



September 2015

TEXAS DEPARTMENT OF AGRICULTURE
COMMISSIONER SID MILLER

Cost Recovery Rate Analysis

The mission of the Texas Department of Agriculture (TDA) is to partner with all Texans to make Texas the nation's leader in agriculture, fortify our economy, empower rural communities, promote healthy lifestyles, and cultivate winning strategies for rural, suburban and urban Texas through exceptional service. Goals at TDA include ensuring the agriculture industry plays a vital role in developing future state water plans; growing trade opportunities for farmers and ranchers; and increasing consumer protection enforcement. The agency is also focused on making sure Texans understand

Texas Agriculture Matters!

Fee-based programs



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TEXAS DEPARTMENT OF AGRICULTURE
COMMISSIONER SID MILLER

October 14, 2015

To: The Membership of the House and Senate of the State of Texas.
Subject: Texas Department of Agriculture Fee Updates

Dear Members:

Please be advised the Texas Department of Agriculture (TDA) has recently filed regulatory fee changes with the Texas Register that, if adopted, will increase some of the fees charged for various licenses, renewals, inspections and other activities related to statutory duties of TDA.

As required by the state legislature, TDA has continued to evolve toward a cost recovery method of financing its regulatory programs. The legislature did not require fee increases, but our fee structure must change to meet cost recovery expectations in the General Appropriations Act. The necessary rule changes were published in the Texas Register on October 9, 2015. If adopted, the fee changes will go into effect on December 1, 2015.

In anticipation your constituents have questions related to the fee updates; TDA is providing you with notice of the rule changes, which can be accessed here:

<http://www.sos.state.tx.us/texreg/pdf/backview/1009/1009prop.pdf>

Also, a cost recovery rate overview, including the current fee structure versus the proposed fee structure, is enclosed. Please note the public comment period on these changes is from October 9, 2015 to November 8, 2015.

Any questions you have regarding the rule changes should be directed to Patrick Dudley by email at patrick.dudley@texasagriculture.gov or by phone at 512-475-1840. We will endeavor to provide any information you may need to increase transparency regarding the new fee increases.

Thank you for your attention to this matter.

Sincerely,

Sid Miller
Commissioner



Texas Department of Agriculture Cost Recovery Programs Rate Study FY2016

The Texas Department of Agriculture (TDA) has completed a comprehensive review of the fee structure for its agriculture and consumer protection programs. This was a lengthy, detailed process that analyzed both revenue and expenditures.

TDA's regulatory programs are statutorily designed to recover direct and indirect costs where feasible. Our recent review of the current fee structure revealed some rates have not changed since 1996, and of the rates we are updating, the most recent changes occurred between 2011 and 2013.

BUDGET DIRECTIVES

In 2012, certain TDA programs that had been funded through general revenue were expected to begin functioning as cost recovery programs. The legislature continued to provide a cushion of general revenue to help the transition. For the FY16-17 biennium, the 84th Legislature adopted a budget for TDA with the intent that certain programs become self-sufficient and no longer rely on general revenue.

TDA's goal of establishing a consistent and sustainable revenue source for these programs is much like any service industry. Performance goals and statutory responsibilities, along with the need for efficient and effective service delivery provided the context for analysis of operational costs and revenue projections.

CONSISTENCY IN REVENUE STREAM

Recent budget rules placed restrictions on the movement of funds within TDA and across fiscal years. This reduced flexibility created a need to more tightly control cash flow. Some fees are collected in two or five year cycles. In FY16, TDA will be reviewing various options for a more consistent revenue stream. The goal is to reduce the risk that fees collected in the first year are swept into the general revenue fund before the baseline program needs in the second (or fifth) year are met.

STAKEHOLDER ENGAGEMENT

During the session, some of the budgetary changes and impacts to fee-based programs were supported by associations and boards working directly with various legislators. TDA continues to communicate with stakeholders about the potential for fee increases and will be sharing the results of the rate study with interested parties. Fee change proposals are submitted to the Texas Register, giving the public an opportunity to comment on the proposed changes.

STATUTORY NOTICE

Whether increased or decreased, the fee rates are set by TDA and not mandated by the Legislature. (GAA Art. IX §6.16).

Attached are the proposed rates by program and strategy.

**Strategy 1.1.2 Regulated Pesticide Uses
COST RECOVERY RATE ANALYSIS**

Exhibit A

FEE TABLE

| Particulars | Current Fee Structure | Proposed Fee Structure |
|---|--|--|
| Pesticide Applicator Certification | | |
| Agriculture commercial | 180.00 | 200.00 |
| Agriculture noncommercial | 120.00 | 140.00 |
| Agriculture Noncommercial Political Subdivision | 12.00 | 75.00 |
| Agriculture Private License 5-Year | 60.00 | 100.00 |
| Agriculture Private License 5-Year (late fee) | 1.5 times fee if < 90 days late; 2 times fee if > 90 but <1 yr | 1.5 times fee if < 90 days late; 2 times fee if > 90 but <1 yr |
| Category Test Fees | 0 - 24.00 | 64.00 |
| Private Recertification Exam | 50.00 | 64.00 |
| Dealer Licensing | | |
| Pesticide Dealer 2-Year | 240.00 | 250.00 |
| Pesticide Dealer 2-Year (late fee) | 1.5 times fee if < 90 days late; 2 times fee if > 90 but <1 yr | 1.5 times fee if < 90 days late; 2 times fee if > 90 but <1 yr |
| Pesticide Product Registration | | |
| Product Registration 2-year | 420.00 | 600.00 |
| Product Registration 2-year (late fee) | 1.5 times fee if < 90 days late; 2 times fee if > 90 but <1 yr | 1.5 times fee if < 90 days late; 2 times fee if > 90 but <1 yr |
| Prescribed Burn | | |
| Prescribed Burn Commercial Lic. 2-year | 500.00 | 500.00 |
| Prescribed Burn Private License 2-yr | 500.00 | 500.00 |
| Prescribed Burn License 2-yr (late fee) | 1.5 times fee if < 90 days late; 2 times fee if > 90 but <1 yr | 1.5 times fee if < 90 days late; 2 times fee if > 90 but <1 yr |

The above fee rates were set by TDA, and were not mandated by the Legislature. (GAA Art. IX §6.16).

**Strategy 1.1.3 Integrated Pest Management
COST RECOVERY RATE ANALYSIS**

Exhibit A

FEE TABLE

| Particulars | Current Fee Structure | Proposed Fee Structure |
|---|------------------------------|-------------------------------|
| Citrus | | |
| Citrus Budwood - Per Budwood Stick | 0.06 | 0.10 |
| Citrus Budwood Foundation Grove Application | 250.00 | 250.00 |
| Organics | | |
| Organic Cert -[1 Time] NEW Application Fee/License | 400.00 | 400.00 |
| Organic Certification - 50% 1-90 Day Late Fee; | 1,500.00 | 1,500.00 |
| Organic Certification - 100% 91-365 Day Late Fee | 1,500.00 | 1,500.00 |
| Handler - Organic Certification fee | 1,500.00 | 1,500.00 |
| Handler - Organic Certification Review Fee per Product up to 25 Products | 250.00 | 250.00 |
| Handler - Organic Certification Review Fee per Product above 25 Products | 100.00 | 100.00 |
| Handler - Organic Cert - New Product Review | 200.00 | 200.00 |
| Producer - Cert Review Fee - per additional input | 100.00 | 100.00 |
| Producer - Certification Fee - 50 Acres or Less | 1,000.00 | 1,000.00 |
| Producer - Certification Fee - More than 50 Acres | 1,500.00 | 1,500.00 |
| Producer - Certification Fee - Livestock | 1,000.00 | 1,000.00 |
| Producer - 5,000 Acres or More - Add'l Inspection Fee (< 5,000 acres max fee \$4,200) | 600.00 | 600.00 |
| Administrative Fee - Mid-year Review Fee | 300.00 | 300.00 |
| Administrative Fee - Compliance Fee | 200.00 | 200.00 |
| Admin Fee - \$200 Facility Visit + \$250 per sample; Requested Sample Collection (separate from inspection) | 450.00 | 450.00 |
| Service Fee -USDA NOP-EU Equivalency Review | 75.00 | 75.00 |
| Service Fee-USDA NOP-COR Equivalency Review | 75.00 | 75.00 |
| Service Fee - Certificate of Inspection for USDA NOP - EU Equivalency | 50.00 | 50.00 |
| Service Fee - Attestation Notice for USDA NOP - COR Equivalency USDA NOP - EU Equivalency | 50.00 | 50.00 |
| Administrative Fee - Re-inspection Fee | 400.00 | 400.00 |
| Administrative Fee - Sample Collection and Analysis Fee Requested by Client During Scheduled Inspection | 250.00 | 250.00 |
| Transaction Certificate Fee | 100.00 | 100.00 |

The above fee rates were set by TDA, and were not mandated by the Legislature. (GAA Art. IX §6.16).

**Strategy 1.1.5 Agriculture Production Development – Seed Certification
COST RECOVERY RATE ANALYSIS**

Exhibit A – Page 1

FEE TABLE

| Particulars | Current Fee Structure | Proposed Fee Structure |
|---|-----------------------|------------------------|
| Seed Certification - Field Inspection | | |
| Application Fee per Field | 30.00 | 100.00 |
| Application Late Fee per Field | 50.00 | 100.00 |
| Pre-Plant Application Fee (vegetative propagated mat) | 30.00 | 100.00 |
| Re-inspection Fee; Number of Applications for Pre-Plant | 50.00 | 100.00 |
| Agrotricum/Acre | 0.70 | 1.35 |
| Alfalfa/Acre | 1.40 | 2.40 |
| Buckwheat/Acre | 0.70 | 1.35 |
| Cantaloupe/Acre | 6.90 | 10.65 |
| Clover (All Kinds)/Acre | 1.40 | 2.40 |
| Corn/Acre | 4.30 | 6.75 |
| Cotton/Acre | 1.00 | 1.80 |
| Cowpea, Field Bean, Flat Pea, Partridge Pea/Acre | 1.40 | 2.40 |
| Flax and Rape/Acre | 1.75 | 2.40 |
| Forest Tree Seed/Acre | 6.90 | 10.65 |
| Forest Tree Seedlings/Acre | 55.00 | 82.80 |
| Grass (seeded)/Acre | 5.50 | 8.55 |
| Grass (vegetative propagated)/Acre | 13.25 | 20.20 |
| Millet (foxtail and pearl)/Acre | 1.40 | 2.40 |
| Millet (gahi and hybrids)/Acre | 3.75 | 5.95 |
| Okra and Pepper/Acre | 4.30 | 6.75 |
| Peanut /Acre | 1.00 | 1.80 |
| Rice, Hybrid / Acre | 5.00 | 7.80 |
| Rice/Acre | 4.00 | 6.30 |
| Small Grain/Acre | 0.70 | 1.35 |
| Sorghum (open pollinated)/Acre | 1.20 | 2.10 |
| Sorghum (commercial hybrids)/Acre | 3.60 | 5.70 |
| Hybrid Sorghum Varietal Purity Grow-outs | 120.00 | 180.00 |

**Strategy 1.1.5 Agriculture Production Development – Seed Certification
COST RECOVERY RATE ANALYSIS**

Exhibit A – Page 2

FEE TABLE

| Particulars | Current Fee Structure | Proposed Fee Structure |
|--|-----------------------|--------------------------------|
| Seed Certification - Field Inspection (continued) | | |
| Sorghum (A, B, and R lines)/Acre | 10.50 | 16.05 |
| Soybean & Mung bean/ Acre | 0.80 | 1.50 |
| Sugarcane/Acre | 7.00 | 10.80 |
| Sunflower (commercial hybrids)/Acre | 3.50 | 5.55 |
| Sunflower (A and R lines)/Acre | 10.30 | 15.75 |
| Sunflower (open pollinated), Bush Sunflower, Max/Acre | 3.50 | 5.55 |
| Sunflower Varietal Purity Grow-outs | 120.00 | 180.00 |
| Watermelon/Acre | 7.50 | 11.55 |
| Guar | 0.55 | 1.15 |
| Illinois Bundleflower, & Englemann daisy | 4.30 | 6.75 |
| Other Kinds Not Listed/Acre | 7.00 | 10.80 |
| Seed Certification - Interagency Certification | | |
| Inter-agency Certification Fee by Lots | 200.00 | 200.00 |
| Seed Certification - Seed Labels | | |
| Certified Labels (100 lb. containers or less)/Label | 0.12 | greater of \$0.16 or \$5.00 |
| Certified Labels (>100 lb. containers)/Label | 0.12 | greater of \$0.16 or \$5.00 |
| Certified Labels (bulk certificates)/100 lb./Label | 0.12 | greater of \$0.16 or \$5.00 |
| Varietal Application/Variety | 50.00 | 100.00 |
| Reg Plant Breeder/Certified Seed Grower Appl Fee | 150.00 | 250.00 |

The above fee rates were set by TDA, and were not mandated by the Legislature.
(GAA Art. IX §6.16).

