agriculture to conduct a study that tracks animals rejected at any export facility. The study should track the reason for rejection, length of time between when a rejection occurs and when it is reported to TAHC, final resolution of rejection, solutions to resolve any gaps in reporting requirements at export facilities, and any other significant findings. TAHC should report its findings to the Legislature and the Sunset Commission by June 30, 2022. (Management action – nonstatutory)

**Recommendation 2.6, Adopted** — Direct TAHC to review and update all training materials and guidelines for consistency and conformity with statute and rules. (Management action – nonstatutory)

### ISSUE 3 — TAHC Laws, Rules, and Information

**Recommendation 3.1, Adopted** — Remove outdated, overly prescriptive, restrictive provisions in statute to provide TAHC more flexibility to prevent, manage, and eradicate reportable animal diseases.

**Recommendation 3.2, Adopted** — Authorize TAHC to establish advisory committees by rule.

**Recommendation 3.3, Adopted** — Direct TAHC to provide clear, consistent public information about state animal health laws and rules, regulatory programs, and appeals processes by February 1, 2021. (Management action – nonstatutory)

**Recommendation 3.4, Adopted** — Direct TAHC to adopt a policy to ensure each rule undergoes meaningful review pursuant to state law, and update the Sunset Commission on its progress by February 1, 2021. (Management action – nonstatutory)

**Recommendation 3.5, Adopted** — Direct TAHC and Texas A&M AgriLife Extension Service to enter into a memorandum of understanding to jointly develop and coordinate educational programs and information about animal health. (Management action – nonstatutory)

### ISSUE 4 — Continue

**Recommendation 4.1, Adopted** — Continue the Texas Animal Health Commission for 12 years.

**Recommendation 4.2, Adopted** — Update the standard Sunset across-the-board requirements on commission member training and grounds for removal.

### NEW RECOMMENDATION ADDED BY THE SUNSET COMMISSION

**Complaints information update, Adopted** — Update the standard across-the-board requirement related to developing and maintaining a complaints system and making information on complaint procedures available to the public. Specify agencies may not inform parties of the status of complaints if doing so would jeopardize an ongoing investigation.

### Provisions Added by the Legislature

**Quarantine authority delegation, Adopted** — Authorize TAHC to delegate its authority to establish a quarantine to the executive director.



**Disease reporting and slaughter requirements, Adopted** — Authorize TAHC to require a report within 24 hours of a diagnosis of a USDA reportable disease and to require slaughter for animals with a USDA reportable disease.

**Remove rule expiration, Adopted** — Remove automatic expiration of rules regarding the duty to report certain animal diseases within 24 hours.

**Rule repeal exemption, Adopted** — Exempt disease lists in rule from the statutory requirement for an agency to repeal a rule that imposes a cost on regulated persons when adopting rules that increase costs to regulated persons.

## Fiscal Implication Summary

Overall, Senate Bill 705 and the adopted recommendations will result in a positive fiscal impact to the state of about \$128,711 in fiscal year 2022 and \$132,311 in fiscal year 2023 and thereafter. The bill will result in a net reduction of two FTEs due to the closure of TAHC's StateFederal Laboratory in Austin and the designation of TVMDL as the state's regulatory animal health lab.

Calculations are based on the TAHC lab's fiscal year 2020 budget and employees. Savings are associated with eliminating \$787,679 in lab expenditures and seven FTEs. These savings would be offset by the need for \$658,968 for TVMDL to perform the necessary lab services in fiscal year 2022 and \$655,368 each year thereafter. Calculations for TVMDL to perform lab services include four FTEs with a cost of \$187,506 in salaries, \$418,307 for equipment and supplies, and a onetime \$3,600 training expense in fiscal year 2022. TAHC would retain one FTE with a \$49,555 salary to coordinate lab services with TVMDL. These provisions could also result in further savings in the future as TVMDL realizes efficiencies and adjusts its future legislative appropriations requests based on its testing workload from TAHC.

### Texas Animal Health Commission

Fiscal Year	Savings to the General Revenue Fund	Change in Number of FTEs From FY 2019
2022	\$128,711	-2
2023	\$132,311	-2
2024	\$132,311	-2
2025	\$132,311	-2
2026	\$132,311	-2



# SUNSET COMMISSION DECISIONS

## Summary

The following material summarizes the Sunset Commission's decisions on the staff recommendations for the Texas Animal Health Commission (TAHC), as well as modifications and a new recommendation raised during the public hearing.

TAHC works to ensure the health and marketability of the state's animal agriculture industry by protecting livestock and fowl from foreign and domestic diseases, and controlling the spread of outbreaks that occur. The commission found TAHC remains necessary and recommends continuing it for 12 years as an independent, standalone agency, but also recognized TAHC has not fully kept up with Texas' shifting disease landscape.

One of the most significant shifts occurred in recent years as Texas was declared free of cattle brucellosis and federal funding to test for this disease was eliminated, significantly reducing the workload of TAHC's lab. Because of this reduction, along with other problems, the commission determined TAHC's lab is no longer cost-effective or needed, particularly when the better-equipped Texas A&M Veterinary Medical Diagnostic Laboratory (TVMDL) is capable of serving as the state's regulatory animal health lab. The commission also recognized a need to bring the agency's statute and operations in line with current best practices for disease and pest management. Finally, the commission found TAHC needs to strengthen and improve the consistency of its investigation and enforcement activities across its six regions to better mitigate the risk of disease outbreak in Texas.

## ISSUE 1

### The Texas Animal Health Commission's Laboratory Is No Longer Needed or Cost-Effective, and Should Be Closed.

**Recommendation 1.1, Adopted as Modified** — Require TAHC to close its laboratory and designate TVMDL as the state's regulatory animal health laboratory in statute to the extent testing is available, efficient, and cost effective. For a test not offered by TVMDL, authorize TAHC to use other labs if cost-effective. As part of this recommendation, TVMDL would provide TAHC access to all necessary disease testing data, including both positive and negative test results. Upon request by the TAHC Executive Director or their designee, TVMDL would be required to provide regulatory disease records and statistical and survey information related to regulatory, reportable, and other diseases or pests of concern that could affect livestock or poultry, in a timely manner. This data sharing requirement would be included in the memorandum of understanding and contract required by the provisions of the full recommendation on page 17 of this report.

## ISSUE 2

### The Texas Animal Health Commission's Inconsistent and Weak Enforcement Efforts May Increase the Risk of Animal Diseases in Texas.

**Recommendation 2.1, Adopted** — Require TAHC to regularly conduct trend analysis of its compliance data.

**Recommendation 2.2, Adopted as Modified** — Direct TAHC to complete and implement its penalty matrix by February 1, 2021, instead of December 31, 2020. (Management action – nonstatutory)

**Recommendation 2.3, Adopted** — Direct TAHC to include explicit guidance in all field manuals on documenting incidents of noncompliance and corresponding educational conversations. (Management action – nonstatutory)

**Recommendation 2.4, Adopted as Modified** — Direct TAHC to share its compliance database with regional office staff to facilitate information flow between Austin and the field by February 1, 2021, instead of December 31, 2020. (Management action – nonstatutory)

**Recommendation 2.5, Adopted as Modified** — Direct TAHC and the Texas Department of Agriculture to enter into a memorandum of understanding to ensure TAHC is notified when animals are rejected at state animal export facilities by February 1, 2021, instead of December 31, 2020. Additionally, direct TAHC to work with the Texas Department of Agriculture to conduct a study that tracks animals rejected at any export facility. The study should track the reason for rejection, length of time between when a rejection occurs and when it is reported to TAHC, final resolution of rejection, solutions to resolve any gaps in reporting requirements at export facilities, and any other significant findings. TAHC should report its findings to the Legislature and the Sunset Commission by June 30, 2022. (Management action – nonstatutory)

**Recommendation 2.6, Adopted** — Direct TAHC to review and update all training materials and guidelines for consistency and conformity with statute and rules. (Management action – nonstatutory)

## ISSUE 3

### The Texas Animal Health Commission's Outdated Laws, Deficient Rulemaking, and Inadequate Communications Do Not Best Serve Industry or Public Interests.

**Recommendation 3.1, Adopted** — Remove outdated, overly prescriptive, restrictive provisions in statute to provide TAHC more flexibility to prevent, manage, and eradicate reportable animal diseases.

**Recommendation 3.2, Adopted** — Authorize TAHC to establish advisory committees by rule.

**Recommendation 3.3, Adopted as Modified** — Direct TAHC to provide clear, consistent public information about state animal health laws and rules, regulatory programs, and appeals processes by February 1, 2021, instead of December 31, 2020. (Management action – nonstatutory)

**Recommendation 3.4, Adopted as Modified** — Direct TAHC to adopt a policy to ensure each rule undergoes meaningful review pursuant to state law, and update the Sunset Commission on its progress by February 1, 2021, instead of December 31, 2020. (Management action – nonstatutory)

**Recommendation 3.5, Adopted** — Direct TAHC and Texas A&M AgriLife Extension Service to enter into a memorandum of understanding to jointly develop and coordinate educational programs and information about animal health. (Management action – nonstatutory)

## ISSUE 4

Texas Has a Continuing Need for the Texas Animal Health Commission.

**Recommendation 4.1, Adopted** — Continue the Texas Animal Health Commission for 12 years.

**Recommendation 4.2, Adopted** — Update the standard Sunset across-the-board requirements on commission member training and grounds for removal.

## ADOPTED NEW RECOMMENDATION

### Complaints Information Update

Update the standard across-the-board requirement related to developing and maintaining a complaints system and making information on complaint procedures available to the public. Specify agencies may not inform parties of the status of complaints if doing so would jeopardize an ongoing investigation.

## Fiscal Implication Summary

Overall, the Sunset Commission's recommendations would result in an estimated positive fiscal impact to the state of \$2,547,335 over the next five years. The recommendation to close TAHC's lab and designate TVMDL as the state's regulatory animal health lab would result in estimated annual savings to general revenue of \$506,587 in fiscal year 2022, and \$510,187 in each of the following four fiscal years. The recommendation would also result in an overall reduction of three full-time positions.

This estimate is based on the lab's fiscal year 2019 budget and employee count, and savings associated with eliminating the TAHC lab's expenditures and seven employees. Estimated savings based on eliminating the lab's expenditures of \$1,167,273 would be offset by TAHC's continuing need for \$607,086 in appropriations to pay TVMDL for lab services, and a staff position to coordinate these services. TVMDL would need four additional staff positions and would incur a one-time cost of \$3,600 in fiscal year 2022 to train employees for testing.

### Texas Animal Health Commission

Fiscal Year	Savings to the General Revenue Fund	Change in Number of FTEs From FY 2019
2022	\$506,587	-3
2023	\$510,187	-3
2024	\$510,187	-3
2025	\$510,187	-3
2026	\$510,187	-3



# SUMMARY OF SUNSET STAFF REPORT

The animal agriculture industry historically has played an outsized role in the story of Texas, from the famous cattle drives of the 19th century to the nation-leading economic engine the industry is today. The Texas Animal Health Commission (TAHC) works to ensure the health and marketability of the state's livestock and fowl by protecting these animals from foreign and domestic diseases, and controlling the spread of diseases when outbreaks do occur. In the 127 years since the Legislature created TAHC's predecessor, the Texas Livestock Sanitary Commission, the agency has seen great change and growth in the animal agriculture industry, but the primary conditions that drove the agency's creation still exist today.

Animal diseases such as tuberculosis, and pests such as cattle fever ticks, can have a serious impact on this economically significant industry, and the state needs an agency to help prevent outbreaks and mitigate effects when outbreaks do occur. Beyond directly affecting industry, diseases originating from animals can drastically disrupt the safe food supply and interrupt trade, cost millions of dollars to manage, and even affect human health. With this in mind, Sunset staff found TAHC remains necessary and recommends continuing it for 12 years as an independent, standalone agency. However, in examining the agency's ability to prevent, control, and eradicate animal diseases in Texas, the review found TAHC has not fully kept up with Texas' shifting disease landscape.

Texas continues to need TAHC to help prevent animal disease outbreaks and mitigate their effects.

One of the most significant shifts occurred a decade ago, when Texas was declared free of cattle brucellosis. This declaration resulted in another major change in 2019 when federal funding to test for this disease was eliminated, significantly reducing the workload of TAHC's lab. Because of this reduction, along with other problems, the review determined TAHC's lab is no longer cost-effective or needed, particularly when the better-equipped Texas A&M Veterinary Medical Diagnostic Laboratory (TVMDL) is capable of serving as the state's regulatory animal health lab.

TAHC's regulatory authority has also not kept pace with Texas' ever-changing disease environment. The review identified several outdated statutory provisions that limit TAHC's ability to effectively do its job, and that are out of line with current best practices for disease and pest management. Also, TAHC's industry-friendly approach to regulation drives agency policy, limiting enforcement actions. TAHC largely relies upon voluntary compliance and education to enforce its statute and rules, which is challenging when the agency does not have all the regulatory tools it needs to best regulate animal health. TAHC also needs to strengthen and improve the consistency of its investigation and enforcement activities across its six regions.

The following material highlights Sunset staff's key recommendations for the Texas Animal Health Commission.

## Sunset Staff Issues and Recommendations

### ISSUE 1

#### The Texas Animal Health Commission's Laboratory Is No Longer Needed or Cost-Effective, and Should Be Closed.

TAHC operates an animal health lab to identify a limited number of animal diseases and pests that can spread disease. The review identified serious problems at the lab, including a drastic workload reduction that led to layoffs and inefficient operations; ongoing management, proficiency, and quality control issues that resulted in the lab's suspension from a federal lab network; and noncompliance with legislative directives to be cost-effective. Sunset staff concluded TAHC should close its lab and outsource its lab services to TVMDL, which could provide lab services more cost-effectively, reliably, and efficiently than TAHC.

#### Key Recommendation

- Require TAHC to close its laboratory and designate TVMDL as the state's regulatory animal health laboratory in statute.

### ISSUE 2

#### The Texas Animal Health Commission's Inconsistent and Weak Enforcement Efforts May Increase the Risk of Animal Diseases in Texas.

TAHC works to ensure compliance with animal health regulations by investigating complaints and inspecting livestock and records at places where animals congregate, such as livestock markets. TAHC relies on its field inspectors to document noncompliance and educate producers. However, the agency cannot ensure consistent enforcement across the state due to the lack of a penalty matrix to guide uniform application of sanctions, gaps in compliance data, and unclear guidance to field staff, which may increase the risk of diseases. TAHC should standardize its penalties and compliance guidance to field inspectors and better track and analyze data trends to ensure more consistent enforcement throughout the state.

#### Key Recommendations

- Require TAHC to regularly conduct trend analysis of its compliance data.
- Direct TAHC to complete and implement its penalty matrix.
- Direct TAHC to share its compliance database with regional office staff to facilitate information flow between Austin and the field.
- Direct TAHC and the Texas Department of Agriculture to enter into a memorandum of understanding to ensure TAHC is notified when animals are rejected at state animal export facilities.



## ISSUE 3

### The Texas Animal Health Commission's Outdated Laws, Deficient Rulemaking, and Inadequate Communications Do Not Best Serve Industry or Public Interests.

The agency protects livestock and fowl from the spread of diseases and pests that carry disease by regulating animal movement and locations where animals congregate. However, outdated, inconsistent, or overly prescriptive laws hamper TAHC's ability to incorporate modern animal health best practices. Many of the agency's rules and regulatory publications are out of date, confusing, vague, or poorly organized, making compliance harder for the industry. TAHC also lacks general authority to appoint advisory committees for rulemaking processes and instead uses informal working groups that are closed to the public and have unbalanced representation. Finally, TAHC and Texas A&M AgriLife Extension Service would benefit from a formal process to jointly develop educational programs and materials on animal health regulations and disease management.

#### Key Recommendations

- Remove outdated, overly prescriptive, restrictive provisions in statute to provide TAHC more flexibility to prevent, manage, and eradicate reportable animal diseases.
- Authorize TAHC to establish advisory committees by rule.
- Direct TAHC to provide clear, consistent public information about state animal health laws and rules, regulatory programs, and appeals processes.
- Direct TAHC and Texas A&M AgriLife Extension Service to enter into a memorandum of understanding to jointly develop and coordinate educational programs and information about animal health.

## ISSUE 4

### Texas Has a Continuing Need for the Texas Animal Health Commission.

Texas benefits from a state agency that works to prevent, control, and eradicate diseases and pests that can negatively affect the economically significant animal agriculture industry. Sunset staff concluded an independent agency focused solely on animal health continues to offer the state an efficient approach to manage evolving and reoccurring threats to livestock and fowl.

#### Key Recommendation

- Continue the Texas Animal Health Commission for 12 years.