**Strategy 2.1.2 Verify Seed Quality
COST RECOVERY RATE ANALYSIS**

Exhibit A

FEE TABLE

| Particulars | Current Fee Structure | Proposed Fee Structure |
|--|--------------------------------------|--------------------------------------|
| Seed Arbitration | | |
| Seed Arbitration - Filing Fee | 300.00 | 500.00 |
| Seed Law | | |
| Agricultural - Seed Sales Qtrly Report (per 100 Lb.)/ License Fee | 0.18 | 0.45 |
| Agricultural - Penalty for Late Filing of Qtrly reporting | Greater of \$50 or 10% of fee due | Greater of \$50 or 10% of fee due |
| Agricultural - Texas Tested Seed Labels/License Fee (100 lb. containers or less) | 0.18 | 0.45 |
| Agricultural - Texas Tested Seed Labels/License Fee (greater than 100 lb. containers)/Label | 0.18 | 0.45 |
| Vegetable - Individual Vegetable Seed License Fee | 300.00 | 350.00 |
| Seed Testing - Standard Germination Test | 50.00 | 60.00 |
| Seed Testing - Standard Germination Test - grass | 80.00 | 90.00 |
| Seed Testing - Vigor | 50.00 | 60.00 |
| Seed Testing - Red Rice Test – 10 lbs | 35.00 | 45.00 |
| Seed Testing - Red Rice Test – 75 lbs | 75.00 | 85.00 |

The above fee rates were set by TDA, and were not mandated by the Legislature.
(GAA Art. IX §6.16).

**Strategy 2.1.3 Agriculture Commodity Regulation
COST RECOVERY RATE ANALYSIS**

Exhibit A – Page 1

FEE TABLE

| Particulars | Current Fee Structure | Proposed Fee Structure |
|---|--|--|
| Handle/Mkt of Perishable Commodities | | |
| HMPC - Produce Recovery Fund | 250.00 | 250.00 |
| Buying Agents/Transporting Agents - ID Card Fee | 15.00 | 30.00 |
| Complaint - Claim Filing Fee | 20.00 | 50.00 |
| General License Fee | 115.00 | 150.00 |
| Grain Warehouse | | |
| Annual Inspection - Bushels | Greater of \$22 per/ 10,000 BU or \$100 | Greater of \$38 per/ 10,000 BU or \$200 |
| Combo License Application/Renewal for Each Add'l Facility | 160.00 | 300.00 |
| Combo License Application/Renewal Headquarters | 235.00 | 500.00 |
| Single License Application/Renewal | 235.00 | 500.00 |
| Requested Inspection - Bushel Capacity | Greater of \$22 per/ 10,000 BU or \$100 | Greater of \$38 per/ 10,000 BU or \$200 |
| Requested Inspection-Partial Inspection-Other issues | 100.00 | 150.00 |
| Egg Law | | |
| Broker - License | 420.00 | 500.00 |
| Dealer/Wholesaler - Class 1 (1-9 Cases/WK) | 20.00 | 100.00 |
| Dealer/Wholesaler - Class 2 (10-49 Cases/WK) | 40.00 | 100.00 |
| Dealer/Wholesaler - Class 3 (50-99 Cases/WK) | 60.00 | 100.00 |
| Dealer/Wholesaler - Class 4 (100-199 Cases/WK) | 100.00 | 300.00 |
| Dealer/Wholesaler - Class 5 (200-499 Cases/WK) | 180.00 | 300.00 |
| Dealer/Wholesaler - Class 6 (500-999 Cases/WK) | 270.00 | 500.00 |
| Dealer/Wholesaler - Class 7 (1000-1499 Cases/WK) | 360.00 | 500.00 |
| Dealer/Wholesaler - Class 8 (1500-2999 Cases/WK) | 720.00 | 1,000.00 |
| Dealer/Wholesaler - Class 9 (3000-4499 Cases/WK) | 900.00 | 1,200.00 |
| Dealer/Wholesaler - Class 10 (4500-6999 Cases/WK) | 1,200.00 | 1,500.00 |
| Dealer/Wholesaler - Class 11 (7000-9999 Cases/WK) | 1,800.00 | 2,100.00 |
| Dealer/Wholesaler - Class 12 (10000+ Cases/WK) | 2,400.00 | 2,700.00 |
| Processor - Class 1 (1-249 Cases/WK) | 60.00 | 100.00 |
| Processor - Class 2 (250-599 Cases/WK) | 120.00 | 175.00 |
| Processor - Class 3 (600-1499 Cases/WK) | 210.00 | 250.00 |
| Processor - Class 4 (1500+ Cases/WK) | 420.00 | 450.00 |
| Inspection/Case Fee | 0.03 | 0.06 |

**Strategy 2.1.3 Agriculture Commodity Regulation
COST RECOVERY RATE ANALYSIS**

Exhibit A – Page 2

FEE TABLE

| Particulars | Current Fee Structure | Proposed Fee Structure |
|--|---|---|
| Enforcement | | |
| Grain Warehouse - Enforcement - Penalties for Violations | Not more than \$10,000 per violation | Not more than \$10,000 per violation |
| Egg Law - Enforcement/Chptr 15 - Administrative Penalty | Not to Exceed \$500 per violation | Not to Exceed \$500 per violation |
| Late Fees | | |
| Grain WH - General License - Late Fees | | |
| Grain WH - License Application - Late Fees | 1.5 times fee if < 90 days late; 2 times fee if > 90 but <1 yr | 1.5 times fee if < 90 days late; 2 times fee if > 90 but <1 yr |
| Egg Law - Broker - License Late Fees | | |
| Egg Law - Dealer/Wholesaler - Late Fees | | |
| Egg Law - Processer - Late Fees | | |

The above fee rates were set by TDA, and were not mandated by the Legislature. (GAA Art. IX §6.16).

**Strategy 2.1.4 Structural Pest Controls
COST RECOVERY RATE ANALYSIS**

Exhibit A

FEE TABLE

| Particulars | Current Fee Structure | Proposed Fee Structure |
|---|--|--|
| Structural Pest Control | | |
| Business License | see below | 300.00 |
| Business License - original/renewal | 224.00/224.00 | - |
| Commercial /Noncommercial Certified Applicator License | see below | 125.00 |
| Commercial /Noncommercial Certified Applicator License - original/renewal | 108.00/100.00 | - |
| Commercial /Noncommercial Technician License | see below | 125.00 |
| Commercial /Noncommercial - Renewal Technician License - original/renewal | 81.00/76.00 | - |
| Licensing - Reissue license for loss or name change | 30.00 | eliminated |
| Testing - Exam Fee - all categories | 64.00 | 64.00 |
| SPCS CEU Approval - Continuing Education Course | 48.00 | eliminated |
| Late Fees | 1.5 times fee if < 90 days late; 2 times fee if > 90 but <1 yr | 1.5 times fee if < 90 days late; 2 times fee if > 90 but <1 yr |
| Enforcement | | |
| Administrative Penalties (SPCS) - Violations | Up to \$5,000/per violation/per day | Up to \$5,000/per violation/per day |

The above fee rates were set by TDA, and were not mandated by the Legislature. (GAA Art. IX §6.16).

**Strategy 3.1.1 Inspect Measuring Devices
COST RECOVERY RATE ANALYSIS**

Exhibit A – Page 1

FEE TABLE

| Particulars | Current Fee Structure | Proposed Fee Structure |
|---|-----------------------|------------------------|
| Devices - Weights & Measures | | |
| Bulk Meter (rated flow >100 GPM) | 36.00 | 250.00 |
| LPG Meter | 32.00 | 65.00 |
| Bulk Meter (rated flow 20 GPM-100 GPM) | 36.00 | 75.00 |
| Livestock Scale (5,000 pounds or greater) | 172.00 | 350.00 |
| Other Scales (greater than 2,000 pounds) | 120.00 | 250.00 |
| Ranch Scale | 16.00 | 32.00 |
| Scales (0-2,000 pound capacity) | 16.00 | 35.00 |
| Truck Scale (5,000 pounds or greater) | 172.00 | 400.00 |
| Consumer Information Sticker (1 page of 8) | 8.00 | 8.00 |
| Fuel Pump - Diesel (one product per nozzle) | 7.20 | 12.00 |
| Fuel Pump - E85-Fuel Ethanol (one product per nozzle) | 7.20 | 12.00 |
| Fuel Pump - Gasoline (one product per nozzle) | 7.20 | 12.00 |
| Fuel Pump (multiple products per nozzle) | 21.20 | 36.00 |
| Precision Test Fees - Metrology | | |
| Up to and including 3 kilograms | 70.00 | 70.00 |
| > 3 kilograms but =< 30 kilograms | 110.00 | 110.00 |
| > 30 kilograms | 140.00 | 140.00 |
| note: do not have certification due to lack of environmental controls | | |
| Tolerance Test Fees - Metrology | | |
| <10 pounds | 20.00 | 20.00 |
| >10 pounds but <500 pounds | 30.00 | 30.00 |
| >500 pounds but < 2,500 pounds | 60.00 | 60.00 |
| > 2,500 pounds | 110.00 | 110.00 |

**Strategy 3.1.1 Inspect Measuring Devices
COST RECOVERY RATE ANALYSIS**

Exhibit A – Page 2

FEE TABLE

| Particulars | Current Fee Structure | Proposed Fee Structure |
|---|--|--|
| Volume Measures Fees - Metrology | | |
| <=5 gallons | 55.00 | 55.00 |
| Fee—all containers over 5 gallons | \$65 (+ \$1 for each gal > 5 gal) | \$65 (+ \$1 for each gal > 5 gal) |
| LPG Provers—25 gals or less | 150.00 | 150.00 |
| LPG Provers—over 25 gals | 325.00 | 325.00 |
| Weight Measure Fees - Metrology | | |
| Prover Neck Calibration | 50.00 | 50.00 |
| Weight adj. > 1,000 lbs | 20.00 | 40.00 |
| Weight adj. > 100 lbs to 1,000 lbs | 10.00 | 20.00 |
| Weight adj >10 lbs to 100 lbs | 5.00 | 10.00 |
| Weight adj <10lbs | 5.00 | 10.00 |
| Lottery Balls - Metrology | | |
| Lottery Ball Testing (note: IAC; Mandatory) | 10.00 | 10.00 |
| License Service Companies | | |
| License | 100.00 | 150.00 |
| Weights & Measures - Other | | |
| Public Weighers - Certificate of Authority | 485.00 | 500.00 |
| Registered Technicians - 5-year License (Not issued-Exam is License) | 60.00 | 0.00 |
| Examination Fee - must retest every 5 years | 60.00 | 60.00 |
| Late Fees | 1.5 times fee if < 90 days late; 2 times fee if > 90 but <1 yr | 1.5 times fee if < 90 days late; 2 times fee if > 90 but <1 yr |

The above fee rates were set by TDA, and were not mandated by the Legislature. (GAA Art. IX §6.16).

Strategy 3.1.1 Inspect Measuring Devices
APPROPRIATED RECEIPTS RATE ANALYSIS

Exhibit A

FEE TABLE

| Particulars | Current Fee Structure | Proposed Fee Structure |
|---|--|--|
| Motor Fuel Testing - Fuel Quality - Octane | | |
| One Gas Product Per Nozzle | 3.30 | 4.00 |
| Multiple Gas Products Per Nozzle | 9.90 | 12.00 |
| One Fuel Product Per Nozzle - Not Gas | 0.80 | 1.00 |
| Multiple Fuel Products Per Nozzle - Not Gas | 2.40 | 3.00 |
| Distributor, Jobber, Wholesaler | 20.00 | 40.00 |
| Supplier | 1,500.00 | 1,500.00 |
| Late Fees | 1.5 times fee if < 90 days late; 2 times fee if > 90 but <1 yr | 1.5 times fee if < 90 days late; 2 times fee if > 90 but <1 yr |

The above fee rates were set by TDA, and were not mandated by the Legislature. (GAA Art. IX §6.16).

Regulated Pesticide Uses

- Pesticide Applicator certification
- Dealer licensing
- Pesticide Product Registration
- Prescribed Burn

Strategy 1.1.2 Regulated Pesticide Uses

COST RECOVERY RATE ANALYSIS

Purpose: The Texas Department of Agriculture (“TDA”) is the lead agency responsible for compliance and enforcement of state and federal pesticide laws for use and distribution of pesticides in Texas. Homeowners as well as agriculture producers, noncommercial political subdivision employees and commercial pesticide application companies are subject to complying with state and federal pesticide laws. TDA certifies and licenses applicators to purchase and use restricted-use and state-limited-use pesticides or regulated herbicides in a variety of license categories.

State-limited-use pesticides and regulated herbicides are those products identified by TDA as requiring a license to purchase and use along with other restrictions and requirements. Licensed pesticide applicators must demonstrate competency in the knowledge of pesticide application standards as well as knowledge of laws and regulations that govern the use of pesticides by passing various certification exams to qualify for a license. Applicators certified by TDA must comply with TDA regulations and must obtain continuing education units (CEUs) to renew their licenses.

Performance:

This strategy encourages consumer protection and responsible pesticide use practices through applicator inspections, certifying and recertifying pesticide applicators, conducting use observations to ensure that pesticides are being used legally, and monitoring of pesticide distribution to ensure only persons with valid pesticide licenses are purchasing specific pesticide products, the required labeling is contained on pesticide products, as well as confirming only pesticide products registered in Texas are being distributed and removing cancelled or suspended pesticides from distribution channels.

Complaints involving pesticide misuse are investigated and routine inspections of pesticide users are conducted to determine the level of compliance with pesticide laws and regulations. TDA focuses on identifying high, medium, and low risk inspections to efficiently utilize limited resources where they will be most effective.

This strategy also provides for the laboratory analysis of pesticide residue samples at TDA's Pesticide Laboratory located on the campus of Texas A&M University to support enforcement efforts, provides for the protection of pesticide workers and handlers in agricultural establishments through monitoring for compliance with various requirements by agricultural producers by the Texas Agricultural Hazard Communication Act and the Federal Worker Protection Standard.

The services included in this study are those funded on a full cost-recovery basis.

Challenges:

Changes in federal/state laws and regulations, the number of new or renewed pesticides requiring registration, the number of applicators needing to become licensed, the number of pesticide dealers needing to become licensed to distribute restricted or state-limited use pesticides, and the number of complaints received by the agency alleging pesticide misuse will impact this strategy. Weather conditions and changes in agricultural practices impact this

**Strategy 1.1.2 Regulated Pesticide Uses
COST RECOVERY RATE ANALYSIS**

strategy by creating either an increased or decreased demand for pesticide use or distribution.

Increased pesticide use requires a greater level of regulatory monitoring and oversight and results in the potential increase in the number of pesticide related complaints. TDA has implemented convenience testing for agriculture pesticide applicators by using a contracted entity in lieu of TDA inspection and program staff to administer exams required for an applicator license. In addition, TDA has implemented a risk-based inspection system to balance inspection resources depending upon the level of risk a location or pesticide use may pose.

Staffing: Strategy 1.1.2 has two funding sources of which the cost recovery program makes up approx. 69%. Federal funds are the source of funding for the remaining 31% of this strategy and these funds are dedicated for specific purposes.

There are five regional offices that coordinate the activities at the remote sites. The largest position classifications for this cost recovery program are the program specialists (43%) and inspectors (38%). The program specialist classification includes such positions as education specialists, certification specialists, and compliance specialists. The legal enforcement staff (8%) consists of attorneys, case preparation staff and support staff that are solely dedicated to the enforcement of related laws including prosecution of violators. The cost recovery program funds the staff shown in the table below.

| | <u>FTEs</u> |
|--------------------------------|-------------|
| Direct program - Staffing | |
| Management oversight | 2.0 |
| Program specialists | 17.8 |
| Inspectors | 15.9 |
| Legal Enforcement staff | 3.2 |
| Program administrative support | 2.5 |
| Total - Direct Program Staff | <u>41.4</u> |

Condition of the program in January 2015: Comprehensive fee schedules for all programs were not readily available. The statutory directives for TDA regulatory programs are to recover direct and indirect costs where feasible, with a biennial submission of adopted program fees to LBB. As with any fee structure, the methodology and components of the various fee rates for this program need to be reviewed periodically. Past reviews of fee rates were based on a variety of factors, including reliance on historical funding from state general revenue. The most current fee structure review was in the 2011 time period. Operating and indirect costs have changed since the fees were initially established, with no adjustments in recent years.

Strategy 1.1.2 Regulated Pesticide Uses

COST RECOVERY RATE ANALYSIS

For the FY16-17 biennium, the LBB recommended, and the 84th Legislature adopted a budget for this agency with the intent that the agency fully recovers certain program costs without reliance on general revenue. The core of the cost recovery philosophy is that the businesses and individuals regulated by this program should pay for its consumer protection services. These costs are typically passed through to customers by the regulated industries, moving program costs to those consumers that directly benefit.

After the close of the 84th Legislative session, TDA performed a comprehensive and strategic review of agency cost recovery programs within the context of the FY16-17 budget. The analysis was designed to answer the question “what does it cost to operate the program on a total cost recovery basis?” The analysis considered the need for efficient and effective service delivery to meet agency goals and objectives, as well as a variety of other factors essential to recovering state costs. The goal of the comprehensive review was a sustainable method of financing for the agency’s cost recovery programs. The recommended rates should achieve this goal.

Cost Study: The program area and the Financial Services Division of TDA developed a cost model to use in the development of a fee structure that would result in the program being self-sufficient. The program area assessed factors relevant to the calculation of appropriate rates that are needed to cover program costs.

As part of the assessment, the legal framework and revenue stream trends for past years were reviewed; and an evaluation of changes in staffing, the use of contracted services, and the program’s working capital requirements was performed.

A. Data reviewed:

- Direct and indirect operating costs for the past two fiscal years
- Budgeted and projected expenditures and revenues for the past two fiscal years
- Shortfalls in the funding levels assumed in the biennial budget
- Preventative maintenance requirements
- Vehicle and equipment replacement cycle requirements
- Methods of finance for program components
- Impact of service delivery changes currently in development
- Applicable statutes for authority and limitations
- TDA rules for changes necessary for full cost recovery implementation

Exhibit B provides additional details on applicable statutes and administrative rules.

**Strategy 1.1.2 Regulated Pesticide Uses
COST RECOVERY RATE ANALYSIS**

B. Cost Components

| | <u>FTEs</u> | <u>Amount</u> |
|-------------------------------------|-------------|-------------------------|
| Direct Labor costs | 41.4 | 3,353,843 |
| Indirect costs ⁽¹⁾ | | 1,309,488 |
| Operating Expenditures | | <u>2,440,859</u> |
| Total - GR - Fee Based costs | | <u>7,104,190</u> |

⁽¹⁾ Indirect costs include services performed for the program by the indirect strategies such as legal, accounting, procurement, records management, human resources, information technology, budget, risk management, executive administration and audit services.

Statewide "Other Direct and Indirect Costs" (ODIC) are automatically assessed against cost recovery programs through the biennial budget process. These costs, which are part of the Direct Labor costs, include active employee benefits and retiree healthcare. The amount of ODIC assessed is determined by program staffing, and it offsets the costs of state agencies charged with benefit and retirement fund management.

C. Assumptions

| | <u>Annual cost</u> |
|---|-------------------------|
| Base budget operating costs | 145,197 |
| Utilities (electricity, natural gas, waste disposal) | 33,300 |
| Telecommunication (internet, cell phone, trunk lines) | 34,100 |
| Fuel (16 miles/gal @ \$3/gal) | 145,200 |
| Uniforms for inspectors | 21,900 |
| Rent - Office space (4 regional offices; Pesticide Lab) | 94,600 |
| Fleet management system | 20,100 |
| Mobi Logistics SW licenses (30 licenses) | 30,000 |
| Vehicle maintenance & Repair | 46,100 |
| Vehicle replacement plan (4 vehicles/year) | 85,300 |
| Computer - 4 yr replacement plan | 11,900 |
| Printer - 4 yr replacement plan | 2,300 |
| Liquid Chromatograph/Tandem Mass Spectrometer | 300,000 |
| Contract - pesticide exams | 250,000 |
| 60-days working capital/cost relief factor | <u>1,220,862</u> |
| Total - Operating expenditure detail | <u>2,440,859</u> |

**Strategy 1.1.2 Regulated Pesticide Uses
COST RECOVERY RATE ANALYSIS**

D. Revenue Stream

The cost study identified areas where the fee rates need to be increased to fully support the program. In some cases, multiple fee structure scenarios were reviewed. The table below reflects the outcome of the analysis:

| Particulars | Annual Revenue Stream (amount) | |
|------------------------------------|--------------------------------|------------------------|
| | Current Fee Structure | Proposed Fee Structure |
| Pesticide Applicator Certification | 1,495,330 | 2,548,267 |
| Dealer Licensing | 282,360 | 283,060 |
| Pesticide Product Registration | 3,623,973 | 4,250,613 |
| Prescribed Burn | 22,250 | 22,250 |
| TOTAL | 5,423,913 | 7,104,190 |

Exhibit A provides additional detail on how the above fee categories were calculated.

Recent budget rules placed restrictions on the movement of funds within the agency and across fiscal years. This reduced flexibility in funds management creates a need to more tightly control cash flow in order to have consistent funds to meet ongoing and exceptional expenses. This may require restructuring when licenses and other annual fees are collected.

E. Results of Cost Study

Rate Increase Timeline: In order for the new fee rates to go into effect December 1, 2015, the following timeline must be met:

| | |
|----------------|--|
| Sept 24 | Submit to Legal division for publication preparation |
| Sept 28 (noon) | Submit for publication |
| Oct 9 | Publication in Texas Register |
| Nov 8 | 30-day comment period ends, eligible for adoption |
| Nov 9 | Submit for adoption |
| Nov 29 | Adoption in effect |

Strategy 1.1.2 Regulated Pesticide Uses

COST RECOVERY RATE ANALYSIS

Market Evaluation: *Comparisons were based generally on like fee types, and not on total fee structure or methods of program funding, which can impact individual rates.*

How do we compare with other states' regulatory charges?