## Fiscal Implication Summary

Overall, the recommendations in this report would result in an estimated positive fiscal impact to the state of \$2,547,335 over the next five years. The recommendation to close TAHC's lab and designate

TVMDL as the state’s regulatory animal health lab would result in estimated annual savings to general revenue of \$506,587 in fiscal year 2022, and \$510,187 in each of the following four fiscal years. The recommendation would also result in an overall reduction of three full-time positions.

This estimate is based on the lab’s fiscal year 2019 budget and employee count, and savings associated with eliminating the TAHC lab’s expenditures and seven employees. Estimated savings based on eliminating the lab’s expenditures of \$1,167,273 would be offset by TAHC’s continuing need for \$607,086 in appropriations to pay TVMDL for lab services, and a staff position to coordinate these services. TVMDL would need four additional staff positions and would incur a one-time cost of \$3,600 in fiscal year 2022 to train employees for testing.

**Texas Animal Health Commission**

<b>Fiscal Year</b>	<b>Savings to the General Revenue Fund</b>	<b>Change in Number of FTEs From FY 2019</b>
2022	\$506,587	-3
2023	\$510,187	-3
2024	\$510,187	-3
2025	\$510,187	-3
2026	\$510,187	-3

# AGENCY AT A GLANCE

The Legislature created the Texas Livestock Sanitary Commission in 1893 to manage an outbreak of cattle fever ticks that threatened the cattle industry in Texas and 12 other states. In 1959, the Legislature renamed the agency the Texas Animal Health Commission (TAHC), and the agency now works to protect the health of all native and exotic livestock and fowl. The agency's mission is to:

- Protect the animal agriculture industry from and mitigate the effects of domestic, foreign, and emerging diseases.
- Increase the marketability of Texas livestock commodities at the state, national, and international levels.
- Promote and ensure animal health and productivity.
- Protect human health from animal diseases that are transmissible to people.
- Prepare for and respond to emergencies involving animals.

## Key Facts

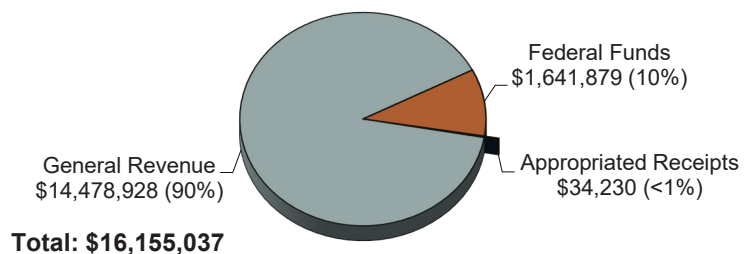
- **Governance.** The governor appoints the agency's 13-member commission with the advice and consent of the Senate to serve staggered six-year terms. Statute requires commission membership to include three public members and a member from each of the following industries: cattle raisers, dairy, equine, exotic livestock or fowl, feedlot, livestock marketing, poultry, sheep and goat, swine, and veterinary medicine.<sup>1</sup> The governor names the commission chair, and statute requires the governor to make the appointments in proportionate representation to geographic regions of the state.<sup>2</sup> The commissioners use working groups to inform rulemaking and help guide agency policy, but do not use formal advisory committees.
- **Funding.** The agency receives a combination of state and federal funds, and collects revenue from appropriated receipts, as demonstrated in the chart, *TAHC Sources of Revenue*.

The agency's operating budget for fiscal year 2019 was a little more than \$16 million. Of that amount, almost \$14.5 million, or about 90 percent, came from the state's General Revenue Fund. The rest came from the U.S. Department of Agriculture (USDA) and the U.S. Department of Homeland Security for cooperative disease management

programs and disaster response activities. The agency collected almost \$600,000 in fee revenue from inspections, the Fowl Registration Program, and orders for health certificates from veterinarians.

As demonstrated in the chart on the following page, *TAHC Expenditures*, the agency spent 72 percent of its funding on field operations in fiscal year 2019, mostly for salaries and wages. Field operations

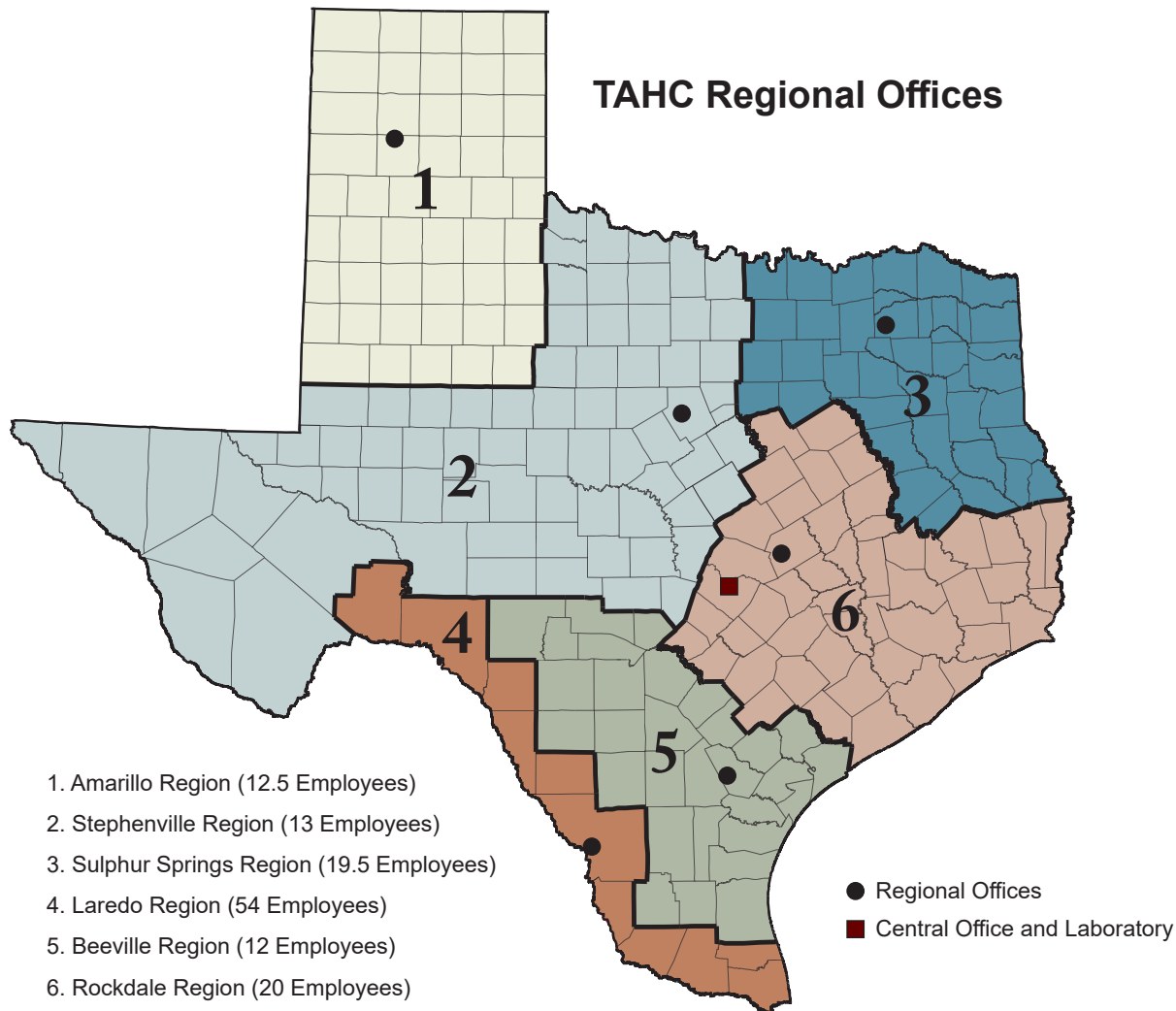
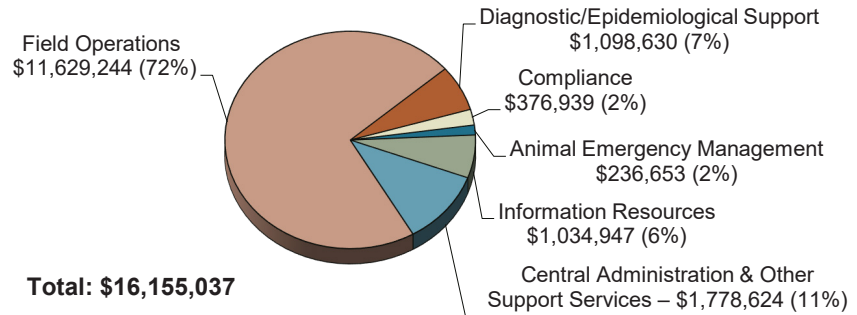
**TAHC Sources of Revenue – FY 2019**



include inspections of animals and records at livestock markets, events, and slaughter plants across the state. Appendix A outlines the agency’s use of historically underutilized businesses in purchasing goods and services for fiscal years 2017–19.

- **Staffing.** In fiscal year 2019, TAHC employed nearly 208 employees, most of whom are inspectors working in one of the agency’s six regional offices. The map, *TAHC Regional Offices*, shows the locations of regional offices and the number of employees in each region for fiscal year 2019. About 77 staff are based at the central office and TAHC’s lab in Austin. The agency’s executive director also serves as the Texas state veterinarian. Appendix B compares the agency’s workforce composition to the percentage of minorities in the statewide civilian labor force for fiscal years 2017–19.

**TAHC Expenditures – FY 2019**



- **Regulate animal movement.** TAHC regulates the movement of certain animals into and within the state to protect the health and productivity of the livestock and fowl types found in the textbox, *Animals Regulated by TAHC*. TAHC has authority to control or eradicate any disease affecting these animals, even if the disease is transmitted by animal species not subject to its jurisdiction.<sup>3</sup>

The agency attempts to prevent diseased animals from entering the state by regulating entry requirements, such as requiring health certificates and documentation of disease testing.<sup>4</sup> If an inspector finds an animal without testing documentation or one showing signs of disease or infestation, the agency can prohibit movement of the individual animal or the whole herd until TAHC rules out disease or infestation. TAHC also regulates animal movement by requiring certain inspections, identification, and testing before sale at livestock markets or congregation at shows and events.<sup>5</sup>

### Animals Regulated by TAHC

**Livestock:** cattle, horses, mules, donkeys, sheep, goats, llamas, alpacas, and swine.

**Domestic fowl:** chickens, turkeys, ducks, geese, guineas, pheasants, quail, and doves.

**Exotic livestock:** ungulates (hoofed mammals) not native to Texas, including animals from the swine, horse, tapir, rhinoceros, elephant, deer, and antelope families.

**Exotic fowl:** ratites and other fowl not native to Texas, including ostriches, emus, and rheas.

- **Monitor and test animals for diseases and pests.** The agency monitors animals for communicable diseases and pests through inspections, herd certification and fowl registration programs, and collection and testing of milk, blood, and tissue specimens.<sup>6</sup> The table on the following page, *Animal Diseases and Pests of Concern in Texas*, lists the main diseases and pests the agency currently monitors. TAHC also conducts preparedness exercises for high-consequence foreign and emerging diseases such as foot and mouth disease or African swine fever. Some diseases of concern are zoonotic, or transmissible from animals to humans.

Staff inspects animals and records at livestock markets, feedlots, slaughter plants, feral swine holding facilities, certain events, and roadside checkpoints, as well as at quarantined properties and those adjacent to and affected by them. In fiscal year 2019, the agency conducted 104,488 inspections statewide. Fowl sellers, distributors, and transporters who do not participate in a federal disease control program must register under the agency's Fowl Registration Program, which included 847 flocks in fiscal year 2019.<sup>7</sup>

TAHC inspectors, agency-certified sample collectors, and private veterinarians can send specimens either to the agency's lab or to the Texas A&M Veterinary Medical Diagnostic Laboratory for analysis. The TAHC lab received more than 320,000 specimens in fiscal year 2019. The two labs have a memorandum of understanding intended to coordinate efforts, share test results, and reduce duplication of activities.

- **Respond to animal disease outbreaks.** If TAHC confirms the existence of a communicable disease or pest infestation, the agency issues a quarantine and conducts an epidemiological investigation to determine the source and extent of exposure. Agency staff tracks animal movements and finds other potentially infected or exposed animals using records from livestock markets, feedlots, events, and slaughter plants. The agency's ability to identify and track individual animals is known as animal disease traceability, and tagging animals is essential to this process. The agency has species-specific identification rules and maintains animal identification information for the purposes of disease traceability. The textbox on the following page, *Disease Outbreak Activity*, lists examples of recent TAHC outbreak response activity.

### Animal Diseases and Pests of Concern in Texas

Disease or Pest	Affected Species	Zoonotic (can infect humans)
Anthrax	Cattle, sheep, goats, equine, cervids, and antelopes <sup>8</sup>	Yes
Avian Influenza	Poultry	Yes
Brucellosis	Cattle, swine, sheep, and goats	Yes
Cattle Fever Ticks	Cattle, antelope, cervids, and equine	No
Chronic Wasting Disease	CWD-susceptible cervids	No*
Equine Herpesvirus Myeloencephalopathy	Equine	No
Equine Infectious Anemia	Equine	No
Equine Piroplasmiasis	Equine	No
Infectious Laryngotracheitis	Poultry	No
Pseudorabies	Swine, cattle, sheep, and goats	No
Pullorum Disease and Fowl Typhoid (PT)	Poultry	Yes
Scrapie	Sheep and goats	No
Trichomoniasis	Cattle	No
Tuberculosis	Cattle and cervids	Yes
Vesicular Stomatitis Virus	Equine	No

\* The Centers for Disease Control and Prevention recommends not eating meat from CWD-positive animals.<sup>9</sup>

- **Enforce compliance with animal health regulations.**

The agency investigates complaints of alleged violations of statute and rules. Members of the public can file complaints, but TAHC field staff identifies the majority of compliance issues in the course of conducting regular inspections. Common violations include sale of dairy cattle without proper identification, sale or congregation of horses without proof of negative disease status, and movement of animals without valid health certificates. TAHC has authority to impose an administrative penalty of up to \$1,000 per day for violations of its rules.<sup>10</sup> The agency can also refer violations of statute, which are generally either Class C or Class B misdemeanors, to county courts. The agency completed 1,458 enforcement actions in fiscal year 2019, including issuing 1,282 informational or warning letters and one administrative penalty, and referring 10 cases for criminal prosecution in county courts.

- **Prepare for and respond to emergencies.** The agency prepares for and responds to natural and man-made emergencies that affect livestock, fowl, and pets.<sup>11</sup> Three emergency management staff members develop response plans, conduct preparedness exercises, and coordinate emergency response activities among local, state, and federal stakeholders. During a natural disaster, field personnel

**Disease Outbreak Activity  
FY 2019**

- Cattle fever tick eradication efforts.
- Anthrax outbreak response at 20 properties in five counties, affecting multiple animal species.
- Tuberculosis monitoring and quarantine among beef and dairy cattle.
- Vesicular stomatitis outbreak among horses and cattle in 37 counties.

conduct livestock damage assessments, and help rescue and supply food for livestock and pets. During Hurricane Harvey in 2017, 60 percent of agency staff were involved in response efforts, and the agency coordinated the activities of over 30 agencies and organizations.<sup>12</sup> Efforts included hosting the Animal Response Operations Coordination Center, rescuing livestock from flooded areas, helping farmers and ranchers feed stranded cattle, assisting county authorities who were rescuing pets and taking them to shelters, coordinating the evacuation of zoo animals, identifying animal evacuation shelters, and collecting and reporting damage assessments to USDA and the Federal Emergency Management Agency.

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<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 161.021(a), Texas Agriculture Code.

<sup>2</sup> Section 161.021(b), Texas Agriculture Code.

<sup>3</sup> Section 161.041(b), Texas Agriculture Code.

<sup>4</sup> 4 T.A.C. Chapter 51.

<sup>5</sup> Sections 161.041, 161.0411, 161.054, and 161.114, Texas Agriculture Code.

<sup>6</sup> Texas Animal Health Commission (TAHC) has nine herd certification programs, which are voluntary programs requiring participants to regularly test a percentage of their animals and submit to inspections in exchange for disease-free status. Having certified disease-free status enables producers to move animals across the state and, in the case of the chronic wasting disease program, facilitates interstate movement of deer.

<sup>7</sup> Section 161.0411, Texas Agriculture Code.

<sup>8</sup> Cervids are members of the deer family, *Cervidae*. Cervids native to Texas, such as white-tailed deer and mule deer, are managed by the Texas Parks and Wildlife Department. Exotic cervids, such as red deer and elk, fall under the jurisdiction of TAHC. Since livestock and exotic cervids may be susceptible to the same diseases as native cervids, the two agencies coordinate closely to monitor the spread of disease.

<sup>9</sup> "Chronic Wasting Disease (CWD) Prevention," Centers for Disease Control and Prevention, last modified October 9, 2018, <https://www.cdc.gov/prions/cwd/prevention.html>.

<sup>10</sup> Section 161.148(b), Texas Agriculture Code.