- Texas Pesticide Product Registration fees – the proposed \$600 for a 2-year period (\$300/year) will be comparable to, or lower than many states, with \$70/year being the lowest and \$1,150/year being the highest charged across the 50 states. The median fee for all 50 states is \$175/year.
- When compared to Florida and California, which are similar to Texas in the scope of agricultural production, California charges \$1,150/year, plus a tax on a percentage of sales, while Florida charges \$350/year. States surrounding Texas have pesticide product registration fees as follows: \$400/year for Louisiana, \$160/year for Oklahoma, \$100/year for New Mexico, \$165/year for Colorado and \$250/year for Arkansas.
- Texas Pesticide Applicator license fees – are generally comparable to most other states. For example, the Private applicator license in Oklahoma costs \$20/year. In comparison, the proposed Private applicator license in Texas will cost \$100 for a 5 year license or \$20/year. Oklahoma Department of Agriculture's fee for a commercial applicator license is \$100-\$500/year, depending upon how many categories are added to the license. On average, a commercial pesticide applicator in Texas will have 3 categories. In Oklahoma, a comparable commercial license would cost \$150/year; while the same license in Texas would cost \$200/year. When compared to Florida and California, pesticide applicator license fees in Texas will be higher.

Revenue Stream: Timing of fee collection

- The current fee collection process has resulted in a revenue stream that is not constant. In FY16, TDA will be reviewing various options of providing for a more constant revenue stream which may result in such changes as consolidation of when licenses are renewed, auto renewal options, and out-sourcing of services.

Legislative Changes: Increase in accountability, decrease in authority

- The 84th Legislature eliminated TDA's authority to rollover excess fee revenue between the fiscal years of a biennium. In addition the Legislature eliminated TDA's authority to transfer budget between fee based programs beyond the standard allowance included in the GAA, Article IX. The Legislature shifted the funding burden by reducing general revenue support that previously covered program fee shortfalls.

**Strategy 1.1.2 Regulated Pesticide Uses
COST RECOVERY RATE ANALYSIS**

Change Management: Engagement of program-specific associations, boards, and other affected organizations

- Early discussions with stakeholders on probable fee increases have occurred. Once the rate study is complete, further discussions on the study and its results will take place. Applicable associations and boards will be notified of the proposed fee rate changes as we welcome their input in the process.
- Some of the budgetary changes and impacts to the fee based programs were supported by various associations and boards, which should assist the fee transition process. Seed industry representatives worked directly with the Legislature on replacing general revenue with a more comprehensive cost recovery process.

Moving Forward: On-going processes will be established to:

- Monitor the level of service performed is in line with the projected service plan
- Ensure timely billing of fee renewals
- Timely follow-up on delayed payment of fees and/or fines
- Identify significant changes in expenditures of the program due to external factors such as higher fuel costs, unanticipated vehicle repairs, equip & material cost increases from vendors, deferred maintenance and infrastructure repairs, legislative changes (state and federal level), etc. and take correction actions
- Monitor cash flow and take corrective actions as necessary

See attached exhibits for additional supporting detail.

**Strategy 1.1.2 Regulated Pesticide Uses
COST RECOVERY RATE ANALYSIS**

Exhibit A

FEE TABLE

| Particulars | Current Fee Structure | Proposed Fee Structure |
|---|--|--|
| Pesticide Applicator Certification | | |
| Agriculture commercial | 180.00 | 200.00 |
| Agriculture noncommercial | 120.00 | 140.00 |
| Agriculture Noncommercial Political Subdivision | 12.00 | 75.00 |
| Agriculture Private License 5-Year | 60.00 | 100.00 |
| Agriculture Private License 5-Year (late fee) | 1.5 times fee if < 90 days late; 2 times fee if > 90 but <1 yr | 1.5 times fee if < 90 days late; 2 times fee if > 90 but <1 yr |
| Category Test Fees | 0 - 24.00 | 64.00 |
| Private Recertification Exam | 50.00 | 64.00 |
| Dealer Licensing | | |
| Pesticide Dealer 2-Year | 240.00 | 250.00 |
| Pesticide Dealer 2-Year (late fee) | 1.5 times fee if < 90 days late; 2 times fee if > 90 but <1 yr | 1.5 times fee if < 90 days late; 2 times fee if > 90 but <1 yr |
| Pesticide Product Registration | | |
| Product Registration 2-year | 420.00 | 600.00 |
| Product Registration 2-year (late fee) | 1.5 times fee if < 90 days late; 2 times fee if > 90 but <1 yr | 1.5 times fee if < 90 days late; 2 times fee if > 90 but <1 yr |
| Prescribed Burn | | |
| Prescribed Burn Commercial Lic. 2-year | 500.00 | 500.00 |
| Prescribed Burn Private License 2-yr | 500.00 | 500.00 |
| Prescribed Burn License 2-yr (late fee) | 1.5 times fee if < 90 days late; 2 times fee if > 90 but <1 yr | 1.5 times fee if < 90 days late; 2 times fee if > 90 but <1 yr |

The above fee rates were set by TDA, and were not mandated by the Legislature. (GAA Art. IX §6.16).

**Strategy 1.1.2 Regulated Pesticide Uses
COST RECOVERY RATE ANALYSIS**

Exhibit B

FEE TABLE - AUTHORITY

| Particulars | Reg: Y/N Mand: Y/N | Authority: Rule/Statute | Last Update |
|---|-------------------------------|---|--------------------|
| Pesticide Applicator Certification | | | |
| Agriculture commercial | Y/Y | Rule-TAC 4:1 §7.20 | 2011 |
| Agriculture noncommercial | Y/Y | Rule-TAC 4:1 §7.20 | 2011 |
| Agriculture Noncommercial Political Subdivision | Y/Y | Rule-TAC 4:1 §7.20 | 2011 |
| Agriculture Private License 5-Year | Y/Y | Rule-TAC 4:1 §7.20 | 2011 |
| Agriculture Private License 5-Year (late fee) | Y/Y | Tx Ag Code §12.024 (b) & (c) TAC 4:1 §1.55 & §1.56 | 1993 |
| Category Test Fees | Y/Y | Rule-TAC 4:1 §7.22 | 2011 |
| Private Recertification Exam | Y/Y | Rule-TAC 4:1 §7.24 | 2011 |
| Dealer Licensing | | | |
| Pesticide Dealer 2-Year | Y/Y | Rule-TAC 4:1 §7.20 | 2011 |
| Pesticide Dealer 2-Year (late fee) | Y/Y | Tx Ag Code §12.024 (b) & (c) TAC 4:1 §1.55 & §1.56 | 1993 |
| Pesticide Product Registration | | | |
| Product Registration 2-year | Y/Y | Rule-TAC 4:1 §7.10 | 2011 |
| Product Registration 2-year (late fee) | Y/Y | Tx Ag Code §12.024 (b) & (c) TAC 4:1 §1.55 & §1.56 | 1993 |
| Prescribed Burn | | | |
| Prescribed Burn Commercial Lic. 2-year | Y/Y | Rule-TAC 4:1 §226.5 | 2011 |
| Prescribed Burn Private License 2-yr | Y/Y | Rule-TAC 4:1 §226.5 | 2011 |
| Prescribed Burn License 2-yr (late fee) | Y/Y | Tx Ag Code §12.024 (b) & (c) TAC 4:1 §1.55 & §1.56 | 1993 |

Section 3

Integrated Pest Management

- Citrus
- Organics (no change in fee structure)

Strategy 1.1.3 Integrated Pest Management COST RECOVERY RATE ANALYSIS

Purpose: The Texas Department of Agriculture (“TDA”) assists in the development and implementation of pest management programs for the control and eradication of crop specific pests. Certification of citrus nurseries and stock, and certification for compliance with organic production methods of producers, distributors, processors, and retailers are also included. This strategy is justified by the needs of farmers, ranchers and nurserymen to develop and use less costly and more effective methods of crop production.

Performance: This program has been extremely successful, with the eradication of certain crop pests. The advantage of eradication is a reduction in pesticide usage, a crop increase in the yield per acre as less damage is done to the plant, and an increase in profits as production costs decrease per acre.

Citrus, an important Texas crop, is susceptible to the Mexican Fruit Fly (currently eradicated and monitored), and other citrus specific pests and diseases. The Citrus Budwood Certification Program and the Citrus Nursery Stock Certification Program are proactively managing the health of Texas citrus crops by setting standards for foundation groves, citrus budwood certification, certified citrus nurseries and citrus nursery stock certification; designating individual foundation groves; and inspecting citrus nurseries, and the records of citrus nurseries to ensure that the citrus nurseries are using certified citrus budwood, and that citrus nurseries comply with the provisions of the citrus nursery stock certification program. TDA is assisted by the Citrus Budwood Advisory Council.

TDA also provides organic certification services to Texas producers and handlers as an accredited certifying agent under the USDA National Organic Program. The certification process provides independent verification that crops, livestock and processed products are produced in accordance with the National Organic Standards. The U.S. organic retail market is in excess of \$35 billion and growing.

The services included in this study are only those funded on a full cost-recovery basis.

Challenges:

Weather, pest eradication efforts, a growing biotech industry and federal laws that effect biotech and organic certification may impact this strategy. Increasing popularity of organic products potentially impacts workload in this strategy.

Staffing: Strategy 1.1.3 has multiple funding sources of which the cost recovery program makes of approx. 2%. Federal funds, GR-grants, and general revenue are the sources of funding for the remaining 98% of this strategy and they are dedicated for specific purposes.

There are five regional offices that coordinate the activities at the remote sites. By far the largest position classification for this cost recovery program is the program specialist (73%), which includes such positions as organic certification specialists. The inspector classification (23%), is the second largest classification.

**Strategy 1.1.3 Integrated Pest Management
COST RECOVERY RATE ANALYSIS**

The cost recovery program funds the staff shown in the table below.

| | <u>FTEs</u> |
|--------------------------------|-------------|
| Direct program - Staffing | |
| Management oversight | 0.1 |
| Program specialists | 4.2 |
| Inspectors | 1.3 |
| Program administrative support | 0.1 |
| | <hr/> |
| Total - Direct Program Staff | <u>5.7</u> |

Condition of the program in January 2015: Comprehensive fee schedules for all programs were not readily available. The statutory directives for TDA regulatory programs are to recover direct and indirect costs where feasible, with a biennial submission of adopted program fees to LBB. As with any fee structure, the methodology and components of the various fee rates for this program need to be reviewed periodically. Past reviews of fee rates were based on a variety of factors, including reliance on historical funding from state general revenue. The most current fee structure review for Citrus was 1999, and for Organics in the 2014-2015 time period. Operating and indirect costs have changed since Citrus fees were initially established, with no adjustments in recent years.

For the FY16-17 biennium, the LBB recommended, and the 84th Legislature adopted a budget for this agency with the intent that the agency fully recovers certain program costs without reliance on general revenue. The core of the cost recovery philosophy is that the businesses and individuals regulated by this program should pay for its consumer protection services. These costs are typically passed through to customers by the regulated industries, moving program costs to those consumers that directly benefit.

After the close of the 84th Legislative session, TDA performed a comprehensive and strategic review of agency cost recovery programs within the context of the FY16-17 budget. The analysis was designed to answer the question “what does it cost to operate the program on a total cost recovery basis?” The analysis considered the need for efficient and effective service delivery to meet agency goals and objectives, as well as a variety of other factors essential to recovering state costs. The goal of the comprehensive review was a sustainable method of financing for the agency’s cost recovery programs. The recommended rates should achieve this goal.

Cost Study: The program area and the Finance division of TDA developed a cost model to use in the development of a fee structure that would result in the program being self-sufficient. The program area assessed factors relevant to the calculation of appropriate rates that are needed to cover program costs.