<sup>11</sup> Section 161.0416, Texas Agriculture Code.

<sup>12</sup> Susan Culp, "Hurricane Response Demonstrates Fellowship," *Texas Veterinarian*, 79, no. 6 (2017): 36, [https://www.tahc.texas.gov/vets/TVMA\\_2017-12.pdf](https://www.tahc.texas.gov/vets/TVMA_2017-12.pdf).





# ISSUE 1

## The Texas Animal Health Commission's Laboratory Is No Longer Needed or Cost-Effective, and Should Be Closed.

### Background

The Texas Animal Health Commission (TAHC) has provided animal health lab services since 1939. TAHC historically operated several labs across the state until 2013, when the agency consolidated all lab activities in one location in Austin as testing and communication became more efficient. The lab tests for a small number of contagious animal diseases, including brucellosis, equine infectious anemia, and pseudorabies virus, and identifies pests such as ticks, mites, and fly larvae that can spread animal diseases. The lab receives specimens from TAHC staff, other state and federal agencies, veterinarians, and state-inspected slaughter plants. The lab does not have statutory authority to charge fees and provides services at no cost to those submitting specimens. The lab had eight employees and \$1.2 million in expenditures in fiscal year 2019.

The lab is a member of the U.S. Department of Agriculture's (USDA) National Animal Health Laboratory Network (NAHLN), which protects the nation's livestock industries by detecting foreign and emerging animal diseases early, testing large numbers of samples rapidly in an outbreak, and confirming disease eradication.<sup>1</sup> NAHLN membership is voluntary and includes 59 federal, state, and university animal health labs.<sup>2</sup> USDA awards federal funds to NAHLN labs to maintain their testing capacity and to reimburse them for performing certain tests. The textbox, *Animal Health Laboratory Tests*, describes the types and purpose of tests these labs may perform.

NAHLN designates state and university labs as Level 1, 2, or 3 based on their qualifications, such as testing capacity, types of facilities, and accreditation status.<sup>3</sup>

- Level 1 labs have the most testing capacity, resources, and membership requirements. For example, they must be fully accredited by a nationally recognized professional organization and have biosafety facilities and surge testing capacity for national emergencies.
- Level 2 labs are similar to Level 1 labs, except they may have provisional instead of full accreditation, are not required to have surge capacity or biosafety facilities, and have the option of meeting other Level 1 lab requirements as their resources allow.
- Level 3 labs primarily perform surveillance testing and have the least testing capacity, resources, and qualifications, including having trained and proficient staff members. They typically are not accredited and NAHLN audits them regularly to confirm they meet the Level 3 qualifications.

#### Animal Health Laboratory Tests

**Regulatory surveillance tests** help regulators ensure animals do not have a contagious disease, even if they appear healthy.

**Regulatory diagnostic tests** help regulators identify diseases in animals with symptoms or exposure to a sick animal.

**Routine diagnostic tests** enable public and private clients to identify and treat a variety of diseases in their animals.

Texas has two NAHLN members with five in-state labs:

- TAHC operates a Level 3 lab in Austin. USDA awarded the lab \$46,000 to maintain testing capacity and \$4,500 in reimbursements for performing one type of test in fiscal year 2019.<sup>4</sup>
- Texas A&M Veterinary Medical Diagnostic Laboratory (TVMDL) is a Level 1 lab and an independent agency administratively housed under the Texas A&M University System in College Station, with Level 1 satellite labs in Amarillo, Center, and Gonzales.<sup>5</sup>

## Findings

### Loss of federal funds for cattle brucellosis testing eliminated most of the lab’s workload, significantly reducing its cost-effectiveness.

The TAHC lab’s workload fell 90 percent after a federal program ended.

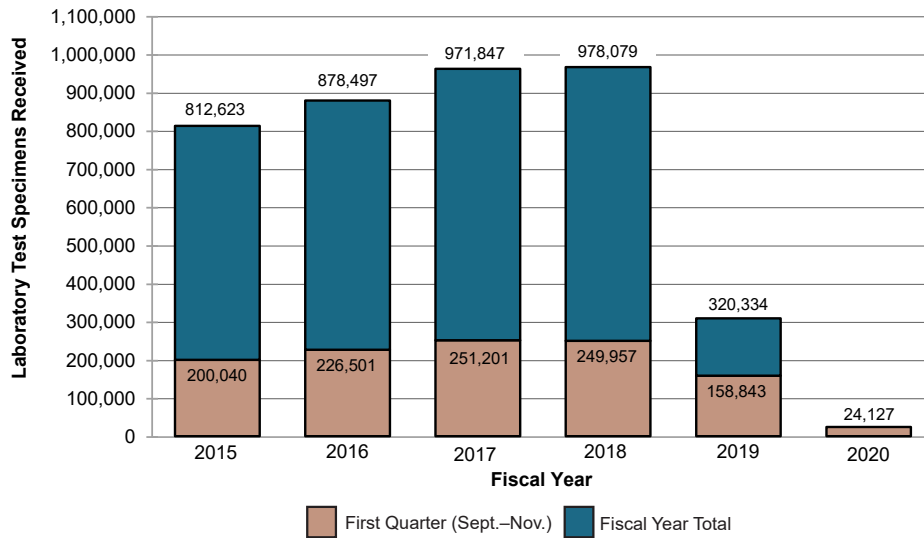
The table, *TAHC Laboratory’s Test Specimens Received*, shows the lab’s historical workload by disease for fiscal years 2015–19. This workload dropped dramatically in March 2019 when USDA stopped funding tests for cattle brucellosis at large federally inspected slaughter plants, a decade after declaring Texas free of the disease. As a result, the lab received 90 percent fewer test samples in the first quarter of fiscal year 2020 than in the first quarters of the previous five years, as shown in the chart on the following page, *TAHC Laboratory’s Declining Workload*.

**TAHC Laboratory’s Test Specimens Received, FYs 2015–2019**

Types of Test Specimens	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
Brucellosis	798,421	866,779	961,502	966,294	308,941
Pseudorabies	7,681	7,424	7,379	8,972	8,942
Equine Infectious Anemia	259	254	230	966	1,126
Bovine Tuberculosis	4,363	1,955	384	90	0
Trichomoniasis	0	2	0	0	0
Tick Identification	1,891	2,071	2,338	1,746	1,315
Mite Identification	0	0	0	0	1
Fly Larvae Identification	8	14	14	11	9
<b>Total</b>	<b>812,623</b>	<b>878,499</b>	<b>971,847</b>	<b>978,079</b>	<b>320,334</b>

While federally inspected slaughter plants no longer have to submit brucellosis specimens to the lab for testing, TAHC still requires 38 smaller state-inspected custom slaughter plants to do so, citing potential risks from stray cattle from Mexico and other cattle that enter Texas illegally. TAHC appealed to USDA to continue funding for disease surveillance purposes. USDA responded that it continues to test stray livestock along the border and offered to work with TAHC to identify risk-based alternatives to its custom slaughter plant brucellosis tests, such as testing herds that show signs of infection.

**TAHC Laboratory’s Declining Workload, FYs 2015–2020**



When the federal slaughter plant brucellosis testing program ended, the lab eliminated five positions, nearly half its staff. However, the lab’s total expenses increased in fiscal year 2019, as shown in the table, *TAHC Laboratory’s Average Operating Expenses Per Test Specimen Received*. The average operating expenses per test specimen has tripled since fiscal year 2017 and is likely to be even higher in fiscal year 2020.

The lab’s average operating expenses per specimen have tripled since FY 2017.

**TAHC Laboratory’s Average Operating Expenses Per Test Specimen Received, FYs 2017–2019**

Annual Operating Expenses*	FY 2017	FY 2018	FY 2019
Salaries, Wages, and Benefits	\$734,911	\$712,774	\$690,639
Professional Fees and Services	\$0	\$14,848	\$0
Consumable Supplies	\$78,235	\$89,970	\$76,644
In-State/Out-of-State Travel	\$17,145	\$10,892	\$21,899
Office Lease	\$185,763	\$186,846	\$187,417
Utilities	\$28,607	\$26,547	\$24,865
Other Operating Costs	\$147,114	\$101,006	\$165,809
<b>Total Operating Expenses</b>	<b>\$1,191,775</b>	<b>\$1,142,956</b>	<b>\$1,167,273</b>
<b>Total Test Specimens</b>	<b>971,847</b>	<b>978,079</b>	<b>320,334</b>
<b>Average Cost Per Test Specimen</b>	<b>\$1.23</b>	<b>\$1.17</b>	<b>\$3.64</b>

\* Excludes TAHC’s expenditures for TVMDL laboratory services.

**Significant and persistent quality control issues at the TAHC lab jeopardize the state’s capacity to perform regulatory tests for some contagious animal diseases.**

NAHLN approves member labs to perform tests for specific foreign and emerging animal diseases if they can demonstrate testing proficiency and

NAHLN suspended TAHC's lab for six months due to quality control issues performing three tests.

compliance with quality standards. TAHC's lab currently performs one type of test for NAHLN that represents a small portion of the lab's total workload. In October 2019, NAHLN suspended the lab from performing three other types of tests due to significant, ongoing issues with the staff's proficiency and the reliability and integrity of the tests they perform. TAHC has six months to correct these issues or NAHLN will terminate the lab's Level 3 status and will not consider reinstating the lab until January 2021 at the earliest.

The information below highlights some of the critical findings by both NAHLN and an internal audit of the lab dating back to 2013. Appendix C describes in detail the events and audit findings that led to the lab's six-month suspension.

- **Repeated proficiency failures.** Since 2016, NAHLN audits show TAHC's lab staff have repeatedly failed or did not complete proficiency exams required by NAHLN, inconsistently performed tests, and incorrectly interpreted test results. A 2016 internal audit also reported the lab could not verify if two employees had passed or even taken their proficiency exams. In 2019, NAHLN confirmed a vesicular stomatitis virus case in Texas but had to revoke the lab's approval to perform tests for the disease when staff failed the proficiency exam. A USDA national lab that confirms positive animal disease tests for state labs also raised concerns about the lab's testing proficiency for certain diseases, further prompting NAHLN to audit the lab in July 2019.
- **Poor management practices.** NAHLN requires labs to adopt and adhere to standard operating procedures and quality control measures, and to provide documentation on demand to confirm test results and identify and correct any quality control issues, especially in an emergency. Since 2013, NAHLN audits repeatedly found TAHC's lab was missing data and documents necessary to verify the reliability and integrity of its testing procedures and results. Lab staff also did not follow standard quality controls and operating procedures, such as failing to maintain clean equipment and improperly storing reagent chemicals, which detect diseases in specimens, at temperatures that could alter test results.

Lab staff failed proficiency exams and did not follow standard procedures.

**TAHC has not fully complied with a legislative directive to use TVMDL's more cost-effective lab services.**

For the past 20 years, the Legislature has adopted a budget rider requiring TAHC to have TVMDL perform its regulatory lab tests unless TAHC's lab can perform them more cost-effectively; to work with TVMDL to reduce duplication between the labs; and to ensure all testing is performed in Texas to the extent possible.<sup>6</sup> However, TAHC was unable to provide current or historical analyses of the lab's costs for each type of test it performs to compare with TVMDL's fees. Further, TAHC has used TVMDL's standard online retail rates to justify performing tests in-house instead of asking TVMDL for discounted fees, even though TVMDL has discounted TAHC's fees on other lab services by about 30 percent at TAHC's request, as shown in the table on the following page, *TVMDL Laboratory Discounts to TAHC*.

The fiscal year 2020–21 budget rider requires TAHC to annually report the lab’s workload and describe how it is more cost-effective than TVMDL. TAHC submitted a report for fiscal year 2019 at the Legislative Budget Board staff’s direction in October 2019. In the report:

- TAHC continued to assert its lab was more cost-effective compared to TVMDL’s standard rates, despite having received significant discounts from TVMDL on other lab services in the past.
- TAHC stated TVMDL does not offer regulatory brucellosis tests or parasite identification, but did not explain that this is due to the Legislature’s directive for the labs to reduce duplication, not because TVMDL is unable to perform the tests. TVMDL’s online fee schedule lists several cattle brucellosis tests and parasite identification services it currently provides.
- TAHC stated its lab has a faster response time than TVMDL, but did not provide any supporting documentation.

#### TVMDL Laboratory Discounts to TAHC FYs 2017–2019

	Services Provided	Standard Rates	TAHC Discount	Total Charged
FY 2017	1,572	\$38,421	\$8,644	\$29,777
FY 2018	1,743	\$45,108	\$10,938	\$34,170
FY 2019	2,040	\$55,710	\$19,412	\$36,298
<b>Total</b>	<b>5,355</b>	<b>\$139,239</b>	<b>\$38,994</b>	<b>\$100,245</b>

#### TVMDL can perform the state’s animal disease testing more reliably, efficiently, and cost-effectively than TAHC.

TVMDL is better qualified and has more resources to perform regulatory animal disease tests than TAHC’s lab, as shown in the textbox, *TVMDL at a Glance*. As a NAHLN founding member and Level 1 lab, TVMDL must meet 19 requirements, such as accreditation to demonstrate technical competency, electronic test reporting, and surge capacity. As a Level 3 member, TAHC’s lab must meet only five requirements, is not accredited, and is not required to have surge capacity.

##### TVMDL at a Glance

- \$53 million, 90,000-square-foot lab opened in 2017.
- \$20.9 million annual budget.
- 70% fee recovery of operating expenses.
- 900,000+ tests annually.
- 161 employees, including 30 doctors and specialists.
- Global clients include state and federal agencies, veterinarians, businesses, and individuals.

Unlike TAHC’s lab, which is not established in statute, TVMDL has specific legislative directives to conduct animal disease testing for diagnostic, regulatory surveillance, and public health purposes, as described in the textbox on the following page, *TVMDL’s Statutory Powers and Duties*.<sup>7</sup>

### TVMDL's Statutory Powers and Duties

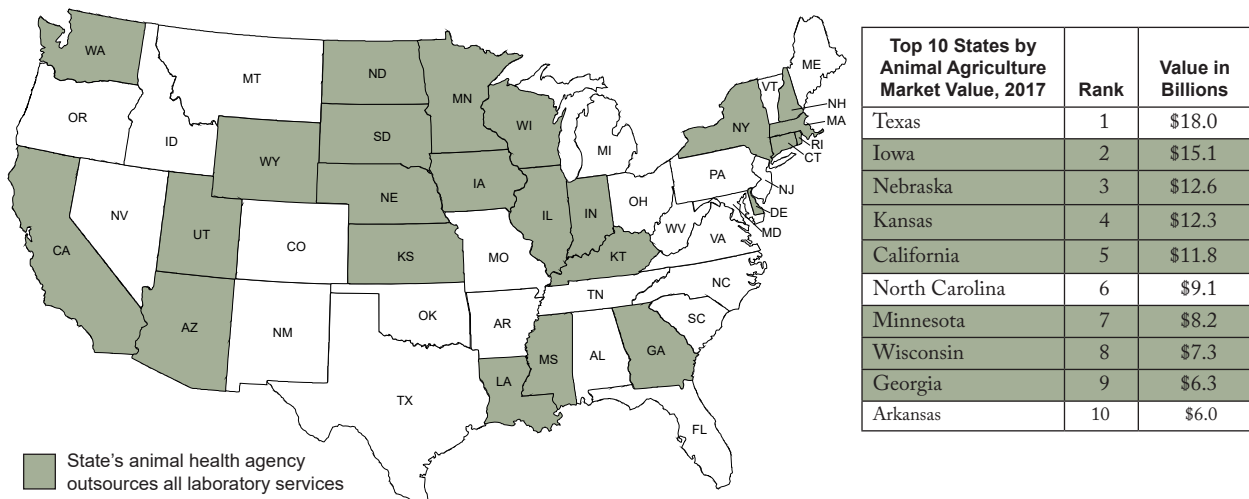
Section 88.708, Texas Education Code, requires TVMDL to:

- Provide diagnostic testing to aid in the identification of animal disease.
- Provide testing to facilitate intrastate, interstate, or international animal shipments.
- Identify and monitor animal disease epidemics.
- Assist livestock owners and veterinarians to identify, diagnose, and treat disease and other animal health matters, including those that could affect human health.
- Report the identification of a disease or other animal health matter, including those that could affect human health, to state or federal agencies or officials.
- Disseminate news and information, including general trends in animal health derived from diagnostic testing, concerning animal disease outbreaks and other animal health matters.
- Provide diagnostics, surveillance, and reporting of animal diseases.
- Provide diagnostic testing for pets and other domestic animals or out-of-state clients only when laboratory resources are not required for diagnostic testing of livestock in Texas.

### Many other states use university labs to perform all of their regulatory animal disease tests.

As shown in the map, *Other States' Animal Health Laboratories*, 24 states have assigned all animal health regulatory testing to university labs, indicating a common structure that could be replicated in Texas.<sup>8</sup> Also, seven of the top 10 states by 2017 animal agriculture market value use a university lab for all of their regulatory animal health testing. All but one of these university labs are NAHLN Level 1 or Level 2 members, similar to TVMDL.<sup>9</sup> In most cases, the state regulatory agencies are clients of the university labs, with formal agreements and contracts for testing services and fees.

### Other States' Animal Health Laboratories



## Sunset Staff Recommendations

### *Change in Statute*

#### **1.1 Require TAHC to close its laboratory and designate TVMDL as the state's regulatory animal health laboratory in statute.**

This recommendation would designate TVMDL as the state's regulatory animal health lab, effective September 1, 2021. TAHC would enter into a memorandum of understanding (MOU) with TVMDL for lab services and close its lab no later than January 1, 2022. As part of this recommendation, both TVMDL and TAHC would receive funding for staff positions, and TAHC would receive funding to cover the costs of TVMDL's lab service fees. TAHC would retain its statutory authority to collect specimens and perform field tests to diagnose animal diseases.

This recommendation would include the following provisions:

- **Agreement and contract.** TAHC and TVMDL would be required to enter into an MOU and contract for TVMDL to provide lab services, effective no later than January 1, 2022. The MOU and contract should address lab fees, billing processes, reporting timeframes, interagency communications, emergency response plans and procedures, and other details as needed. TAHC and TVMDL would be required to review and renew the MOU and contract annually to adjust to changing animal disease testing needs and to help guide their respective legislative appropriations requests.
- **Lab fees.** TVMDL would set its lab fees to fully recover the costs of any lab services it performs for TAHC, and TAHC would request funding for these outsourced lab services in its legislative appropriations request.
- **Lab staff and budget.** TAHC's lab budget would be eliminated, including all lab staff positions. TAHC would retain one position for administrative purposes to coordinate the MOU, contract, and lab services. TVMDL would need one new supervisory position and three new laboratory technician positions to perform TAHC's lab services, and could hire additional temporary workers and request surge capacity assistance from NAHLN in an emergency.
- **Lab equipment and supplies.** TVMDL would have the first option to acquire the TAHC lab's office and testing equipment and supplies, which would be transferred at no cost to TVMDL. TAHC would then have the option to keep any remaining equipment and supplies that could be used for other agency purposes, and would be required to report the rest to the Texas Facilities Commission (TFC) as surplus or salvage property for disposal. TAHC would provide an inventory of its lab equipment to TVMDL and TVMDL would inspect and evaluate the equipment for acquisition purposes and budgetary considerations no later than February 1, 2021.
- **Lab records and documents.** TAHC would be required to transfer the lab's electronic and paper records, test data, and related information to TVMDL for retention as required by state and federal regulations. TAHC and TVMDL would be required to develop a plan, process, and timeline to transfer the information before the lab closes.
- **Coordination provision.** TAHC would be required to coordinate with TFC to terminate the lab's building lease and contracts for related equipment and services, such as copiers, telecommunications, and utilities.

## Fiscal Implication

Closing TAHC’s lab and designating TVMDL as the state’s regulatory animal health lab would result in an estimated annual savings of over \$500,000 for each of the next five fiscal years, and a net reduction of three full-time equivalent employee positions.

This estimate is based on the fiscal year 2019 budget and staffing for the TAHC lab, and savings associated with eliminating the lab’s expenditures and seven employees. Estimated savings would be offset by TAHC’s continuing need for funding to pay TVMDL for lab services, and one staff position to coordinate these services. TVMDL would need four additional staff positions and incur a one-time cost of about \$3,600 in fiscal year 2022 to train staff to perform lab services it does not currently provide.

- **Lab costs:** While eliminating TAHC’s lab would result in an annual savings of \$1,167,273, TAHC would continue to need an estimated \$607,086 annually to pay TVMDL to conduct its lab services. This estimate is based on historical TAHC lab workload data, but the costs could be much lower as the number of tests continue to decline. TVMDL would set fees to recover the cost of performing TAHC’s lab services, including employees, lab equipment, testing materials, and indirect overhead expenses.
- **Personnel:** This recommendation would eliminate seven TAHC lab positions, leaving one full-time position at TAHC — a program specialist with a combined salary and benefits of about \$50,000 — to coordinate the MOU, contract, and lab services with TVMDL. Under this recommendation, TVMDL would receive four new full-time lab positions, and these salaries and benefits would be included in the estimate of \$607,086 for TVMDL’s lab service fees paid by TAHC using general revenue funds.

### Texas Animal Health Commission

Fiscal Year	Savings to the General Revenue Fund	Change in Number of FTEs From FY 2019
2022	\$506,587	-3
2023	\$510,187	-3
2024	\$510,187	-3
2025	\$510,187	-3
2026	\$510,187	-3



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<sup>1</sup> U.S. Department of Agriculture (USDA), “NAHLN Background and History,” last modified September 20, 2019, [https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/lab-info-services/nahln/ct\\_background](https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/lab-info-services/nahln/ct_background).

<sup>2</sup> USDA, “All NAHLN Laboratory List,” last modified November 19, 2019, [https://www.aphis.usda.gov/animal\\_health/nahln/downloads/all\\_nahln\\_lab\\_list.pdf](https://www.aphis.usda.gov/animal_health/nahln/downloads/all_nahln_lab_list.pdf).

<sup>3</sup> USDA, “A Proposal for a Revised Structure of the National Animal Health Laboratory Network,” October 25, 2012, [https://www.aphis.usda.gov/animal\\_health/nahln/downloads/NAHLN\\_structure\\_concept\\_paper.pdf](https://www.aphis.usda.gov/animal_health/nahln/downloads/NAHLN_structure_concept_paper.pdf).

<sup>4</sup> USDA, “NAHLN Level 3 Laboratories,” January 27, 2020, [https://www.aphis.usda.gov/animal\\_health/nahln/downloads/level\\_three\\_labs.pdf](https://www.aphis.usda.gov/animal_health/nahln/downloads/level_three_labs.pdf).

<sup>5</sup> USDA, “NAHLN Level 1 Laboratories,” May 16, 2019, [https://www.aphis.usda.gov/animal\\_health/nahln/downloads/level\\_one\\_labs.pdf](https://www.aphis.usda.gov/animal_health/nahln/downloads/level_one_labs.pdf).

<sup>6</sup> Rider 3 (Laboratory Testing), page VI-13, Article VI (H.B. 1), Acts of the 86th Legislature, Regular Session 2019 (the General Appropriations Act).

<sup>7</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 88.708, Texas Education Code.

<sup>8</sup> State regulatory agencies that outsource all lab tests: Arizona, California, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Minnesota, Mississippi, Nebraska, New Hampshire, New York, North Dakota, Rhode Island, South Dakota, Utah, Washington, Wisconsin, and Wyoming.

<sup>9</sup> New Hampshire Veterinary Diagnostic Laboratory, University of New Hampshire, is not a NAHLN member.



## ISSUE 2

# The Texas Animal Health Commission's Inconsistent and Weak Enforcement Efforts May Increase the Risk of Animal Diseases in Texas.

### Background

The Texas Animal Health Commission (TAHC) works to ensure compliance with animal health regulations by investigating complaints initiated by agency staff and the public. In addition to three investigators, the agency relies heavily on its 108 field inspectors to perform regulatory and compliance activities, as they are often the first to interact with members of the animal agriculture industry. Staff inspects animals for signs of disease and examines records at places where animals congregate, such as livestock markets, feedlots, slaughter plants, and events. The most common types of violations are bringing animals into the state without a permit and failure to tag animals for disease control purposes. When inspectors note violations, they can either educate the violator about statute and rules, or refer a complaint to TAHC's Legal and Compliance Division. If referred, the general counsel assigns the complaint a priority level and, if needed, an investigator will gather further information and recommend corrective action.

Unlike many other agencies with enforcement programs, TAHC does not license individuals or facilities. The agency requires registration of certain facilities such as feral swine holding facilities, and certification for certain activities such as chronic wasting disease sample collection.<sup>1</sup> TAHC's regulatory authority primarily covers animal movement, disease testing, and recordkeeping requirements. The Texas Agriculture Code lists criminal penalties for violations of statute and some agency rules, and provides TAHC administrative penalty authority of up to \$1,000 per day for violations of commission rules and orders.<sup>2</sup> In fiscal year 2019, agency staff conducted 104,488 inspections, initiated 1,551 complaints, and completed 314 investigations, which resulted in one administrative penalty and 10 referrals for criminal prosecution in county courts.

### Findings

#### **TAHC's industry-friendly approach to regulation drives agency policy, limiting enforcement actions.**

The agency generally encourages and relies on the cooperation of the animal agriculture industry to ensure compliance. While a cooperative relationship may facilitate compliance, the agency's history of deference to the industry has, at times, limited its enforcement activity.

- **Reluctance to charge fees.** Many state agencies and programs must recover their costs through fee revenue. Despite broad authority in statute to set fees for all inspections it conducts, TAHC has chosen to collect fees for just one inspection, one registration program, and for orders of health certificates from veterinarians.<sup>3</sup> The agency performs at least 15 different inspections for which it does not collect fees and provides most services at no cost to the animal agriculture industry.<sup>4</sup>

Commission decisions led to unnecessary reductions in funding and staff.

In response to the state budget shortfall in 2011, the Legislature made \$9.9 million of the agency’s funding and almost 58 full-time equivalent (FTE) positions contingent upon recovering the cost of its field operations in the next biennium.<sup>5</sup> However, when faced with the decision to recover these costs or lose significant funding and staff, the commission rejected the staff’s proposal to institute inspection fees at livestock markets because segments of the industry opposed this.<sup>6</sup> Commissioners only approved industry-supported fee increases and new fees on voluntary, opt-in programs. These decisions resulted in reductions of approximately \$2.2 million in general revenue and 53 budgeted FTEs from fiscal year 2011 to fiscal year 2014. These reductions amounted to about 21 percent of appropriations and about 25 percent of budgeted FTEs.

The commission made these decisions despite information from agency staff about the likely consequences of not raising sufficient fee revenue, some of which are highlighted in the table, *Projected Impact of Revenue Reduction in 2011*. With fewer staff in the field, TAHC was forced to stop or reduce the frequency of its key disease prevention and control activities, putting the productivity and marketability of the state’s livestock at risk.

**Projected Impact of Revenue Reduction in 2011**

Activities TAHC Expected to Stop	Activities TAHC Expected to Reduce
<ul style="list-style-type: none"> <li>• Verification of arrival and paperwork for animals entering Texas under an entry permit.</li> <li>• Inventory and flock health verification for Fowl Registration Program applicants.</li> <li>• Inspection of cattle for fever ticks at livestock markets.</li> <li>• Inspection of feral swine holding facilities prior to permit approval.</li> <li>• Epidemiological investigations of cattle herds infected with trichomoniasis and notification of other impacted herds.</li> </ul>	<ul style="list-style-type: none"> <li>• Market inspections (frequency reduced from every sale day to once per month).</li> <li>• Feral swine holding facility inspections (frequency reduced to once per year).</li> <li>• Road stops at borders and across the state to check livestock shipments for compliance.</li> <li>• Surveillance at fairs and rodeos for tuberculosis and equine infectious anemia.</li> <li>• Emergency response activities and training with local counties.</li> </ul>

TAHC only sent warning letters for some serious violations.

- **Overreliance on voluntary compliance and education.** Despite having both administrative and criminal penalty authority, the agency closed more than 80 percent of complaints with informational or warning letters in fiscal years 2018 and 2019 combined. The agency’s compliance policy states these letters should be sent for lower priority violations that pose no immediate disease threat. However, TAHC also sent warning letters for some serious violations, such as movement of animals in violation of a quarantine and failure to maintain dealer records necessary to trace animals during a disease outbreak. Statute classifies these specific violations as Class C and B misdemeanors, but the discretionary factors the agency uses to decide whether to pursue criminal charges are unclear.<sup>7</sup>

Further, the agency referred only 0.7 percent of the 2,553 complaints closed in fiscal years 2018 and 2019 to local courts for criminal prosecution,

despite the existence of repeat offenders. Sunset staff reviewed the agency's compliance data for fiscal year 2019 and noted 17 repeat offenders, but the agency does not systematically capture and use this information. The review also revealed instances of repeat offenders receiving multiple written or verbal warnings for the same type of violation, such as markets or feedlots accepting cattle without proper paperwork, or producers failing to tag dairy cattle before moving them from the farm of origin to prevent the spread of tuberculosis.

The table, *TAHC Complaints Closed by Type*, shows the number of cases closed in each category for fiscal years 2017–19. The agency prioritizes warning and informational letters over other tools meant to deter would-be violators from breaking the law and agency rules. By emphasizing voluntary compliance and education without clear policies or guidance on when staff have discretion to pursue misdemeanor charges, TAHC sends the message to the animal agriculture industry that violations result in few or no consequences.

**TAHC Complaints Closed by Type, FYs 2017–2019**

Action Taken	FY 2017	FY 2018	FY 2019
Agreed Order	1	0	1
Demand Letter	36	52	43
Failure to Follow Proper Procedure	0	3	2
Informational Letter	0	38	774
Insufficient Evidence	0	2	0
No Action Taken	1	14	18
No Violation	1	9	4
Order to Treat Letter	1	0	0
Other	4	2	2
Penning or Inspection Letter	2	1	1
Referred for Prosecution	29	8	10
Referred to Another Agency	1	5	3
Unable to Locate	1	8	4
Voluntary Compliance	35	141	88
Warning Letter	289	812	508
Unknown Disposition*	416	0	0
<b>Total Closed</b>	<b>817</b>	<b>1,095</b>	<b>1,458</b>

\* The agency did not track disposition in its database until fiscal year 2018.

### **Unclear and limited guidance creates inconsistent enforcement and less effective disease prevention.**

Sunset staff's review of the agency's compliance database revealed different prioritization and processes for the same violations among the agency's six regions. For example, some regional offices send informational letters that do not require additional action from the violator or agency, while other regional offices request the Legal and Compliance Division to address the same type of violation through a demand letter requiring documentation by a deadline. The agency also inconsistently prioritizes the same violations across regions. The 2006 Sunset TAHC review attributed regional inconsistencies to the lack of a written compliance policy, which the agency has since developed.<sup>8</sup> While the agency has taken steps to address inconsistent enforcement, including initiating work on a penalty matrix and creating two new positions to oversee inspector training, problems remain evident.

Despite steps taken to standardize enforcement, regional inconsistencies remain.

A penalty matrix would better ensure consistency of sanctions.

- **No formal schedule of sanctions.** The agency lacks a schedule of sanctions, commonly called a penalty matrix, which would ensure the disciplinary action relates appropriately to the nature and seriousness of the offense and is consistently applied. A penalty matrix should guide administrative penalty levels and provide for aggravating and mitigating factors. Without a formal matrix, agency staff cannot ensure consistency of sanctions, and the process of determining sanctions is not transparent. The lack of a matrix also makes it difficult for field inspectors to understand objective factors to consider when they encounter violations in the field and the appropriate response to specific violations. The agency began work on a matrix in late 2019 and expects to have a policy document ready for commissioners to review in spring 2020.
- **Field manuals exclude key enforcement guidance.** TAHC provides its field inspectors with 18 different field manuals that are organized by disease or type of activity, such as livestock shipment inspections. The manuals detail the process of conducting inspections and what equipment the inspector should bring, but they exclude other important information and guidance, including how to adequately document all noncompliance and educational conversations with producers. In addition, guidance in the agency’s *Livestock Event Inspection Manual* on equine testing requirements did not match agency rules. Without clear, practical direction, field inspectors are left to their own discretion when determining how strictly to apply animal health laws and regulations, which can lead to unfair practices and potentially increased risk of diseases.

**Data gaps hinder targeted compliance efforts and decrease the effectiveness of agency enforcement efforts.**

The Legal and Compliance Division has no way of knowing when inspectors issue verbal warnings.

- **Missing historical data.** TAHC’s compliance database contains gaps in information that prevent agency staff from analyzing trends over time and understanding the types of training staff needs to better ensure compliance. In fiscal year 2017 alone, 416 complaints — more than half of the complaints agency staff tracked — were listed as “unknown disposition” because the agency did not start tracking disposition type until October 2017. The database, which has undergone multiple iterations since 2007, is currently divided between two systems, one containing data from fiscal years 2007 to 2018 and one from fiscal year 2019 onward. The lack of comprehensive historical information in a single database makes it difficult for the agency to quickly and effectively provide trend data and evaluate its overall performance.
- **Undocumented compliance activity.** The agency compliance policy directs staff to take compliance history into account when prioritizing investigations. However, Legal and Compliance Division staff members have not been able to do this because they have no way of knowing when inspectors issue verbal warnings for violations. Without clear and consistent documentation of all instances of noncompliance and educational conversations, the agency

cannot accurately determine which industry members have already been made aware of animal health regulations and should therefore be subject to escalated penalties. Given inspector turnover, relying upon personal relationships with industry stakeholders or subjective judgment of intent is insufficient to enforce regulations. The Legal and Compliance Division has recently directed all inspectors to cease issuing verbal warnings and document all noncompliance on the appropriate forms.