**Strategy 1.1.3 Integrated Pest Management
COST RECOVERY RATE ANALYSIS**

As part of the assessment, the legal framework and revenue stream trends for past years were reviewed; and an evaluation of changes in staffing, the use of contracted services, and the program's working capital requirements was performed.

A. Data reviewed:

- Direct and indirect operating costs for the past two fiscal years
- Budgeted and projected expenditures and revenues for the past two fiscal years
- Shortfalls in the funding levels assumed in the biennial budget
- Preventative maintenance requirements
- Vehicle and equipment replacement cycle requirements
- Methods of finance for program components
- Impact of service delivery changes currently in development
- Applicable statutes for authority and limitations
- TDA rules for changes necessary for full cost recovery implementation

Exhibit B provides additional details on applicable statutes and administrative rules.

B. Cost Components

| | <u>FTEs</u> | <u>Amount</u> |
|-------------------------------------|-------------|-----------------------|
| Direct Labor costs | 5.7 | 437,035 |
| Indirect costs ⁽¹⁾ | | - |
| Operating Expenditures | | <u>112,965</u> |
| Total - GR - Fee Based costs | | <u>550,000</u> |

⁽¹⁾ Indirect costs include services performed for the program by the indirect strategies such as legal, accounting, procurement, records management, human resources, information technology, budget, risk management, executive administration and audit services.

Statewide "Other Direct and Indirect Costs" (ODIC) are automatically assessed against cost recovery programs through the biennial budget process. These costs, which are part of the Direct Labor costs, include active employee benefits and retiree healthcare. The amount of ODIC assessed is determined by program staffing, and it offsets the costs of state agencies charged with benefit and retirement fund management.

**Strategy 1.1.3 Integrated Pest Management
COST RECOVERY RATE ANALYSIS**

C. Assumptions

| | <u>Annual cost</u> |
|---|-----------------------|
| Base budget operating costs | 35,187 |
| Utilities (electricity, natural gas, waste disposal) | 300 |
| Telecommunication (internet, cell phone, trunk lines) | 1,800 |
| Fuel (16 miles/gal @ \$3/gal) | 13,500 |
| Uniforms for inspectors | 2,100 |
| Rent - Office space (4 regional offices) | 3,700 |
| Fleet management system | 1,900 |
| Mobi Logistics SW licenses (1.5 licenses) | 1,500 |
| Vehicle maintenance & Repair | 4,300 |
| Vehicle replacement plan | 8,000 |
| Computer - 4 yr replacement plan | 1,100 |
| Printer - 4 yr replacement plan | 200 |
| 60-days working capital/cost relief factor | <u>39,378</u> |
| Total - Operating expenditure detail | <u>112,965</u> |

D. Revenue Stream

Recent budget rules placed restrictions on the movement of funds within the agency and across fiscal years. This reduced flexibility in funds management creates a need to more tightly control cash flow in order to have consistent funds to meet ongoing and exceptional expenses.

The Integrated Pest Management programs are primarily dependent upon annual licensing fees. Previously, licensing renewal was based on the date of application. This allowed TDA to spread the workload throughout the year. However, in order to manage operations on an annual "use it or lose it" budget, the revenue will need to be collected at the beginning of each year to allow for full expenditure by the end of the year.

The cost study identified areas where the fee rates need to be increased to fully support the program. In some cases, multiple fee structure scenarios were reviewed.

Strategy 1.1.3 Integrated Pest Management COST RECOVERY RATE ANALYSIS

The table below reflects the outcome of the analysis:

| Particulars | Annual Revenue Stream (amount) | |
|--------------|--------------------------------|------------------------|
| | Current Fee Structure | Proposed Fee Structure |
| Citrus | - | 5,000 |
| Organics | 201,379 | 545,000 |
| TOTAL | 201,379 | 550,000 |

Exhibit A provides additional detail on how these fee categories were calculated. No change in the organics fee structure is being proposed at this time. The revenue increase stated above is the result of projected increases in the number of fees issued.

E. Results of Cost Study

Rate Increase Timeline: In order for the new fee rates to go into effect December 1, 2015, the following timeline must be met:

| | |
|----------------|--|
| Sept 24 | Submit to Legal division for publication preparation |
| Sept 28 (noon) | Submit for publication |
| Oct 9 | Publication in Texas Register |
| Nov 8 | 30-day comment period ends, eligible for adoption |
| Nov 9 | Submit for adoption |
| Nov 29 | Adoption in effect |

Market Evaluation: *Comparisons were based generally on like fee types, and not on total fee structure or methods of program funding, which can impact individual rates.*

How do we compare to other states' regulatory charges?

- The overwhelming majority of private sector certifying agents and other state certification programs base their fees on the applicant's or the certified operation's actual or anticipated sales of organic product. Most certifying agents have an additional inspection fee that is based upon an hourly rate.
- The complexity of fee structures by other organic certification agencies and states make it difficult to compare to the TDA Organic Certification fees since TDA fees do not take into account actual or anticipated revenue by the organic business.
- The fee schedule for the TDA Organic Certification Program is unique from other state certifying agencies in that no other state programs have a cost-recovery requirement.

Strategy 1.1.3 Integrated Pest Management COST RECOVERY RATE ANALYSIS

Revenue Stream: Timing of fee collection

- The current fee collection process has resulted in a revenue stream that is not constant. In FY16, TDA will be reviewing various options of providing for a more constant revenue stream which may result in such changes as consolidation of when licenses are renewed, auto renewal options, and out-sourcing of services.

Legislative Changes: Increase in accountability, decrease in authority

- The 84th Legislature eliminated TDA's authority to rollover excess fee revenue between the fiscal years of a biennium. In addition the Legislature eliminated TDA's authority to transfer budget between fee based programs beyond the standard allowance included in the GAA, Article IX. The Legislature shifted the funding burden by reducing general revenue support that previously covered program fee shortfalls.

Change Management: Engagement of program-specific associations, boards, and other affected organizations

- Early discussions with stakeholders on probable fee increases have occurred. Once the rate study is complete, further discussions on the study and its results will take place. Applicable associations and boards will be notified of the proposed fee rate changes as we welcome their input in the process.
- Some of the budgetary changes and impacts to the fee based programs were supported by various associations and boards, which should assist the fee transition process. For example, seed industry representatives worked directly with the Legislature on replacing general revenue with a more comprehensive cost recovery process.

Moving Forward: On-going processes will be established to:

- Monitor the level of service performed is in line with the projected service plan
- Ensure timely billing of fee renewals
- Timely follow-up on delayed payment of fees and/or fines
- Identify significant changes in expenditures of the program due to external factors such as higher fuel costs, unanticipated vehicle repairs, equip & material cost increases from vendors, deferred maintenance and infrastructure repairs, legislative changes (state and federal level), etc. and take correction actions
- Monitor cash flow and take corrective actions as necessary

See attached exhibits for additional supporting detail.

**Strategy 1.1.3 Integrated Pest Management
COST RECOVERY RATE ANALYSIS**

Exhibit A

FEE TABLE

| Particulars | Current Fee Structure | Proposed Fee Structure |
|---|------------------------------|-------------------------------|
| Citrus | | |
| Citrus Budwood - Per Budwood Stick | 0.06 | 0.10 |
| Citrus Budwood Foundation Grove Application | 250.00 | 250.00 |
| Organics | | |
| Organic Cert -[1 Time] NEW Application Fee/License | 400.00 | 400.00 |
| Organic Certification - 50% 1-90 Day Late Fee; | 1,500.00 | 1,500.00 |
| Organic Certification - 100% 91-365 Day Late Fee | 1,500.00 | 1,500.00 |
| Handler - Organic Certification fee | 1,500.00 | 1,500.00 |
| Handler - Organic Certification Review Fee per Product up to 25 Products | 250.00 | 250.00 |
| Handler - Organic Certification Review Fee per Product above 25 Products | 100.00 | 100.00 |
| Handler - Organic Cert - New Product Review | 200.00 | 200.00 |
| Producer - Cert Review Fee - per additional input | 100.00 | 100.00 |
| Producer - Certification Fee - 50 Acres or Less | 1,000.00 | 1,000.00 |
| Producer - Certification Fee - More than 50 Acres | 1,500.00 | 1,500.00 |
| Producer - Certification Fee - Livestock | 1,000.00 | 1,000.00 |
| Producer - 5,000 Acres or More - Add'l Inspection Fee (< 5,000 acres max fee \$4,200) | 600.00 | 600.00 |
| Administrative Fee - Mid-year Review Fee | 300.00 | 300.00 |
| Administrative Fee - Compliance Fee | 200.00 | 200.00 |
| Admin Fee - \$200 Facility Visit + \$250 per sample; Requested Sample Collection (separate from inspection) | 450.00 | 450.00 |
| Service Fee -USDA NOP-EU Equivalency Review | 75.00 | 75.00 |
| Service Fee-USDA NOP-COR Equivalency Review | 75.00 | 75.00 |
| Service Fee - Certificate of Inspection for USDA NOP - EU Equivalency | 50.00 | 50.00 |
| Service Fee - Attestation Notice for USDA NOP - COR Equivalency USDA NOP - EU Equivalency | 50.00 | 50.00 |
| Administrative Fee - Re-inspection Fee | 400.00 | 400.00 |
| Administrative Fee - Sample Collection and Analysis Fee Requested by Client During Scheduled Inspection | 250.00 | 250.00 |
| Transaction Certificate Fee | 100.00 | 100.00 |

The above fee rates were set by TDA, and were not mandated by the Legislature. (GAA Art. IX §6.16).

**Strategy 1.1.3 Integrated Pest Management
COST RECOVERY RATE ANALYSIS**

Exhibit B

FEE TABLE - AUTHORITY

| Particulars | Reg: Y/N Mand: Y/N | Authority: Rule/Statute | Last Update |
|---|-------------------------------|------------------------------------|------------------------|
| Citrus | Y/Y | Rule-TAC 4:1 §21.38 | 1999 |
| Organics | | | |
| Organic Certification | Y/N | Rule-TAC 4:1 §18.702 | 2014 |
| Handler - Organic Certification fee | Y/N | Rule-TAC 4:1 §18.702 | 2015 |
| Producer - Cert Review Fee - per additional input | Y/N | Rule-TAC 4:1 §18.702 | 2015 |
| Administrative Fee - Mid-year Review Fee | Y/N | Rule-TAC 4:1 §18.702 | 2015 |
| Service Fee-USDA NOP-EU Equivalency Review | Y/N | Rule-TAC 4:1 §18.702 | 2015 |
| Administrative Fee - Re-inspection Fee | Y/N | Rule-TAC 4:1 §18.702 | 2015 |
| Transaction Certificate Fee | Y/N | Rule-TAC 4:1 §18.702 | 2011 |

Section 4

Seed Certification

- Field Inspection
- Interagency
- Seed Labels

Strategy 1.1.5 Agriculture Production Development – Seed Certification COST RECOVERY RATE ANALYSIS

Purpose: The Texas Department of Agriculture (“TDA”) is responsible for the administration of various programs that assist the state's farmers and ranchers further develop Texas' ability to produce the most affordable food supply in the world.

TDA's Seed Quality Program (“SQ”) has two components: certification and testing. The seed certification program registers growers and breeders of seeds and plants with established genetic purity and identity standards. TDA inspectors perform field inspections for certification of plants and seeds intended for sale. Inspectors collect seed samples from retailers, wholesalers and distributors and submit them to TDA's seed laboratory for testing. The testing function is in strategy 2.1.2 – Verify Seed Quality.

Strategy 1.1.5 includes oversight of the state's 10 commodity boards; administration of livestock export facilities; administration of grants ranging from feral hog abatement, to urban agricultural education, to specialty crop production assistance; and other production assistance grants funded by the federal government on an ad hoc basis.