- **Siloed information.** Compliance information is siloed, limiting staff's ability to effectively use the data the agency collects. Only two individuals have access to the compliance database and only certain information is shared with regional office staff monthly on the employee intranet. This limited information makes it difficult for inspectors and administrative staff to check the database for repeat offenders or to understand how other regions have handled similar violations. The agency is aware of some deficiencies in its data tracking system and is exploring options to resolve some of them. In 2007, the Sunset Commission directed the agency to make the compliance database accessible to regional staff, but TAHC did not implement the recommendation.<sup>9</sup>
- **Regulatory data gap.** The Texas Department of Agriculture (TDA) operates five export facilities where livestock are temporarily held before being inspected and released to international buyers. One pen is located at the Houston-Bush Intercontinental Airport, and the other four are located on the Mexico-United States border in Brownsville, Del Rio, El Paso, and Laredo. Livestock transported through Texas to these pens do not have to meet the same requirements as livestock imported to Texas, but if these animals are rejected at an export facility for poor health, missing paperwork, or other reasons, they could potentially remain in Texas, putting other animals at risk of disease or pests. However, TAHC does not have any direct responsibility or oversight of these export pens or animals.

While TDA staff indicate they inform TAHC if an animal is rejected, there is no formal requirement or agreement for this. During the Sunset review of both TAHC and TDA, Sunset staff received different and conflicting information as to whether and how this information is shared between the agencies. Without this information, TAHC could not adequately trace diseases in an outbreak, should one occur.

Siloed information limits TAHC's ability to effectively use compliance data, including identifying repeat offenders.

TAHC lacks adequate information about animals rejected at export facilities.

### Some enforcement practices potentially increase disease risk by contradicting statute or rules.

- **Equine infectious anemia (EIA) testing.** EIA is a chronic disease spread by biting flies, reused needles, or blood transfusions and has no cure or vaccine. TAHC rules require all equine participating in any assembly to have proof of a negative EIA test within the past 12 months.<sup>10</sup> Assemblies include parades, rodeos, roping events, and trail rides. However, the agency's *Livestock Event Inspection Manual* states that contestants who claim to have a current negative test for their horse can participate in the event on the

Current guidance to field inspectors sometimes deviates from agency rules.

condition that the documentation be sent to the TAHC regional office within 24 hours. Agency staff must frequently track down contestants who fail to submit documentation, requiring additional staff time and agency resources.

By allowing participation in the event without proof of a negative EIA test, the agency is allowing other horses to be exposed to potentially infected animals. Texas has seen a sharp increase in EIA cases, from one in 2013 to 38 in 2019, making it even more important to enforce the agency's rules.<sup>11</sup> Failure to provide proof of negative EIA test results is one of the top three most common violations reported by the agency.

- **Trichomoniasis testing.** Trichomoniasis is a sexually transmitted infection that can cause abortion and temporary infertility in cows. Agency rules require all Texas-origin breeding bulls to be tested for trichomoniasis before change in ownership.<sup>12</sup> In accordance with the rule, if the seller has not tested the bull before sale, TAHC inspectors may issue a permit to move the animal on the condition that the buyer have it tested within seven days. Field visits conducted during the Sunset review revealed inconsistent regional enforcement of trichomoniasis requirements. Regional staff said they may give buyers 14 or more days to get their bulls tested before following up or filing a complaint with the Legal and Compliance Division.

Legal and Compliance Division staff currently advise field staff to follow up with the buyer in 30 days to learn the results of the test, rather than following up in seven days to confirm the buyer has tested the bull. This guidance does not appear in relevant field manuals distributed to all inspectors. By focusing on the results of the test rather than the requirement to test the bull, TAHC is allowing additional days to pass before it can confirm the animal has been tested and has been isolated from female cattle. TAHC cannot prevent the spread of trichomoniasis without timely confirmation of testing and isolation of breeding bulls from female cattle.

## Sunset Staff Recommendations

### *Change in Statute*

#### **2.1 Require TAHC to regularly conduct trend analysis of its compliance data.**

This recommendation would require TAHC to use the information in its compliance database to compare the enforcement performance of each region and to determine training needs, gaps in enforcement authority, and the most effective enforcement activities, such as road stops or event inspections. The recommendation would also require TAHC to analyze on a statewide and regional basis the types of violations detected, the disposition of the violations, the entities or individuals who commit repeat offenses, and the entities or individuals who commit the most serious violations. TAHC would use the information to inform rulemaking and determine opportunities to educate producers, businesses, and other stakeholders about animal health regulations. The agency should:



- Institute processes that encourage the timely entry and sharing of enforcement information across regions.
- Require formal documentation of educational conversations with producers regarding incidents of noncompliance.
- Import enforcement data from fiscal years 2013–18 into the existing database to provide a historical view of the agency’s enforcement efforts and the results of those efforts.
- Report the results of the analysis to the commission regularly.

## ***Management Action***

### **2.2 Direct TAHC to complete and implement its penalty matrix.**

This recommendation would direct TAHC to continue developing a penalty matrix covering the range of possible statutory and rule violations, ensuring that the agency can consistently and fairly apply its wide range of sanctions. As part of this recommendation, the agency should ensure the matrix considers compliance history and relevant mitigating factors that may lead to a warning instead of another sanction, as well as when such discretion is appropriate. The matrix should also relate sanctions for different violations to their severity, and provide for increased penalties for repeat violations. The agency should complete the penalty matrix no later than December 31, 2020, and make it available to field inspectors to guide their understanding of appropriate enforcement actions.

### **2.3 Direct TAHC to include explicit guidance in all field manuals on documenting incidents of noncompliance and corresponding educational conversations.**

This recommendation would direct the agency to update all inspector manuals with more detailed information about the appropriate way to document all instances of noncompliance and educational conversations, and the importance of doing so. This recommendation would help standardize enforcement processes for all inspectors across the state.

### **2.4 Direct TAHC to share its compliance database with regional office staff to facilitate information flow between Austin and the field.**

This recommendation would direct TAHC to make its compliance database available for regional office staff to access no later than December 31, 2020. Giving regional staff access to the database would allow them to check the compliance record of producers they interact with, more proactively file complaints against repeat offenders, and better understand what information is necessary to effectively document violations.

### **2.5 Direct TAHC and the Texas Department of Agriculture to enter into a memorandum of understanding to ensure TAHC is notified when animals are rejected at state animal export facilities.**

Under this recommendation, TAHC and TDA would develop and enter into a memorandum of understanding to establish a notification timeframe and process for TDA to inform TAHC of animals rejected at animal export facilities operated by the state, and any other issues and information necessary as determined by the two agencies. The two agencies should adopt the memorandum of understanding by December 31, 2020.

## 2.6 Direct TAHC to review and update all training materials and guidelines for consistency and conformity with statute and rules.

This recommendation would direct TAHC to review all inspector manuals, policy documents, and other relevant materials. This review would ensure the agency is aware of deviations from statute and rules and would help prioritize which materials to update immediately.

## Fiscal Implication

These recommendations could be implemented with existing resources and would have no fiscal impact to the state.

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<sup>1</sup> Texas Animal Health Commission (TAHC) requires registration of approved feedlots, feral swine holding facilities, and swine garbage feeder facilities, but facilities are not licensed and registrations are renewed annually after an inspection. The agency also registers participants of the Fowl Registration Program, manages the federal Chronic Wasting Disease (CWD) Herd Certification Program in Texas, and requires certification to participate in disease-specific programs such as CWD-authorized sample collectors and trichomoniasis-certified veterinarians.

<sup>2</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Criminal penalties are listed throughout Sections 161–168, Texas Agriculture Code. Administrative penalty authority can be found in Section 161.148, Texas Agriculture Code.

<sup>3</sup> Sections 161.060, 161.0411, and 161.0601, Texas Agriculture Code.

<sup>4</sup> Legislative Budget Board, *Strategic Fiscal Review of the Texas Animal Health Commission* (Austin, Legislative Budget Board, 2019), 6.

<sup>5</sup> Rider 10, page VI-15, Article VI (H.B. 1), Acts of the 82nd Legislature, Regular Session, 200 (the General Appropriations Act).

<sup>6</sup> TAHC, 380th Commission Meeting, July 19, 2011, audio recording (beginning at 2:13:18), accessed February 19, 2020, <https://www.youtube.com/watch?v=cwMaCgUaGNA>.

<sup>7</sup> Sections 161.141 and 161.147, Texas Agriculture Code.

<sup>8</sup> Texas Sunset Advisory Commission, *Texas Animal Health Commission Staff Report, April 2006*, accessed March 3, 2020, <https://www.sunset.texas.gov/public/uploads/files/reports/Animal%20Health%20Commission%20staff%20report%202007%2080%20leg.pdf>.

<sup>9</sup> *Ibid.*

<sup>10</sup> 4 T.A.C. Section 49.1.

<sup>11</sup> TAHC, 404th Commission Meeting, August 13, 2019, official minutes, p. 7, [https://www.tahc.texas.gov/agency/meetings/minutes/Minutes\\_CommMtg\\_2019-08-13.pdf](https://www.tahc.texas.gov/agency/meetings/minutes/Minutes_CommMtg_2019-08-13.pdf).

<sup>12</sup> 4 T.A.C. Section 38.2.

## ISSUE 3

# The Texas Animal Health Commission's Outdated Laws, Deficient Rulemaking, and Inadequate Communications Do Not Best Serve Industry or Public Interests.

## Background

The Texas Animal Health Commission (TAHC) protects livestock and fowl from diseases by regulating animal movement and locations where animals congregate and can transmit diseases and pests that may spread disease. Regulated activities include:

- Intrastate and interstate animal movement, such as change in ownership and imports from other states and countries.
- Official animal identification methods, such as ear tags and brands.
- Congregation at livestock markets, feedlots, state-inspected slaughter plants, swine facilities, hunting preserves, and deer breeder facilities.<sup>1</sup>
- Congregation at livestock events, such as exhibitions, fairs, rodeos, shows, and races.

TAHC regulates these activities through rules; registration programs; inspections; investigations; enforcement actions; and approved disease and pest prevention, control, and eradication tools described in the textbox, *Disease and Pest Management Tools*. The agency publishes regulatory guidelines, notices, brochures, news releases, and other information to inform the animal agriculture industry and public about animal health regulations in Texas.

### Disease and Pest Management Tools

- **Reportable diseases:** specific high-risk diseases that must be reported to TAHC when diagnosed or suspected.
- **Official identification:** federal and state approved tags, brands, and other IDs that help trace a diseased animal's origin, movement, and exposure to other animals.
- **Quarantines:** restrictions on moving animals to control spread of diseases and pests.
- **Treatments:** methods of preventing and treating animal diseases and pests, such as vaccines, dipping and spraying solutions, and prescribed medications.

## Findings

### Some statutory provisions limit TAHC's ability to effectively manage animal diseases and pests.

- **Inconsistent disease lists cause confusion.** TAHC regulates animal diseases specified in three different lists in statute and rule, which confuses those who must report the diseases as well as the public. One statutory list requires TAHC to control 11 specified diseases, while the other identifies 16 diseases that must be reported to TAHC within 24 hours of diagnosis.<sup>2</sup> TAHC has adopted a third list in rule that includes 68 communicable reportable diseases.<sup>3</sup> Only two diseases with the same name appear on all three lists; 16 are on two lists; and 57 are on only one list. The lists also use

more than one name for the same disease, such as classical swine fever and bovine brucellosis, as shown in the table on the following page, *Examples of Inconsistencies in Reportable Disease Lists*.

Statute limits  
TAHC’s options  
to respond to  
swine diseases.

- **Different regulatory limits increase risks of swine diseases.** Statute prohibits TAHC from adopting rules more stringent than federal rules for contagious swine diseases.<sup>4</sup> This restriction could limit TAHC’s options to quickly respond to a swine disease outbreak that may not be designated as a federal priority. The U.S. Department of Agriculture (USDA) prioritizes foreign and emerging animal diseases in response to high-risk national and international incidents. Diseases on the list change frequently, which can affect USDA’s regulation and response to specific diseases. TAHC noted swine diseases can mutate quickly, and a new strain of swine disease that occurred in Texas four years ago was not on the federal list. Another statutory provision similarly restricts TAHC’s animal identification program but allows the commission to adopt more stringent rules by a two-thirds vote to control a specified disease or manage an emergency.<sup>5</sup>
- **Laws are out of step with current industry practices.** Statute requires overly specific tools and treatments to control diseases and pests that limit TAHC’s ability to use more current and effective methods. For example:

Outdated laws  
limit use of  
new disease  
treatment  
options.

- Quarantines are a necessary tool to control animal diseases and pests. However, statute requires TAHC to impose a quarantine on other states and countries that have an outbreak of certain diseases, which could disrupt Texas’ interstate and international livestock commerce.<sup>6</sup> According to TAHC, some of the specified diseases can now be treated without requiring a quarantine that would unnecessarily prohibit or restrict animal trade.
- Statute requires dipping as the only treatment for some diseases and pests, and prescribes specific recipes, such as a scabies dip solution.<sup>7</sup> These specific requirements and recipes do not take into account advances in animal science and medicine, limiting the use of new and more current treatment options.
- Statute requires fever tick treatment orders to have 13-day intervals between treatments, but according to TAHC, a seven-day period is now adequate, which would allow for faster treatments.<sup>8</sup>
- Statute requires veterinarians to report all tuberculosis test results to TAHC within 48 hours, regardless of whether they are positive or negative.<sup>9</sup> However, TAHC rules take into account the actual risk of disease, requiring veterinarians to report positive tests within 24 hours and negative tests within seven days.<sup>10</sup>
- Classical swine fever is a serious, often fatal contagious disease. Statute authorizes owners and county agents to vaccinate swine for “hog cholera,” the former name of this disease.<sup>11</sup> However, USDA and the federal Centers for Disease Control and Prevention now restrict access

to this vaccine to approved veterinarians and federal and state regulators because it contains the live virus and is on a federal list of controlled biological agents and toxins.<sup>12</sup>

**TAHC’s confusing and vague rules impede industry compliance.**

State agencies’ rules should be transparent, clearly written, and logically organized to facilitate understanding and compliance. TAHC has adopted 206 rules in 26 chapters in the Texas Administrative Code in a disorganized way, causing confusion for the regulated industry.<sup>13</sup> The rules also contribute to TAHC’s inconsistent regulatory and enforcement practices, as discussed in Issue 2.

A third of nearly 1,000 respondents to a Sunset survey did not agree with the statements that Texas animal health laws and rules are easy to understand. Stakeholders also commented that many laws and regulations are outdated and written in unfamiliar legal and technical terms instead of plain language. Sunset staff also heard conflicting information on regulatory requirements from agency employees and complaints about how TAHC’s confusing rules make enforcement difficult.

- **Poorly organized rules are hard to comprehend.** Many of TAHC’s rules are not clearly organized by subject area, as shown in the textbox on the following page, *TAHC’s Confusing Animal Entry Regulations*.<sup>14</sup> This haphazard, scattershot organization makes it difficult for industry members in Texas and elsewhere to identify and comply with the regulatory requirements.

- **Vague rules lack important details.** Some TAHC rules are missing information necessary to comply with regulations.
  - Rule titles do not identify TAHC’s regulatory programs for swine garbage feeder facilities and feral swine holding facilities and hunting preserves, as shown in the textbox on the following page, *Examples of Incomplete Rule Titles*. Not identifying these programs in the rule titles

**Examples of Inconsistencies in Reportable Disease List**

Regulated Animal Diseases (Disease with Multiple Names)	Control List (Statute)	Reportable List (Statute)	Reportable List (Rule)
African Swine Fever			✓
Anthrax	✓	✓	✓
Avian Influenza		✓	✓
Bovine Babesiosis			✓
Bovine Brucellosis (Malta Fever)			✓
Bovine Trichomoniasis		✓	✓
Chronic Wasting Disease		✓	✓
Classical Swine Fever (Hog Cholera)			✓
Equine Infectious Anemia	✓	✓	✓
Equine Piroplasmiasis			✓
Foot and Mouth Disease	✓		✓
Hog Cholera (Classical Swine Fever)	✓		
Malta Fever (Bovine Brucellosis)	✓		
Newcastle Disease			✓
Pseudorabies			✓
Scrapie			✓
Tuberculosis	✓		✓
Vesicular Stomatitis			✓

### TAHC’s Confusing Animal Entry Regulations

TAHC’s animal entry regulations are organized by species, locations, or diseases, depending on the rule, and are scattered across chapters in Title 4 of the Texas Administrative Code. Persons must read all of the various rules to find those that apply to the species they are bringing to Texas.

#### Chapter 51: Entry Requirements

- Rule 51.2: General Requirements: Inspection and permit requirements for all animals entering Texas.
- Rule 51.3: Exceptions: 18 different exceptions for cattle, swine, poultry, equine, sheep, and goats.
- Rule 51.4: Shows, Fairs, and Exhibitions: Inspection and permit requirements for out-of-state cattle, poultry, equine, breeding rams, swine, and other livestock participating in a Texas event.
- Rule 51.6: Special Requirements: Authority for TAHC to stop and inspect animal shipments, and an unrelated specific prohibition on importing brushy-tailed possums due to brucellosis risks.
- Rule 51.7: All Livestock – Special Requirements: Entry requirements for animals from a scabies or vesicular stomatitis quarantine area, screwworm area, fever tick eradication zone, or Mexico.
- Rules 51.8–51.15: More entry requirements by disease in other rules for different species: cattle, exotic livestock and fowl, cervids (deer family), goats, sheep, equine, swine, and poultry.

#### Other Chapters With More Entry Regulations

- Rule 35.4: Entry, Movement, and Change of Ownership (Brucellosis Eradication).
- Rule 40.4: Entry Requirements (Chronic Wasting Disease).
- Rule 41.12: Regulation on Cattle and Products Imported from Mexico (Fever Ticks).
- Several other rules specify more requirements, such as testing and inspections within various timeframes before or after entry.

### Examples of Incomplete Rule Titles

TAHC rules create permitting or approval requirements but do not identify them in the rules’ titles.

- Rule 55.3: Feeding of Garbage. Section (d) also creates a garbage feeding permit.
- Rule 55.9: Feral Swine. Section (c) also requires approval for feral swine holding facilities, while Section (d) also requires approval for feral swine hunting preserves.

makes searching for and locating important regulatory information about them more challenging. The rules also require applicants to submit an application form prescribed by the commission, but the application form and information about the permitting requirements and application process are not attached to the rules or posted on the agency’s website.<sup>15</sup>

TAHC approves eligible businesses to affix official identification tags to livestock onsite, such as livestock markets. Rules on approved tagging sites describe the requirements for approval but do not explain how to apply. Information on the application and approval process is not on the agency’s website, so people must call TAHC for information.<sup>16</sup>

- Livestock owners must provide a health certificate issued by a veterinarian to bring an animal into Texas. However, the agency has not updated its rules to include electronic certificates now available through third-party vendors approved by TAHC, or to describe the online application process. Instead, the rules only describe printed certificates and the process for requesting them from TAHC in writing or by phone.<sup>17</sup>

- In general, supporting documents attached to rules, such as the list of reportable diseases, do not have a publication date or effective date, making it difficult to know when they were adopted or if printed copies are the correct version.<sup>18</sup> Specific rules on fever ticks repeatedly refer to “Table I” and “Table II,” but the supporting document has a different title and is not attached to the same rules where the tables are referenced.<sup>19</sup> Rules on scabies and mange mites require treatment using an “approved product” but do not explain that federal agencies approve the products, not TAHC.<sup>20</sup>
- Agency rules and notices provide inconsistent appeal information. Statute authorizes persons to appeal a TAHC order to slaughter or dispose of animals infected by or exposed to a reportable disease.<sup>21</sup> TAHC’s rules have a general chapter on hearings and appeal procedures, but other rules on specific diseases and pests also address protest and appeal procedures.<sup>22</sup> In addition, TAHC inconsistently informs animal owners of their rights to protest or appeal in their written herd plan notices, which are proposed orders to treat or euthanize an infected or exposed group of animals and require the owner’s signature. Some written herd plans informed recipients of their right to appeal, but others did not even mention the appeals process.

TAHC  
inconsistently  
informs animal  
owners of its  
appeals process.

**By conducting the state’s mandatory four-year rule review without meaningful internal review and stakeholder involvement, the agency has readopted outdated rules.**

Statute requires state agencies to review and consider for re-adoption all rules every four years.<sup>23</sup> TAHC did not review any of its rules between 2006 and 2013, violating the state requirement. Furthermore, while TAHC currently complies with the four-year rule review requirement, the agency fails to use the review process to carefully consider the continuing need and appropriateness of its rules. The four-year rule review process is intended to be more than simply posting rules in the *Texas Register* for public comment before re-adoption. A meaningful rule review should consider whether the initial factual, legal, and policy reasons for adopting each rule are still relevant.<sup>24</sup> As part of its analysis, an agency should consider the experience the agency, stakeholders, and the public have had with each rule over the past four years.<sup>25</sup>

TAHC’s superficial rule review process results in stakeholders and members of the public potentially having to comply with rules that do not accurately reflect current law or agency practice. Between 2017 and 2019, TAHC reviewed and re-adopted 19 chapters of rules in their entirety without making a single change, even to update incorrect information, as shown in the textbox on the following page, *Examples of Unchanged Rules*. TAHC is currently reviewing the remaining seven chapters, which also contain outdated information, and has posted them in their entirety for comment in the *Texas Register*, again without proposing any updates or corrections. TAHC issues news releases, social media posts, and emails to inform stakeholders about other high-profile rulemaking

Some TAHC  
rules do not  
reflect current  
laws or agency  
practices.

processes, but has inconsistently done so for the four-year rule review process. Not surprisingly, TAHC did not receive any public comments on the recently re-adopted 19 chapters.

### Examples of Unchanged Rules

- A rule last changed in 1994 requires the public to request public records by sending a written request to a post office box, but state law now allows requests by other means, including email, website, fax, and hand delivery.<sup>26</sup>
- A rule last changed in 1992 requires livestock markets to provide lab facilities and veterinarian services for brucellosis tests, contrary to current agency practice.<sup>27</sup>
- A rule last changed in 2000 requires all Texas slaughter plants to send brucellosis samples to TAHC, which the agency no longer requires of federally inspected slaughter plants.<sup>28</sup>
- Several rules refer to agencies and organizations that no longer exist or have been renamed, and provide incorrect citations to other agencies' rules.<sup>29</sup>
- A 2011 rule establishes a \$1.00 foreign cattle inspection fee that TAHC has never collected.<sup>30</sup>
- Other rules confusingly refer to hog cholera, an old name for classical swine fever that TAHC no longer uses.<sup>31</sup>

### The agency's use of informal working groups lacks transparency and limits broader representation.

TAHC does not have authority to appoint advisory committees, except to develop rules for regulating exotic livestock and exotic fowl.<sup>32</sup> Instead, TAHC uses informal working groups to help develop new rules and make substantive changes to existing ones, increasing the risk of rulemaking that favors certain industry representatives who are satisfied with the status quo.

**TAHC Working Groups, FYs 2015–2019**

Working Group Name	Meeting Frequency	Members
Avian Influenza	As Needed	5
Bovine Viral Diarrhea	Annually	14
Cervid (Deer Family) Health	As Needed	19
Equine	As Needed	35
Fever Ticks	As Needed	20
Trichomoniasis	Annually <sup>33</sup>	18

TAHC staff appointed six working groups in fiscal years 2015–19 to draft rule proposals and obtain stakeholder feedback. As shown in the table, *TAHC Working Groups*, the groups varied widely in size, from five to 35 members. Appointees included individuals in the industry, interest group representatives, veterinarians, and state or federal agency employees. Other interest groups representing smaller or emerging industry segments, such as ranchers who use organic methods, have little or no opportunity to

participate in the working groups, so TAHC misses hearing other valuable perspectives that could enhance rulemaking, modernize policies and procedures, improve agency programs, and identify needs for new services.

- **Lack of transparency.** Unlike advisory committees, working group meetings are not open to the public. State agencies do not have to post meeting notices, agendas, or minutes, and working group discussions and actions are not public record. Agencies can appoint whomever they want to working



groups with no requirements for balanced representation. TAHC does not announce working group opportunities or seek membership applications from the industry at large or the public. Instead, TAHC typically selects members from interest groups that have longstanding relationships with staff and commissioners. Working groups typically meet irregularly, unannounced, and away from the public's eye, and while the commission regularly mentions working groups at meetings, the agency does not otherwise publish working group rosters, agendas, or meeting minutes. Sunset staff received comments from stakeholders who are concerned they do not have a window into TAHC's working group discussions and do not know when or where they occur.

TAHC's working groups typically meet away from the public's eye.

- **Unbalanced and improper membership.** TAHC tends to repeatedly appoint the biggest, most influential interest groups to its working groups without also inviting members from industry groups that may have different views. In fiscal years 2015–19, only 13 of the 34 interest groups TAHC identified in its self-evaluation report to the Sunset Commission served on a working group. Seven interest groups held the most appointments, as shown in the textbox, *Frequent Interest Group Members*. TAHC staff said some interest groups have tilted the balance of their influence further by bringing more than one representative to participate in working group discussions and decisions, even when TAHC appointed only one member from the organization.

TAHC commission members and staff have also served as members of working groups, including as chair. While commissioners and staff may coordinate and facilitate working group meetings, they should not directly participate in the process or unduly influence recommendations.

- **Advisory committees would better serve the agency and industry.** TAHC's rulemaking and policy development would benefit from the increased inclusiveness and transparency that comes with formal advisory committees. Advisory committees have more balanced and fair representation, a clearly defined purpose and goals, public input opportunities, and open processes that lead to transparent, defensible rulemaking. The independent role of advisory committees could also bring fresh perspectives to help identify problems and offer solutions for more clearly and effectively communicating animal health regulations to affected stakeholders.

#### Frequent Interest Group Members FYs 2015–2019

TAHC appointed these interest groups to two or more working groups:

- Independent Cattlemen's Association of Texas
- Livestock Marketing Association of Texas
- Texas and Southwestern Cattle Raisers Association
- Texas Association of Dairymen
- Texas Cattle Feeders Association
- Texas Farm Bureau
- Texas Veterinary Medical Association

## Regulatory information materials lack important details and are hard to follow, making compliance harder.

Agencies should provide clear, easily accessible information about their permitting and registration programs and requirements. TAHC's website has information, fact sheets, and downloadable forms for its fowl registration and chronic wasting disease herd status programs. However, TAHC does not provide the same online resources for its regulatory programs for swine garbage feeder facilities and feral swine holding facilities and hunting preserves. Instead, potential applicants must call the agency or visit a field office for information about the programs and how to register.<sup>34</sup>

### Confusing Animal Movement Guidelines

- A list of tests accepted for equine infectious anemia refers to "other USDA-licensed tests approved by the commission," but the guidelines do not identify what tests, if any, have been approved or where to find this information.
- Poultry health certificates require a statement that only vaccines approved by USDA and TAHC were used, but the guidelines do not identify them.
- Out-of-state domestic sheep only require an entry permit if they are from an "inconsistent state," but the guidelines do not explain the term "inconsistent state" or how to identify one.
- Guidelines for goats and swine have a blank section that appears to be missing information and mis-numbered lists that are difficult to follow.

TAHC publishes regulatory guideline summaries that are confusing, missing information, and poorly written, as shown in the textbox, *Confusing Animal Movement Guidelines*.<sup>35</sup> TAHC recently published a more readable summary of exhibition animal movement regulations that uses a simpler, more readable chart format and could serve as a model for improving other guidelines. TAHC's website also posts information about individual disease and pest outbreaks and quarantines on multiple pages instead of in one place. Combining this important information on a single page would be much easier for affected animal owners and businesses to locate.

Some state agencies publish searchable PDF documents of their statutes and rules that can be printed, emailed, and posted online.

However, TAHC's website simply links to an online search tool for the Texas Constitution and statutes, with a link to a downloadable version of the entire Texas Agriculture Code. The website also links to the *Texas Register* website page for TAHC's rules.<sup>36</sup> However, these are not useful tools for many people.

- Only a handful of the 95 chapters in the voluminous Texas Agriculture Code apply to TAHC. People unfamiliar with Texas laws may have trouble finding the laws specific to TAHC.<sup>37</sup>
- The *Texas Register's* webpage on TAHC's rules has 26 separate chapter links that, when clicked, have over 200 sublinks to subchapters and sections.<sup>38</sup> The rules are not searchable as a whole and each link must be opened separately to read the rules.

## TAHC could leverage an existing interagency relationship to more effectively reach rural stakeholders.

TAHC primarily shares animal health regulatory information with stakeholders and the public by email, website, and on social media. These are effective,

measurable communications tools for online audiences. However, USDA's *2017 Census of Agriculture* reported only 73 percent of Texas farms have internet access.<sup>39</sup> Even stakeholders with internet access who took the Sunset survey said they have difficulty navigating TAHC's website and social media sites, finding entry and testing requirements, accessing state laws and rules, and getting publications and updates.

These problems reinforce the need to improve and diversify the agency's communications methods, especially for industry members in more rural areas. However, TAHC does not have a formal, on-the-ground animal health public education network or program. Texas A&M AgriLife Extension Service, on the other hand, has 250 county offices and 900 professional educators who teach classes about animal health best practices, animal disease and pest management, and animal health regulations to audiences statewide.<sup>40</sup> AgriLife also has expertise in developing plain language educational and informational materials on a variety of topics for many different audiences.

TAHC needs to improve and diversify its communications methods.

TAHC and AgriLife work together in many ways, such as developing educational materials about regulatory changes, scheduling speakers at events, and distributing animal identification tags through county extension offices. The current relationship appears to be working well. However, TAHC and AgriLife do not have a formal agreement or process to jointly identify educational outreach priorities and opportunities for reportable diseases and animal health education programs in Texas. Over time, changes in agencies' leadership and staff can eliminate or diminish the effectiveness of informal arrangements such as this one.

## Sunset Staff Recommendations

### *Change in Statute*

#### **3.1 Remove outdated, overly prescriptive, restrictive provisions in statute to provide TAHC more flexibility to prevent, manage, and eradicate reportable animal diseases.**

This recommendation would eliminate unnecessary statutory provisions that hinder TAHC's ability to effectively regulate animal health and approve more effective methods of managing animal diseases and pests.

- a. Eliminate two statutory lists of 11 diseases TAHC must protect against and 16 diseases that must be reported within 24 hours of diagnosis, and instead require the commission to adopt and update as needed a list of reportable animal diseases in rule.
- b. Authorize the commission to adopt rules more stringent than federal rules for contagious swine diseases by a two-thirds vote for a specific swine disease or emergency, similar to the existing statutory provision for animal identification programs.
- c. Authorize rather than require the commission to establish quarantines against other states and countries with disease outbreaks.
- d. Eliminate prescriptive statutory provisions for animal testing requirements and disease and pest treatment methods, including but not limited to dipping, test result reporting timeframes, and

treatment time intervals. Require the commission to adopt and update as needed animal testing and disease and pest treatment requirements in rule.

- e. Eliminate statutory authority that conflicts with federal regulations that prohibit owners and county agents from using hog cholera vaccines.

### **3.2 Authorize TAHC to establish advisory committees by rule.**

This recommendation would authorize the commission to establish advisory committees subject to the requirements of Chapter 2110 of the Texas Government Code to provide expertise for rulemaking and policy development, and for other purposes as needed. The commission should adopt rules regarding each advisory committee, including:

- Purpose, role, and goals.
- Appointment procedures, composition, terms, and quorum requirements.
- Membership qualifications, such as experience, representation of various industry segments, or geographic location.
- Conflict-of-interest policies.
- Compliance with the requirements of the Open Meetings Act.

### ***Management Action***

### **3.3 Direct TAHC to provide clear, consistent public information about state animal health laws and rules, regulatory programs, and appeals processes.**

This recommendation would ensure the industry and the public have access to clear regulatory guidelines and information about animal health statutes and rules, regulatory registration and permitting programs, and appeals processes. As part of this recommendation, TAHC would:

- Prepare and update as needed printable, searchable electronic documents of the agency's statutes and rules, and make them available online and by email at no charge to the public. TAHC also would provide printed copies on request and would have authority to charge a fee to recover the cost of printing and mailing them. TAHC should complete these documents and post them online by December 31, 2020.
- Provide public information and downloadable application forms on its website for all of its permitting and registration programs, including swine garbage feeder facilities, feral swine holding facilities, and feral swine hunting preserves. TAHC should complete these documents and post them online by December 31, 2020.
- Provide information about its appeal and protest processes on its website and in written notices and herd plans regarding animals infected by or exposed to a reportable disease. TAHC should implement this recommendation immediately.
- Develop a plan, process, and timeline for reviewing communications materials on animal health regulations to improve their clarity, readability, and formatting. TAHC should complete development of the plan, process, and timeline by December 31, 2020.

### **3.4 Direct TAHC to adopt a policy to ensure each rule undergoes meaningful review pursuant to state law.**

This recommendation would direct the agency to adopt a policy requiring the four-year review of its rules. The policy should require the review to consider current factual, legal, and policy reasons for readopting each rule, as well as practical experience the agency, regulated community, and public have had with each rule over the past four years. Undergoing a more substantive analysis would allow the agency to better engage the public and maintain its rules based on current circumstances and factors. Under this recommendation, the agency would provide an update on its progress to the Sunset Commission by December 31, 2020.