Performance: Texas production of new varieties of seed with improved quality and quantity creates a continuing need for TDA's seed certification services. U.S. markets, as well as international markets rely on TDA certifications of genetic purity and identification. Certification is provided for agricultural crops, native grasses, turf grasses, potatoes and native plants. TDA is a member of the Association of Official Seed Certifying Agencies which develops standards, seals, and tag colors recognizable when seed is shipped nationally and internationally.

Seed certification is a voluntary designation that helps producers by distinguishing the product for buyers as meeting quality standards for that breed. Rules are continually updated as industry and producer demands change.

Challenges: Food and fiber production is affected by more factors out of the control of the farmer or rancher than by possibly any other business. Weather events, such as droughts and floods are examples, as well as the frequently fluctuating market for agricultural products. Federal ad hoc funding decisions for some grant programs determines the scope of this strategy in part. Additionally, seed certification is growing season dependent.

Staffing: Strategy 1.1.5 has multiple funding sources of which the cost recovery program makes of approx. 16%. Federal funds and general revenue fund are the remaining 84% of this strategy and they are dedicated for specific purposes.

There are five regional offices that coordinate the activities at the remote sites. By far the largest position classifications for this cost recovery program are the inspectors (46%) and the program specialists (49%). The program specialist classification includes such positions as seed analysts, educational specialists, and certification and regulatory specialists. The management oversight and administrative support account for the remaining 5%.

Strategy 1.1.5 Agriculture Production Development – Seed Certification
COST RECOVERY RATE ANALYSIS

The cost recovery program funds the staff shown in the table below.

| | <u>FTEs</u> |
|--------------------------------|-------------|
| Direct program - Staffing | |
| Management oversight | 0.2 |
| Program specialists | 4.4 |
| Inspectors | 4.1 |
| Program administrative support | 0.3 |
| | <hr/> |
| Total - Direct Program Staff | <u>9.0</u> |

Condition of the program in January 2015: Comprehensive fee schedules for all programs were not readily available. The statutory directives for TDA regulatory programs are to recover direct and indirect costs where feasible, with a biennial submission of adopted program fees to LBB. As with any fee structure, the methodology and components of the various fee rates for this program need to be reviewed periodically. Past reviews of fee rates were based on a variety of factors, including reliance on historical funding from state general revenue. The most current SQ fee structure review was in the 2011 time period. Operating and indirect costs have changed since the fees were initially established, with no adjustments in recent years.

For the FY16-17 biennium, the LBB recommended, and the 84th Legislature adopted a budget for this agency with the intent that the agency fully recovers certain program costs without reliance on general revenue. The core of the cost recovery philosophy is that the businesses and individuals regulated by this program should pay for its consumer protection services. These costs are typically passed through to customers by the regulated industries, moving program costs to those consumers that directly benefit.

After the close of the 84th Legislative session, TDA performed a comprehensive and strategic review of agency cost recovery programs within the context of the FY16-17 budget. The analysis was designed to answer the question “what does it cost to operate the program on a total cost recovery basis?” The analysis considered the need for efficient and effective service delivery to meet agency goals and objectives, as well as a variety of other factors essential to recovering state costs. The goal of the comprehensive review was a sustainable method of financing for the agency’s cost recovery programs. The recommended rates should achieve this goal.

Cost Study: The program area and the Financial Services division of TDA developed a cost model to use in the development of a fee structure that would result in the program being self-sufficient. The program area assessed factors relevant to the calculation of appropriate rates that are needed to cover program costs.

Strategy 1.1.5 Agriculture Production Development – Seed Certification
COST RECOVERY RATE ANALYSIS

As part of the assessment, revenue stream trends were reviewed and an evaluation of changes in staffing, the use of contracted services, and the program's working capital requirements was performed.

A. Data Analyzed:

- Direct and indirect operating costs for the past two fiscal years
- Budgeted and projected expenditures and revenues for the past two fiscal years
- Shortfalls in the funding levels assumed in the biennial budget
- Preventative maintenance requirements
- Vehicle and equipment replacement cycle requirements
- Methods of finance for program components
- Impact of service delivery changes currently in development
- Applicable statutes for authority and limitations
- TDA rules for changes necessary for full cost recovery implementation

Exhibit B provides additional details on applicable statutes and administrative rules.

B. Cost Components

| | <u>FTEs</u> | <u>Amount</u> |
|-------------------------------------|-------------|-------------------------|
| Direct Labor costs | 9.0 | 620,561 |
| Indirect costs ⁽¹⁾ | | 124,682 |
| Operating Expenditures | | <u>321,308</u> |
| Total - GR - Fee Based costs | | <u>1,066,551</u> |

⁽¹⁾ Indirect costs include services performed for the program by the indirect strategies such as legal, accounting, procurement, records management, human resources, information technology, budget, risk management, executive administration and audit services.

Statewide "Other Direct and Indirect Costs" (ODIC) are automatically assessed against cost recovery programs through the biennial budget process. These costs, which are part of the Direct Labor costs, include active employee benefits and retiree healthcare. The amount of ODIC assessed is determined by program staffing, and it offsets the costs of state agencies charged with benefit and retirement fund management.

**Strategy 1.1.5 Agriculture Production Development – Seed Certification
COST RECOVERY RATE ANALYSIS**

C. Assumptions

| | <u>Annual cost</u> |
|---|-----------------------|
| Base budget operating costs | 69,234 |
| Utilities (electricity, natural gas, waste disposal) | 11,700 |
| Telecommunication (internet, cell phone, trunk lines) | 8,100 |
| Fuel (16 miles/gal @ \$3/gal) | 22,600 |
| Uniforms for inspectors | 3,200 |
| Rent - Office space (4 regional offices) | 5,800 |
| Fleet management system | 2,900 |
| Mobi Logistics SW licenses (6 licenses) | 6,000 |
| Vehicle maintenance & Repair | 6,800 |
| Vehicle replacement plan | 12,500 |
| Computer - 4 yr replacement plan | 1,700 |
| Printer - 4 yr replacement plan | 400 |
| 60-days working capital/cost relief factor | 170,374 |
| Total - Operating expenditure detail | <u>321,308</u> |

D. Revenue Stream

Recent budget rules placed restrictions on the movement of funds within the agency and across fiscal years. This reduced flexibility in funds management creates a need to more tightly control cash flow in order to have consistent funds to meet ongoing and exceptional expenses. Seed Quality programs are dependent upon breeder/grower application fees as well as field inspection fees. Further complicating the analysis is the seasonal nature of the work load. However, the seed program rate study focused primarily on cost coverage and not the timing of the revenue stream. The cost study identified areas where the fee rates need to be increased to fully support the program. In some cases, multiple fee structure scenarios were reviewed. The table below reflects the outcome of the analysis:

| Particulars | Annual Revenue Stream (amount) | |
|--|--------------------------------|------------------------|
| | Current Fee Structure | Proposed Fee Structure |
| Seed Certification - Field Inspection | 451,153 | 698,383 |
| Seed Certification - Interagency Certification | 13,600 | 13,600 |
| Seed Certification - Seed Labels | 292,621 | 354,568 |
| TOTAL | 757,374 | 1,066,551 |

Exhibit A provides additional detail on how these fee categories were calculated.

**Strategy 1.1.5 Agriculture Production Development – Seed Certification
COST RECOVERY RATE ANALYSIS**

E. Results of Cost Study

Rate Increase Timeline: In order for the new fee rates to go into effect December 1, 2015, the following timeline must be met:

| | |
|----------------|--|
| Sept 24 | Submit to Legal division for publication preparation |
| Sept 28 (noon) | Submit for publication (deadline) |
| Oct 9 | Publication in Texas Register |
| Nov 8 | 30-day comment period ends, eligible for adoption |
| Nov 9 | Submit for adoption |
| Nov 29 | Adoption in effect |

- Market Evaluation: *Comparisons were based generally on like fee types, and not on total fee structure or methods of program funding, which can impact individual rates.*
- Comparing Texas Seed Certification fees to other states with similar crops is difficult to achieve as most states have variable fee structures. Some states have a flat fee up to a certain amount of acreage and then apply a fee per additional acreage. Most Seed Certification programs in other states are operated by a Crop Improvement Association, which requires a business to pay an annual membership fee. Crop Improvement organizations are free to market their services, adding fee driven services on a grower by grower basis.
- A fair comparison between Texas and other states would entail a determination of average cost per acre inspected and certified. TDA was not able to obtain this information from the Crop Improvement Associations for comparison purposes.
- The fee for certified seed labels is proposed at \$0.16 per label up to 100 pounds, which is generally comparable with most states. Certified seed labels in other states range from \$0.08 to \$0.15 per label up to 100 pounds

Revenue Stream: Timing of fee collection

- The current fee collection process has resulted in a revenue stream that is not constant. In FY16, TDA will be reviewing various options of providing for a more constant revenue stream which may result in such changes as consolidation of when licenses are renewed, auto renewal options, and out-sourcing of services.

Legislative Changes: Increase in accountability, decrease in authority

- The 84th Legislature eliminated TDA's authority to rollover excess fee revenue between the fiscal years of a biennium. In addition the Legislature eliminated TDA's authority to transfer budget between fee based programs beyond the standard allowance included in the GAA, Article IX. The Legislature shifted the funding burden by reducing general revenue support that previously covered program fee shortfalls.

Strategy 1.1.5 Agriculture Production Development – Seed Certification
COST RECOVERY RATE ANALYSIS

Change Management: Engagement of program-specific associations, boards, and other affected organizations

- Early discussions with stakeholders on probable fee increases have occurred. Once the rate study is complete, further discussions on the study and its results will take place. Applicable associations and boards will be notified of the proposed fee rate changes as we welcome their input in the process.
- Some of the budgetary changes and impacts to the fee based programs were supported by various associations and boards, which should assist the fee transition process. Seed industry representatives worked directly with the Legislature on replacing general revenue with a more comprehensive cost recovery process.

Moving Forward: On-going processes will be established to:

- Monitor the level of service performed is in line with the projected service plan
- Ensure timely billing of fee renewals
- Timely follow-up on delayed payment of fees and/or fines
- Identify significant changes in expenditures of the program due to external factors such as higher fuel costs, unanticipated vehicle repairs, equip & material cost increases from vendors, deferred maintenance and infrastructure repairs, legislative changes (state and federal level), etc. and take correction actions
- Monitor cash flow and take corrective actions as necessary

See attached exhibits for additional supporting detail.

**Strategy 1.1.5 Agriculture Production Development – Seed Certification
COST RECOVERY RATE ANALYSIS**

Exhibit A – Page 1

FEE TABLE

| Particulars | Current Fee Structure | Proposed Fee Structure |
|---|-----------------------|------------------------|
| Seed Certification - Field Inspection | | |
| Application Fee per Field | 30.00 | 100.00 |
| Application Late Fee per Field | 50.00 | 100.00 |
| Pre-Plant Application Fee (vegetative propagated mat) | 30.00 | 100.00 |
| Re-inspection Fee; Number of Applications for Pre-Plant | 50.00 | 100.00 |
| Agrotricum/Acre | 0.70 | 1.35 |
| Alfalfa/Acre | 1.40 | 2.40 |
| Buckwheat/Acre | 0.70 | 1.35 |
| Cantaloupe/Acre | 6.90 | 10.65 |
| Clover (All Kinds)/Acre | 1.40 | 2.40 |
| Corn/Acre | 4.30 | 6.75 |
| Cotton/Acre | 1.00 | 1.80 |
| Cowpea, Field Bean, Flat Pea, Partridge Pea/Acre | 1.40 | 2.40 |
| Flax and Rape/Acre | 1.75 | 2.40 |
| Forest Tree Seed/Acre | 6.90 | 10.65 |
| Forest Tree Seedlings/Acre | 55.00 | 82.80 |
| Grass (seeded)/Acre | 5.50 | 8.55 |
| Grass (vegetative propagated)/Acre | 13.25 | 20.20 |
| Millet (foxtail and pearl)/Acre | 1.40 | 2.40 |
| Millet (gahi and hybrids)/Acre | 3.75 | 5.95 |
| Okra and Pepper/Acre | 4.30 | 6.75 |
| Peanut /Acre | 1.00 | 1.80 |
| Rice, Hybrid / Acre | 5.00 | 7.80 |
| Rice/Acre | 4.00 | 6.30 |
| Small Grain/Acre | 0.70 | 1.35 |
| Sorghum (open pollinated)/Acre | 1.20 | 2.10 |
| Sorghum (commercial hybrids)/Acre | 3.60 | 5.70 |
| Hybrid Sorghum Varietal Purity Grow-outs | 120.00 | 180.00 |

**Strategy 1.1.5 Agriculture Production Development – Seed Certification
COST RECOVERY RATE ANALYSIS**

Exhibit A – Page 2

FEE TABLE

| Particulars | Current Fee Structure | Proposed Fee Structure |
|--|-----------------------|-----------------------------|
| Seed Certification - Field Inspection (continued) | | |
| Sorghum (A, B, and R lines)/Acre | 10.50 | 16.05 |
| Soybean & Mung bean/ Acre | 0.80 | 1.50 |
| Sugarcane/Acre | 7.00 | 10.80 |
| Sunflower (commercial hybrids)/Acre | 3.50 | 5.55 |
| Sunflower (A and R lines)/Acre | 10.30 | 15.75 |
| Sunflower (open pollinated), Bush Sunflower, Max/Acre | 3.50 | 5.55 |
| Sunflower Varietal Purity Grow-outs | 120.00 | 180.00 |
| Watermelon/Acre | 7.50 | 11.55 |
| Guar | 0.55 | 1.15 |
| Illinois Bundleflower, & Englemann daisy | 4.30 | 6.75 |
| Other Kinds Not Listed/Acre | 7.00 | 10.80 |
| Seed Certification - Interagency Certification | | |
| Inter-agency Certification Fee by Lots | 200.00 | 200.00 |
| Seed Certification - Seed Labels | | |
| Certified Labels (100 lb. containers or less)/Label | 0.12 | greater of \$0.16 or \$5.00 |
| Certified Labels (>100 lb. containers)/Label | 0.12 | greater of \$0.16 or \$5.00 |
| Certified Labels (bulk certificates)/100 lb./Label | 0.12 | greater of \$0.16 or \$5.00 |
| Varietal Application/Variety | 50.00 | 100.00 |
| Reg Plant Breeder/Certified Seed Grower Appl Fee | 150.00 | 250.00 |

The above fee rates were set by TDA, and were not mandated by the Legislature. (GAA Art. IX §6.16).

**Strategy 1.1.5 Agriculture Production Development – Seed Certification
COST RECOVERY RATE ANALYSIS**

Exhibit B

FEE TABLE - AUTHORITY

| Particulars | Reg: Y/N Mand: Y/N | Authority: Rule/Statute | Last Update |
|--|-------------------------------|--------------------------------|--------------------|
| Seed Certification - Field Inspection | Y/Y | Rule– TAC 4:1 §10.13 | 2011 |
| Application Late Fee per Field | | and Rule–TAC I :4 §10.5 | |
| Re-inspection Fee; Number of Applications for Pre-Plant (not in application fee) | | and Rule–TAC I :4 §10.5 | |
| Guar | | Rule– TAC 4:1 §10.13 | |
| Illinois Bundleflower, & Englemann Daisy | | Rule– TAC 4:1 §10.13 | |
| Seed Certification - Interagency Certification | | | |
| Inter-agency Certification Fee by Lots | Y/Y | Rule: TAC 4:1 §10.13 & §10.2 | 2011 |
| Seed Certification - Seed Labels | Y/Y | | 2011 |
| Certified Labels (100 lb. containers or less)/Label | | Rule: TAC 4:1 §10.10 | |
| Certified Labels (>100 lb. containers)/Label | | Rule: TAC 4:1 §10.10 | |
| Certified Labels (bulk certificates)/100 lb./Label | | Rule: TAC 4:1 §10.11 | |
| Varietal Application/Variety | | Rule: TAC 4:1 §10.2 | |
| Reg Plant Breeder/Certified Seed Grower Appl Fee | | Rule: TAC 4:1 §10.3 | |

Verify Seed Quality

- Seed Arbitration
- Seed Law

Strategy 2.1.2 Verify Seed Quality COST RECOVERY RATE ANALYSIS

Purpose: The Texas Department of Agriculture (“TDA”) protects Texas growers and producers by enforcing seed and plant regulations that ensure only high quality seed is offered for sale. TDA inspectors collect seed samples from retailers, wholesalers and distributors and submit them to TDA’s seed laboratory, where the sample is tested and the results compared with label information to ensure the consumer receives the quality of seed advertised on the label. If a discrepancy exists, penalties may be imposed.

TDA also has a cooperative agreement with USDA to sample and investigate seed that is subject to the Federal Seed Act. Under this Act, USDA sends seed samples to TDA to be planted and monitored to determine if the seed complies with the label information.

Performance: Texas production of new varieties of seed with improved quality and quantity creates a continuing need for TDA’s seed certification and testing services. The Texas Seed Quality Program regulates one of the largest seed industries in the U.S. Texas has a truth-in-labeling law for agricultural and vegetable seed marketed in Texas. TDA enforcement includes testing, trueness-to-variety grow outs, inspection fees, and seed licenses. Rules are continually updated as industry and producer demands change. The seed quality services included in this study are funded on a full cost-recovery basis.

Challenges:

The ability to draw an adequate number of samples in an area is impacted by the amount of seed available at retail and distribution locations. The number of enforcement actions directly correlates to the number of samples from seed grown out-of-state as they have a higher incidence of noncompliance with Texas seed law. TDA has implemented a risk based program to concentrate time and resources at locations and identified seed types that pose the highest risk of failure.

Challenges going forward will include managing cash flow as a sustained and reliable funding source and managing multi-year operational costs with only short term spending authority.

Staffing:

Strategy 2.1.2 is funded 100% by the cost recovery program. The largest position classification for this cost recovery program is seed analytics staff (56%), which includes seed analysts, agronomists, regulatory and certification specialists, and other seed program specialists. Inspectors are second in size (37%) to seed analytics staff. The legal enforcement staff (5%) consists of attorneys, case preparation staff and support staff that are solely dedicated to the enforcement of related laws.

While inspections may be made at producer locations, the primary location for seed quality analysis and testing is the laboratory in Giddings, Texas.

Strategy 2.1.2 Verify Seed Quality
COST RECOVERY RATE ANALYSIS

The cost recovery program funds the staff shown in the table below.

| | <u>FTEs</u> |
|--------------------------------|-------------|
| Direct program - Staffing | |
| Management oversight | 0.2 |
| Program specialists | 8.0 |
| Inspectors | 5.3 |
| Legal Enforcement staff | 0.7 |
| Program administrative support | 0.1 |
| | <hr/> |
| Total - Direct Program Staff | <u>14.3</u> |

Condition of the program in January 2015: Comprehensive fee schedules for all programs were not readily available. The statutory directives for TDA regulatory programs are to recover direct and indirect costs where feasible, with a biennial submission of adopted program fees to LBB. As with any fee structure, the methodology and components of the various fee rates for this program need to be reviewed periodically. Past reviews of fee rates were based on a variety of factors, including reliance on historical funding from state general revenue. The most current program fee structure review was in 2005 for seed arbitration fees and in the 2011-2012 time period for seed law fees. Operating and indirect costs have changed since the fees were initially established, with no adjustments in recent years.

For the FY16-17 biennium, the LBB recommended, and the 84th Legislature adopted a budget for this agency with the intent that the agency fully recovers certain program costs without reliance on general revenue. The core of the cost recovery philosophy is that the businesses and individuals regulated by this program should pay for its consumer protection services. These costs are typically passed through to customers by the regulated industries, moving program costs to those consumers that directly benefit.

After the close of the 84th Legislative session, TDA performed a comprehensive and strategic review of agency cost recovery programs within the context of the FY16-17 budget. The analysis was designed to answer the question “what does it cost to operate the program on a total cost recovery basis?” The analysis considered the need for efficient and effective service delivery to meet agency goals and objectives, as well as a variety of other factors essential to recovering state costs. The goal of the comprehensive review was a sustainable method of financing for the agency’s cost recovery programs. The recommended rates should achieve this goal.

Strategy 2.1.2 Verify Seed Quality
COST RECOVERY RATE ANALYSIS

Cost Study: The program area and the Financial Services Division of TDA developed a cost model to use in the development of a fee structure that would result in moving program operations closer to private industry funding models. The program area assessed factors relevant to the calculation of appropriate rates that are needed to cover program costs.

As part of the assessment, revenue stream trends were reviewed and an evaluation of changes in staffing, the use of contracted services, and the program's working capital requirements was performed.

A. Data Analyzed:

- Direct and indirect operating costs for the past two fiscal years
- Budgeted and projected expenditures and revenues for the past two fiscal years
- Shortfalls in the funding levels assumed in the biennial budget
- Preventative maintenance requirements
- Vehicle and equipment replacement cycle requirements
- Methods of finance for program components
- Impact of service delivery changes currently in development
- Applicable statutes for authority and limitations
- TDA rules for changes necessary for full cost recovery implementation

Exhibit B provides additional details on applicable statutes and administrative rules.

B. Cost Components

| | FTEs | Amount |
|-------------------------------------|------|------------------|
| Direct Labor costs | 14.3 | 1,048,034 |
| Indirect costs ⁽¹⁾ | | 306,727 |
| Operating Expenditures | | 512,684 |
| Total - GR - Fee Based costs | | 1,867,445 |

⁽¹⁾ Indirect costs include services performed for the program by the indirect strategies such as legal, accounting, procurement, records management, human resources, information technology, budget, risk management, executive administration and audit services.

Statewide "Other Direct and Indirect Costs" (ODIC) are automatically assessed against cost recovery programs through the biennial budget process. These costs, which are part of the Direct Labor costs, include active employee benefits and retiree healthcare. The amount of

Strategy 2.1.2 Verify Seed Quality
COST RECOVERY RATE ANALYSIS

ODIC assessed is determined by program staffing, and it offsets the costs of state agencies charged with benefit and retirement fund management.

C. Assumptions

| | <u>Annual cost</u> |
|---|-----------------------|
| Base budget operating costs | 47,420 |
| Utilities (electricity, natural gas, waste disposal) | 30,100 |
| Telecommunication (internet, cell phone, trunk lines) | 9,800 |
| Fuel (16 miles/gal @ \$3/gal) | 35,800 |
| Uniforms for inspectors | 5,100 |
| Rent - Office space (4 regional offices) | 8,700 |
| Fleet management system | 4,700 |
| Mobi Logistics SW licenses (4 licenses) | 4,000 |
| Vehicle maintenance & Repair | 10,700 |
| Vehicle replacement plan | 19,800 |
| Computer - 4 yr replacement plan | 2,800 |
| Printer - 4 yr replacement plan | 500 |
| Seed Germinator repairs | 4,500 |
| 60-days working capital/cost relief factor | <u>328,764</u> |
| Total - Operating expenditure detail | <u>512,684</u> |

D. Revenue Stream

Recent budget rules placed restrictions on the movement of funds within the agency and across fiscal years. This reduced flexibility in funds management creates a need to more tightly control cash flow in order to have consistent funds to meet ongoing and exceptional expenses.

Seed Quality programs are dependent upon annual fees as well as point of service fees. Further complicating the analysis is the seasonal nature of the work load. The seed program rate study focused on cost coverage and not the timing of the revenue stream.