### **3.5 Direct TAHC and Texas A&M AgriLife Extension Service to enter into a memorandum of understanding to jointly develop and coordinate educational programs and information about animal health.**

This recommendation would ensure TAHC and AgriLife have a formal agreement and planning process to jointly develop and deliver educational materials and information about animal health, animal disease and pest management, and animal health regulations. TAHC also would collaborate with AgriLife on improving the readability, content, and organization of the agency's regulatory education resources and materials. TAHC and AgriLife should develop and adopt the memorandum of understanding and provide copies to the Sunset Commission by March 1, 2021.

## **Fiscal Implication**

These recommendations could be implemented with existing resources and would have no fiscal impact to the state.

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<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 165.026, Texas Agriculture Code authorizes permitted swine garbage feeder facilities to collect waste vegetable, fruit, dairy, and baked goods from grocery stores, restaurants, and other businesses with waste food. The garbage may not include animal products. Section 161.0412, Texas Agriculture Code authorizes permitted swine holding facilities to temporarily hold feral swine until they go to a slaughter plant or hunting preserve.

<sup>2</sup> Sections 161.041 and 161.101(a), Texas Agriculture Code.

<sup>3</sup> 4 T.A.C. Section 45.2(a).

<sup>4</sup> Section 165.022, Texas Agriculture Code.

<sup>5</sup> Section 161.056(d), Texas Agriculture Code.

<sup>6</sup> Sections 161.061 and 164.041, Texas Agriculture Code.

<sup>7</sup> Sections 161.065, 161.112, 161.113, 161.134, 164.002, 164.004, 164.005, 164.021–164.028, 164.044, 164.062–164.065, 164.083, and 164.085, Texas Agriculture Code.

- 8 Section 167.058, Texas Agriculture Code.
- 9 Section 162.004(c), Texas Agriculture Code.
- 10 4 T.A.C. Sections 43.2(d) and 45.2.
- 11 Sections 161.041, 165.002, 165.003, 165.021, and 165.042, Texas Agriculture Code.
- 12 Centers for Disease Control and Prevention and U.S. Department of Agriculture (USDA), *Select Agents and Toxins List*, accessed February 14, 2020, <https://www.selectagents.gov/SelectAgentsandToxinsList.html>.
- 13 4 T.A.C., Part 2, Chapters 31–60.
- 14 4 T.A.C. Chapter 51 and Sections 35.4, 40.4, 41.12, and 57.11.
- 15 4 T.A.C. Sections 55.3 and 55.9.
- 16 4 T.A.C. Section 39.6.
- 17 4 T.A.C. Section 33.2.
- 18 4 T.A.C. Section 45.2.
- 19 4 T.A.C. Sections 41.8 and 41.9.
- 20 4 T.A.C. Section 39.6.
- 21 Section 161.0415, Texas Agriculture Code.
- 22 4 T.A.C. Chapter 32 and Section 43.2(k).
- 23 Section 2001.039, Texas Government Code.
- 24 Ronald L. Beal, *Texas Administrative Practice and Procedure*, (New York: Matthew Bender & Company, 2018), Section 3.8, 36–37.
- 25 *Ibid.*
- 26 Section 552.234, Texas Government Code.
- 27 4 T.A.C. Section 53.1.
- 28 4 T.A.C. Section 35.2.
- 29 4 T.A.C. Sections 31.2, 32.2, 34.2, 45.1, and 59.9.
- 30 4 T.A.C. Section 33.3.
- 31 4 T.A.C. Sections 34.2, 55.2, and 55.4.
- 32 Section 161.035, Texas Agriculture Code.
- 33 4 T.A.C. Section 38.7.
- 34 4 T.A.C. Sections 55.3 and 55.9.
- 35 “Animal Movement: Interstate & Intrastate Movement Summary Links,” Texas Animal Health Commission (TAHC), accessed February 14, 2020, <https://www.tahc.texas.gov/regs/entry.html>.
- 36 TAHC, *Statutes & Rules*, accessed January 29, 2020, <https://www.tahc.texas.gov/regs/code.html>.
- 37 State of Texas, *Texas Constitution and Statutes*, accessed January 29, 2020, <https://statutes.capitol.texas.gov/?link=AG>.
- 38 Office of the Secretary of State, *Texas Administrative Code, Title 4. Agriculture, Part 2. Texas Animal Health Commission*, accessed January 29, 2020, [https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=3&cti=4&cpt=2](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=3&cti=4&cpt=2).
- 39 National Agricultural Statistics Service (NASS), USDA, *2017 Census of Agriculture Texas State Profile*, accessed February 7, 2020, [https://www.nass.usda.gov/Publications/AgCensus/2017/Online\\_Resources/County\\_Profiles/Texas/cp99048.pdf](https://www.nass.usda.gov/Publications/AgCensus/2017/Online_Resources/County_Profiles/Texas/cp99048.pdf).
- 40 Texas A&M AgriLife Extension, *Who We Are and Program Areas*, accessed January 29, 2020, <https://agriflifeextension.tamu.edu/about/>.

## ISSUE 4

# Texas Has a Continuing Need for the Texas Animal Health Commission.

## Background

The Texas Animal Health Commission (TAHC) protects and enhances the health of livestock and fowl, and ensures the marketability and mobility of livestock, while minimizing risk to human health. Created in 1893 as the Texas Livestock Sanitary Commission to control cattle fever tick outbreaks in beef cattle, the Legislature has since expanded the agency's authority. TAHC now manages a range of animal populations including cattle, horses, poultry, goats and sheep, swine, and exotic livestock and fowl not native to the state.<sup>1</sup> The agency accomplishes its mission through disease prevention, control, and eradication activities with a \$16.1 million operating budget and 208 employees who work in the agency's six regions throughout the state.

## Findings

### Texas has a continuing need to protect livestock and fowl from diseases and pests.

Given the serious threat animal diseases and pests pose to the state's economically important animal agriculture industry, and the changing animal disease landscape in Texas, TAHC's prevention, control, and eradication activities continue to be needed.

- **Threats posed by animal diseases and pests.** Animal diseases and pests can have a serious impact on the viability of Texas' \$18 billion animal agriculture industry. As shown in the table, *Market Value of Selected Texas Animal Agriculture Products Sold*, the livestock industry is at or near the top of national rankings in most of the livestock and fowl types for which TAHC administers animal health programs.<sup>2</sup> Diseases and pests the agency monitors and responds to can debilitate or kill livestock and fowl, and can affect an animal's productivity.

Maintaining disease-free livestock and fowl greatly benefits the Texas economy, as agriculture — including livestock, fowl, and their products — accounts for a large sector of the state's economy. Healthy animals result in increased productivity, marketability, and mobility of Texas livestock and poultry products within the state and as exports to other states and countries. An animal disease outbreak could result in a

**Market Value of Selected Texas Animal Agriculture Products Sold – FY 2017**

Texas Livestock, Poultry, and Products	Sales	Rank in U.S.
Cattle	\$12,291,224,000	1
Poultry and Eggs	\$2,991,846,000	6
Cow's Milk	\$2,159,171,000	5
Swine	\$163,381,000	16
Equine	\$125,292,000	2
Goats and Sheep	\$105,562,000	2
<b>Total</b>	<b>\$17,836,476,000</b>	<b>1</b>

Disease outbreaks can have negative financial implications for the animal agriculture industry.

ban or restriction on exports of Texas livestock and fowl, which in turn could result in a devastating effect on Texas' economy.<sup>3</sup>

Animal disease outbreaks can lead to major disruptions in the food supply chain and restrictions on exports, which result in severe negative financial implications for the animal agriculture industry, and for state and federal agencies tasked with responding. For example, a 2014–15 outbreak of avian influenza, which can affect humans, in the western and midwestern U.S. resulted in the death of more than 50 million chickens and turkeys. State and federal agencies spent about \$879 million to manage the outbreak, including depopulation (killing infected or exposed animals), cleaning and disinfection, and compensation for depopulated poultry. Global markets levied trade restrictions on U.S. poultry exports, worsening the industry's economic losses.

- **Prevention, control, and eradication.** TAHC staff attempt to prevent diseased and infested animals from entering Texas by regulating animal movement, including monitoring entry points, and verifying health certificates and documentation of disease testing at events like rodeos and other places where livestock and fowl congregate. The agency's inspections, certification and registration programs, and specimen collection are monitoring activities that are critical to preventing and controlling animal diseases, especially those that can affect human health.

**TAHC Disease and Pest Activity  
FY 2019**

- 109,126 surveillance and shipment inspections
- 106,782 animal movement records processed
- 2,280 herds evaluated for disease
- 6,958 disease investigations completed
- 3,094 movement hold orders issued
- 340 quarantines issued

**Major Disease-Free  
Declaration Dates in Texas**

- 2004: Pseudorabies in commercial swine
- 2006: Cattle tuberculosis
- 2008: Bovine brucellosis
- 2011: Domestic swine brucellosis

When TAHC suspects an outbreak or infestation, the agency can help control it through quarantines and movement hold orders on animals while staff determine the source and extent of exposure. Agency staff attempt to eradicate diseases and pests by removing and sometimes depopulating infected or exposed animals from a herd or flock. The textbox, *TAHC Disease and Pest Activity*, lists just some of the agency's prevention, control, and eradication activities in fiscal year 2019. The agency's efforts have been successful, resulting in several U.S. Department of Agriculture (USDA) disease-free declarations for Texas, listed in the textbox, *Major Disease-Free Declaration Dates in Texas*.

- **Evolving and reoccurring disease and pest issues.** Some diseases and pests TAHC monitors and responds to are relatively new to Texas, and others have reoccurred over time, demonstrating the ongoing need for the agency. For example, chronic wasting disease (CWD) was first discovered in Texas in free-ranging mule deer in 2012, and in a captive white-tailed deer breeding facility in 2015. This progressive and fatal neurological disease, which affects animals in the deer family, is little understood and relatively new to Texas. Since 2012, state and federal agencies have confirmed CWD



in over 150 additional free-ranging and captive animals across the state.<sup>4</sup> TAHC continues to develop herd plans, trace animal movement, and coordinate response activities with other federal and state agencies, including the Texas Parks and Wildlife Department (TPWD), to respond to CWD.

Other diseases and pests pose an ongoing threat, such as cattle fever ticks, the pest that prompted the Legislature to create TAHC's predecessor. The ticks can infect animals with babesiosis, known as cattle fever, which results in death for up to 90 percent of susceptible cattle. While Texas eradicated fever ticks in the 1940s, animals crossing into Texas from Mexico have continued to reintroduce the ticks. Since 2015, TAHC has been working with USDA to battle new fever tick outbreaks in South Texas, emphasizing the continuing need for the agency to manage animal diseases and pests in the state.

### **While organizational structures vary, all 50 states have an agency to protect livestock and fowl from disease.**

Among the states, a variety of organizational structures exists for preventing, controlling, and eradicating animal diseases. In 38 states, animal health responsibilities are housed within the state department of agriculture, although the oversight of and organization within the departments varies. For example, governor-appointed directors lead the agriculture department in some states and others maintain a separate policymaking body specifically for animal health issues within the department. Texas is one of nine states with an independent, standalone agency regulating animal health. Although Texas' structure is not the most common, the state has animal health issues that differ from those in most other states. For example, Texas shares an extensive border with Mexico, resulting in issues unique to Texas, such as the continuing threat of reintroducing diseases and pests from Mexico. Having an independent agency focused solely on animal health continues to offer the state a focused and efficient approach to managing livestock and fowl diseases and pests.

### **No substantial benefits would result from changing TAHC's organizational structure.**

Sunset staff considered organizational alternatives for administering TAHC's programs, but concluded no substantial benefit would result from transferring functions or merging TAHC with another agency. No other agency currently has the staff or expertise to protect the animal agriculture industry from diseases and pests. TAHC is the only agency in Texas tasked with administering animal health programs for livestock and fowl. To achieve its mission, TAHC uses the expertise of its licensed staff veterinarians who can recognize dangerous animal diseases, as well as epidemiologists who specialize in determining the cause and distribution of communicable diseases affecting livestock and fowl. TAHC inspectors typically have animal agriculture backgrounds, and the agency trains inspectors to assist veterinarians with testing and sampling activities in addition to standard inspection duties that require interaction with animals.

No other state agency has the expertise to protect the animal agriculture industry from diseases.

While some other state agencies like the Texas Department of Agriculture and TPWD have responsibilities related to animals and a mutual interest in protecting animal health in the state, their functions do not duplicate those at TAHC. Sunset staff found these responsibilities complement rather than conflict with each other, and having separate organizational structures allows each agency to focus on its primary mission.

**TAHC’s statute does not reflect standard language typically applied across the board during Sunset reviews.**

The Sunset Commission has developed a set of standard recommendations that it applies to all state agencies reviewed unless an overwhelming reason exists not to do so. These across-the-board recommendations (ATBs) reflect an effort by the Legislature to place policy directives on agencies to prevent problems from occurring, instead of reacting to problems after the fact. ATBs are statutory administrative policies adopted by the Sunset Commission that contain “good government” standards for state agencies. The ATBs reflect review criteria contained in the Sunset Act designed to ensure open, responsive, and effective government.

TAHC’s statute does not contain newer board member training requirements.

- **Board member training.** TAHC’s statute contains standard language requiring commission members to receive training and information necessary for them to properly discharge their duties. However, statute does not contain newer requirements for all topics the training must cover, such as a discussion of the scope of, and limitations on, the commission’s rulemaking authority. Statute also does not require the agency to create a training manual for all commission members or specify that commission members must attest to receiving and reviewing the training manual annually.
- **Grounds for removal.** Having a statutory basis and process for removing a member of a policymaking body who does not maintain the qualifications, has a conflict of interest, or has neglected duties can help ensure the sound functioning of the policymaking body. However, the TAHC statute outlining the grounds for removal of a member of the policymaking body does not reference noncompliance with qualifications for public membership as grounds for removal, potentially impeding the process should a public member become ineligible under the existing public membership provision.

**Sunset Staff Recommendations**

***Change in Statute***

**4.1 Continue the Texas Animal Health Commission for 12 years.**

This recommendation would continue the Texas Animal Health Commission until September 1, 2033.

## 4.2 Update the standard Sunset across-the-board requirements on commission member training and grounds for removal.

This recommendation would update existing statutory requirements for commission member training by requiring TAHC to develop a training manual that each member attests to receiving annually, and requiring existing commission member training to include information and guidance about the scope of, and limitations on, TAHC's rulemaking authority. The training should provide clarity that the Legislature sets policy, and agency boards and commissions have rulemaking authority necessary to implement legislative policy. This recommendation would also specify the grounds for removal of commission members by including and clearly referencing noncompliance with qualifications for public membership as grounds for removal.

## Fiscal Implication

These recommendations would not result in a fiscal impact to the state. Based on fiscal year 2019 appropriations, continuing TAHC as an independent agency would require \$16.1 million annually.

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<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 161.001, Texas Agriculture Code.

<sup>2</sup> National Agricultural Statistics Service (NASS), U.S. Department of Agriculture (USDA), *2017 Census of Agriculture Texas State Profile*, accessed February 7, 2020, [https://www.nass.usda.gov/Publications/AgCensus/2017/Online\\_Resources/County\\_Profiles/Texas/cp99048.pdf](https://www.nass.usda.gov/Publications/AgCensus/2017/Online_Resources/County_Profiles/Texas/cp99048.pdf).

<sup>3</sup> USDA, *Impacts of the 2014–2015 Highly Pathogenic Avian Influenza Outbreak on the U.S. Poultry Sector*, last modified August 28, 2018, <https://www.ers.usda.gov/webdocs/publications/86282/1dpm-282-02.pdf?v=0>.

<sup>4</sup> "CWD Positives in Texas," Texas Parks and Wildlife Department, accessed February 13, 2020, <https://tpwd.texas.gov/huntwild/wild/diseases/cwd/tracking/#texasCWD>.



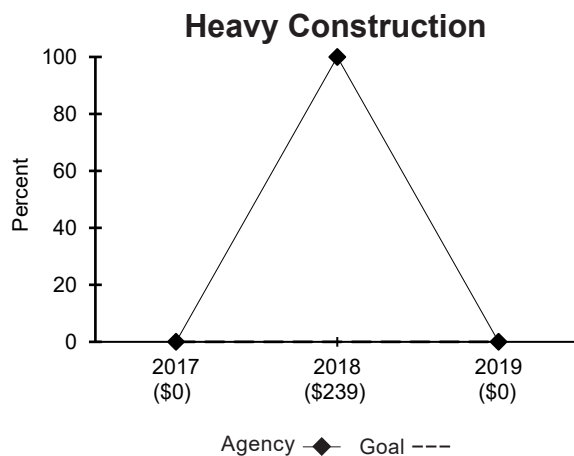
# APPENDIX A

## Historically Underutilized Businesses Statistics, 2017–2019

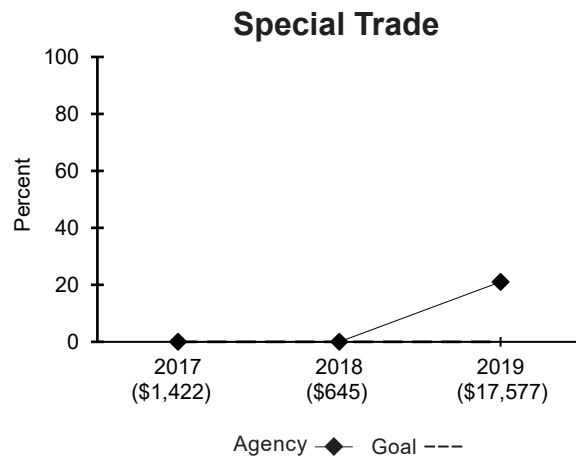
The Legislature has encouraged state agencies to increase their use of historically underutilized businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies’ compliance with laws and rules regarding HUB use in its reviews.<sup>1</sup>

The following material shows trend information for the Texas Animal Health Commission’s use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in statute.<sup>2</sup> The Texas Animal Health Commission has elected to set agency-specific goals for HUB purchasing in all categories. With the exception of the professional services category and the fiscal year 2019 goal for commodities, the agency goals are much lower than the statewide goals. In the charts, the dashed lines represent the agency-specific goal for HUB purchasing in each category. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from fiscal years 2017–19. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category.

The agency has not had many heavy construction or special trade expenditures historically and has set agency-specific goals to zero in these two categories. The agency has not developed a HUB forum program or implemented a mentor-protégé program, as required by Sections 2161.065 and 2161.066 of the Texas Government Code.

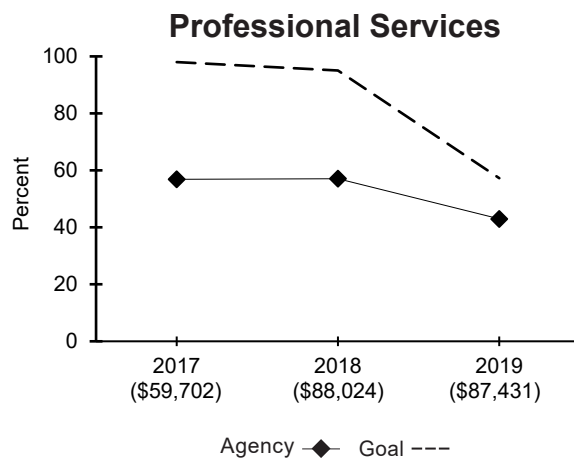


The agency reported heavy construction expenditures only in fiscal year 2018, when the agency used one HUB vendor to fulfill all its heavy construction needs.

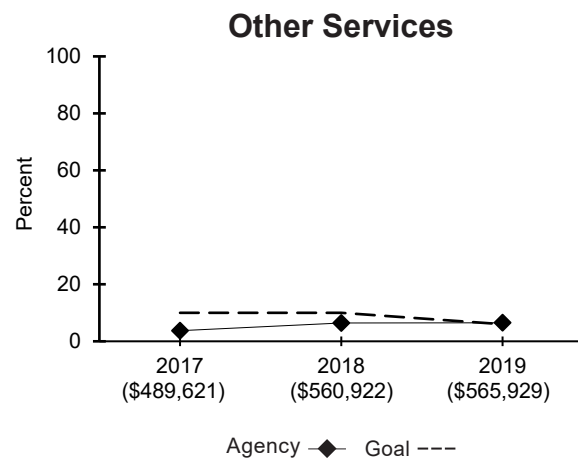


The agency met its goal in fiscal years 2017 and 2018 and exceeded its goal in fiscal year 2019.

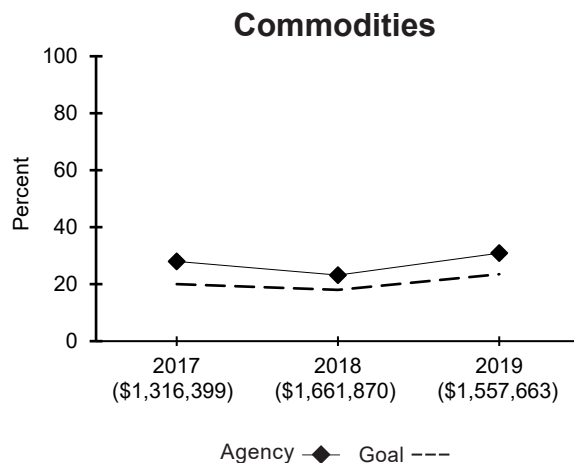
## Appendix A



The agency fell short of its goal in the professional services category in each of the last three fiscal years.



The agency fell short of its goal in fiscal years 2017 and 2018, but met its goal in fiscal year 2019.



The agency exceeded its goal in the commodities category in each of the last three fiscal years.

<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(B), Texas Government Code.

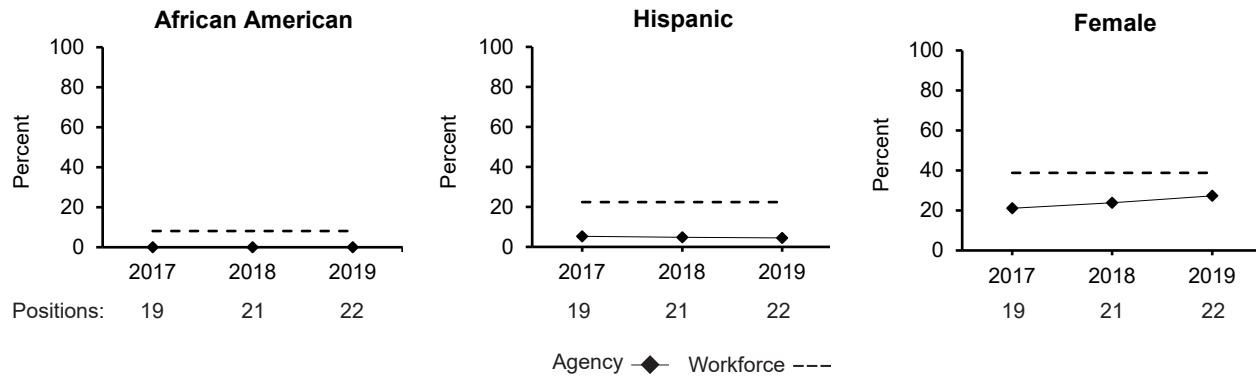
<sup>2</sup> Chapter 2161, Texas Government Code.

# APPENDIX B

## Equal Employment Opportunity Statistics, 2017–2019

In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and females in all applicable categories by the Texas Animal Health Commission.<sup>1</sup> The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.<sup>2</sup> In the charts, the dashed lines represent the percentages of the statewide civilian workforce for African Americans, Hispanics, and females in each job category.<sup>3</sup> These percentages provide a yardstick for measuring agencies’ performance in employing persons in each of these groups. The diamond lines represent the agency’s actual employment percentages in each job category from 2017–19. The Texas Animal Health Commission reported no staff in the service/maintenance and skilled craft categories for fiscal years 2017–19. While the Texas Animal Health Commission has developed a recruitment plan and undertaken efforts to address deficiencies in its employment figures, the agency still fell short of statewide percentages for at least two groups in each job category each of the last three fiscal years.

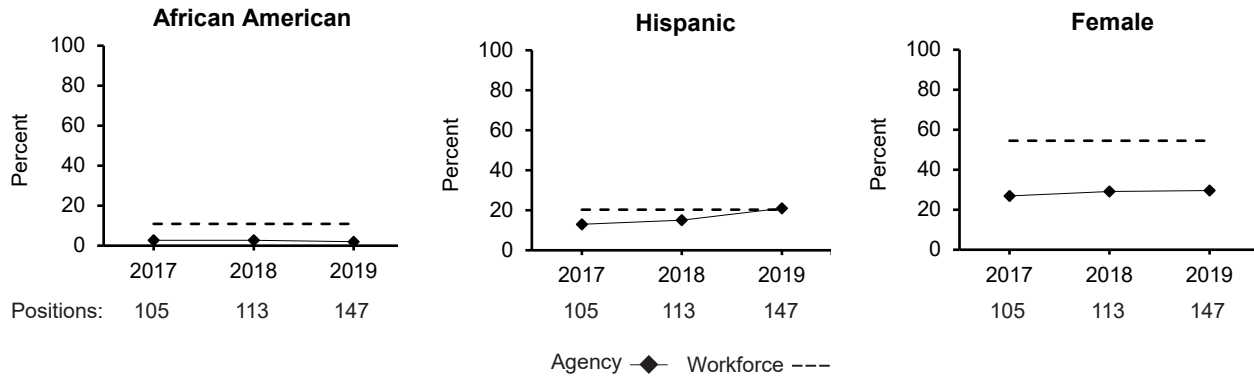
### Administration



The agency fell short of statewide civilian workforce percentages for African Americans, Hispanics, and females in each of the last three fiscal years.

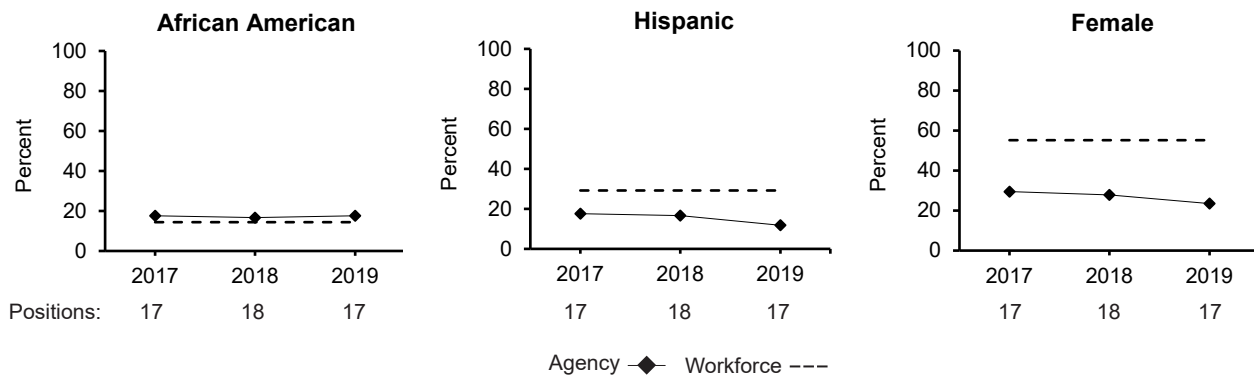
## Appendix B

### Professional



The agency fell short of statewide civilian workforce percentages for African Americans, Hispanics, and females in all three years, except fiscal year 2019, when the agency met the percentage for Hispanics.

### Technical

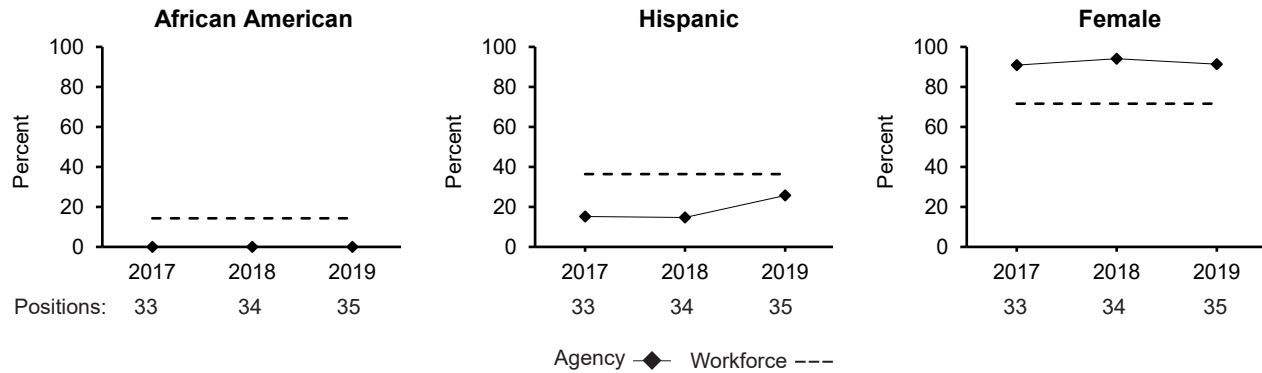


The agency exceeded statewide civilian workforce percentages for African Americans in each of the last three fiscal years, but fell short for Hispanics and females in the same years.



## Appendix B

### Administrative Support



The agency fell short of statewide civilian workforce percentages for African Americans and Hispanics in each of the last three fiscal years. The agency exceeded statewide percentages for females in each of the last three fiscal years.

<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(A), Texas Government Code.

<sup>2</sup> Section 21.501, Texas Labor Code.

<sup>3</sup> Based on the most recent statewide civilian workforce percentages published by the Texas Workforce Commission.



# APPENDIX C

## Events Leading to NAHLN's Suspension of the TAHC Laboratory

### 2012

The National Animal Health Laboratory Network (NAHLN) first approved the lab as a Level 3 member for pseudorabies virus (PRV) tests.

### 2013

A NAHLN audit identified concerns with the lab's quality systems and requested the lab to address them by January 10, 2014.

### 2016

#### April

NAHLN approved the lab for vesicular stomatitis virus (VSV) and classical swine fever (CSF) tests if staff passed the proficiency exams. Two of three staff later passed the VSV proficiency exam.

#### July

A NAHLN audit identified concerns with missing or incomplete records, missing or expired samples, blood-spattered equipment, expired brucella control reagent chemicals, improper storage temperatures for reagent chemicals, chain of custody, and data entry and reporting.

NAHLN requested corrective actions by February 24, 2017, and did not allow lab staff to take the CSF proficiency exam.

### 2017

#### September

NAHLN confirmed in writing the lab resolved the 2016 audit issues and directed lab staff to schedule a follow-up audit.

#### October

The follow-up audit reported the lab's quality systems improved significantly enough to approve PRV and VSV tests and for staff to take the CSF proficiency exam. The audit also identified recordkeeping concerns for the lab to address by May 25, 2018.

### 2018

NAHLN requested the lab to increase its capability and capacity for African swine fever (ASF) tests, but only two of four staff passed the proficiency exam.

### 2019

NAHLN confirmed an Indiana strain of VSV in Texas, but lab staff failed the VSV proficiency exam and could not perform the tests.

A U.S. Department of Agriculture lab that confirms positive tests for state labs also raised concerns to NAHLN about the lab's lack of proficiency for ASF and CSF tests.

NAHLN revoked approval for the lab to perform VSV tests and scheduled another audit.

#### July

A NAHLN audit found what the report called critical issues:

- Lab staff failed or did not complete proficiency exams for three diseases: ASF, CSF, and VSV.
- Lab staff improperly stored reagent chemicals and other test supplies in a self-defrosting freezer with variable temperatures, which could alter test results.
- Lab staff did not consistently perform tests and interpret and report results.
- The lab had incomplete or missing records needed to confirm test results in an outbreak.

#### October

NAHLN suspended the lab's approval to perform four types of tests for six months and set a deadline of April 17, 2020, for the lab to respond to all required actions and address the problems identified by auditors. The lab appealed.

#### November

NAHLN reapproved the lab for PRV tests but upheld the suspension for ASF, CSF, and VSV tests.

If the lab does not adequately address the audit issues by the deadline, NAHLN said it will terminate the lab's status and will not consider reinstatement until January 2021, conditional on a follow-up audit.



## APPENDIX D | Staff Review Activities

During the review of the Texas Animal Health Commission, Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with agency personnel; observed commission meetings; met with staff from key legislative offices; conducted interviews and solicited written comments from interest groups and the public; reviewed agency documents and reports, federal and state statutes, legislative reports, and previous legislation; researched the organization and functions of similar agencies in other states; and performed background and comparative research.

In addition, Sunset staff also performed the following activities unique to this agency:

- Visited the agency's Rockdale region to observe agency activities at a feral swine holding facility, a livestock market, and slaughter plants.
- Visited the agency's Beeville and Laredo regions to observe cattle fever tick dipping operations, a domestic swine field test, and a livestock international export facility.
- Toured the agency's laboratory, the Texas A&M Veterinary Medical Diagnostic Laboratory, and a poultry science research facility.
- Interviewed Texas Animal Health Commission members.
- Interviewed staff from other state and federal agencies, including the National Animal Health Laboratory Network, Texas Department of Agriculture, Texas A&M AgriLife Extension Service, and the U.S. Department of Agriculture.
- Reviewed a sample of enforcement case files and the agency's enforcement database.
- Conducted a survey of stakeholders to gather feedback on the agency's performance and evaluated the responses.



# Sunset Staff Review of the *Texas Animal Health Commission*

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