The cost study identified areas where the fee rates need to be increased to fully support the program. In some cases, multiple fee structure scenarios were reviewed.

**Strategy 2.1.2 Verify Seed Quality
COST RECOVERY RATE ANALYSIS**

The table below reflects the outcome of the analysis:

| Particulars | Annual Revenue Stream (amount) | |
|--|--------------------------------|------------------------|
| | Current Fee Structure | Proposed Fee Structure |
| Seed Arbitration | | |
| Seed Arbitration - Filing Fee | 300 | 500 |
| Seed Law | | |
| Agricultural - Seed Sales Qtrly Report (per 100 Lb.)/ License Fee | 682,071 | 1,743,585 |
| Agricultural - Penalty for Late Filing of Qtrly reporting | - | - |
| Agricultural - Texas Tested Seed Labels/License Fee (100 lb. containers or less) | 35,183 | 33,825 |
| Agricultural - Texas Tested Seed Labels/License Fee (greater than 100 lb. containers)/Label | - | 58,210 |
| Vegetable - Individual Vegetable Seed License Fee | 13,800 | 20,300 |
| Seed Testing - Standard Germination Test | 5,100 | 8,820 |
| Seed Testing - Standard Germination Test - grass | 80 | 90 |
| Seed Testing - Vigor | 1,000 | 540 |
| Seed Testing - Red Rice Test – 10 lbs | 1,015 | 1,575 |
| Seed Testing - Red Rice Test – 75 lbs | - | - |
| TOTAL | 738,549 | 1,867,445 |

Exhibit A provides additional detail on how these fee categories were calculated.

E. Results of Cost Study

Rate Increase Timeline: In order for the new fee rates to go into effect December 1, 2015, the following timeline must be met:

| | |
|----------------|--|
| Sept 24 | Submit to Legal division for publication preparation |
| Sept 28 (noon) | Deadline to submit for publication |
| Oct 9 | Publication in Texas Register |
| Nov 8 | 30-day comment period ends, eligible for adoption |
| Nov 9 | Submit for adoption |
| Nov 29 | Adoption in effect |

Strategy 2.1.2 Verify Seed Quality

COST RECOVERY RATE ANALYSIS

Changes to rules affecting seed certification and fees must also have a public hearing in Austin, Texas. This could be accomplished during the Texas Register comment period.

Market Evaluation: *Comparisons were based generally on like fee types, and not on total fee structure or methods of program funding, which can impact individual rates.*

How does the TDA Seed Law fees compare with the fees charged by other states?

- Tonnage/Sales Reporting – Texas collects regulatory seed sales fees for quarterly sales reporting (proposed at \$0.45 per 100 lbs.). Minnesota charges \$0.063 to \$3.29 per 100 lbs. sold for required semiannual sales reports. California requires an “assessment” based on gross sales not to exceed \$0.25 per \$100 gross dollar sales volume of agricultural seed, which is expected to cover program costs. Arkansas charges \$0.10 per 100 pounds sold for quarterly reporting.
- Seed Labeling License – TDA has proposed at \$0.45 per 100 lb. container labeled. These fees include inspection services to receive a “Texas Tested” label. Minnesota charges between \$50 and \$2,000 for a seed tagging permit. Arkansas charges \$250 for an annual seed labeler’s license and allows as an option to reporting/tonnage fees, a per label fee of \$0.10.
- Vegetable Seed Licenses – Proposed rates for an individual vegetable seed license are \$350.
- Testing Fees – TDA rates also include testing fees for germination and vigor, proposed at a per test range of \$45-\$90). Nevada charges between \$55-\$75 per test. Georgia charges between \$20-\$95 for testing. Wyoming charges between \$19-\$88 per germination test.
- Some states also collect a fee from all retailers in state who sell seed, which can range from \$25-\$100 per retail outlet. TDA does not charge a similar fee.
- Some states charge directly for inspection travel expenses, whereas Texas includes those costs in its overall inspection rates.

Revenue Stream: Timing of fee collection

- The current fee collection process has resulted in a revenue stream that is not constant. In FY16, TDA will be reviewing various options of providing for a more constant revenue stream which may result in such changes as consolidation of when licenses are renewed, auto renewal options, and out-sourcing of services.

Legislative Changes: Increase in accountability, decrease in authority

- The 84th Legislature eliminated TDA’s authority to rollover excess fee revenue between the fiscal years of a biennium. In addition the Legislature eliminated TDA’s authority to transfer budget between fee based programs beyond the standard allowance included in the GAA, Article IX. The Legislature shifted the funding burden by reducing general revenue support that previously covered program fee shortfalls.

Strategy 2.1.2 Verify Seed Quality
COST RECOVERY RATE ANALYSIS

Change Management: Engagement of program-specific associations, boards, and other affected organizations

- Early discussions with stakeholders on probable fee increases have occurred. Once the rate study is complete, further discussions on the study and its results will take place. Applicable associations and boards will be notified of the proposed fee rate changes as we welcome their input in the process.
- Some of the budgetary changes and impacts to the fee based programs were supported by various associations and boards, which should assist the fee transition process. Seed industry representatives worked directly with the Legislature on replacing general revenue with a more comprehensive cost recovery process.

Moving Forward: On-going processes will be established to:

- Monitor the level of service performed is in line with the projected service plan
- Ensure timely billing of fee renewals
- Timely follow-up on delayed payment of fees and/or fines
- Identify significant changes in expenditures of the program due to external factors such as higher fuel costs, unanticipated vehicle repairs, equip & material cost increases from vendors, deferred maintenance and infrastructure repairs, legislative changes (state and federal level), etc. and take correction actions
- Monitor cash flow and take corrective actions as necessary

See attached exhibits for additional supporting detail.

**Strategy 2.1.2 Verify Seed Quality
COST RECOVERY RATE ANALYSIS**

Exhibit A

FEE TABLE

| Particulars | Current Fee Structure | Proposed Fee Structure |
|--|--------------------------------------|--------------------------------------|
| Seed Arbitration | | |
| Seed Arbitration - Filing Fee | 300.00 | 500.00 |
| Seed Law | | |
| Agricultural - Seed Sales Qtrly Report (per 100 Lb.)/ License Fee | 0.18 | 0.45 |
| Agricultural - Penalty for Late Filing of Qtrly reporting | Greater of \$50 or 10% of fee due | Greater of \$50 or 10% of fee due |
| Agricultural - Texas Tested Seed Labels/License Fee (100 lb. containers or less) | 0.18 | 0.45 |
| Agricultural - Texas Tested Seed Labels/License Fee (greater than 100 lb. containers)/Label | 0.18 | 0.45 |
| Vegetable - Individual Vegetable Seed License Fee | 300.00 | 350.00 |
| Seed Testing - Standard Germination Test | 50.00 | 60.00 |
| Seed Testing - Standard Germination Test - grass | 80.00 | 90.00 |
| Seed Testing - Vigor | 50.00 | 60.00 |
| Seed Testing - Red Rice Test – 10 lbs | 35.00 | 45.00 |
| Seed Testing - Red Rice Test – 75 lbs | 75.00 | 85.00 |

The above fee rates were set by TDA, and were not mandated by the Legislature.
(GAA Art. IX §6.16).

**Strategy 2.1.2 Verify Seed Quality
COST RECOVERY RATE ANALYSIS**

Exhibit B

FEE TABLE - AUTHORITY

| Particulars | Reg: Y/N Mand: Y/N | Authority: Rule/Statute | Last Update |
|--|-------------------------------|--------------------------------|--------------------|
| Seed Arbitration | Y/Y | Rule-TAC 4:1 - §6.4 | 2005 |
| Seed Law | | | |
| Agricultural - Seed Sales Qtrly Report (per 100 Lb.)/ License Fee | Y/Y | Rule-TAC 4:1 §9.3 | 2011 |
| Agricultural - Penalty for Late Filing of Qtrly reporting | Y/Y | Rule- TAC 4:1 §9.2 | 2011 |
| Agricultural - Texas Tested Seed Labels/License Fee (100 lb. containers or less) | Y/Y | Rule- TAC 4:1 §9.2 | 2011 |
| Agricultural - Texas Tested Seed Labels/License Fee (greater than 100 lb. containers)/Label | | Rule- TAC 4:1 §9.2 | 2011 |
| Vegetable - Individual Vegetable Seed License Fee | Y/Y | Rule-TAC 4:1 §9.3 | 2011 |
| Seed Testing - Standard Germination Test | Y/N | Rule-TAC 4:1 §9.5 | 2012 |
| Seed Testing - Standard Germination Test - grass | Y/N | Rule-TAC 4:1 §9.5 | 2012 |
| Seed Testing - Vigor | Y/N | Rule-TAC 4:1 §9.5 | 2012 |
| Seed Testing - Red Rice Test – 10 lbs | Y/N | Rule-TAC 4:1 §9.5 | 2012 |
| Seed Testing - Red Rice Test – 75 lbs | Y/N | Rule-TAC 4:1 §9.5 | 2012 |

Agriculture Commodity Regulation

- Handle/Mkt of Perishable Commodities
- Grain Warehouse
- Egg Law

Strategy 2.1.3 Agriculture Commodity Regulation

COST RECOVERY RATE ANALYSIS

Purpose: The Texas Department of Agriculture (“TDA”) ensures standards for egg grade, size and quality, protects grain deposited in public grain warehouses, and administers the Produce Recovery Fund that protects perishable commodity producers and dealers from non-payment for goods bought on credit.

The main objective of the egg program is to ensure eggs offered for sale to Texas consumers meet quality standards. Other program activities include the licensing of egg dealers/wholesalers, brokers and processors, as well as the inspection of eggs at packing plants, distribution centers and retail outlets. Although retailers are exempt from licensing requirements, TDA continues to inspect eggs offered for sale at retail outlets.

Under strategy 2.1.3 the department also monitors grain warehouses to ensure the proper storing and handling of agricultural commodities through licensing and inspection. Warehouse owners are required to submit proof of financial responsibility and a surety bond to cover losses, insure all stored grain at full market value, and keep records relating to grain inventory and ownership.

The Handling and Marketing of Perishable Commodities Program (HMPC) ensures that producers of Texas-grown perishable commodities receive timely compensation for commodities they sell. Under this program a dealer or buyer must be licensed and must pay an annual license fee. If a licensed dealer fails to pay for producer delivered perishable commodities, the producer and/or seller is allowed to recover a portion of their damages from the Produce Recovery Fund, a special account funded with a portion of the license fees paid.

Performance: Egg quality is monitored by multiple agencies. TDA’s Egg Quality Program reduces the risk of duplication of efforts by entering into a memorandum of understanding with the Texas Department of State Health Services that defines each agency’s responsibilities. TDA also does not inspect eggs at facilities that are under the USDA inspection program.

Public grain warehouses are susceptible to fluctuations in grain prices and grain yields, and require monitoring to assure storage and handling is consistent with regulation and depositor agreements. Inspectors monitor grain inventories, warehouse accounting practices, and potential company insolvency. Onsite financial risk assessments are performed as necessary.

The HMPC program protects perishable commodities grown in Texas on credit through the administration of a trust fund financed by dealers that buy on credit. Investigation and distribution in the event of non-payment is initiated by a complaint or claim filed with TDA.

Challenges: Egg Quality Program – Changing federal and state health regulations regarding the handling of eggs impact oversight by TDA affect resources. The wide range of retail business types also provides inspection challenges under current staff and budget. To address resource issues, egg inspection efforts are distributed across the industry by focusing agency resources on those locations that pose a greater risk of non-compliance. TDA also monitors egg quality issues in other states that have a potential to impact the Texas egg market.

Strategy 2.1.3 Agriculture Commodity Regulation
COST RECOVERY RATE ANALYSIS

Grain Warehouse Program – Changing market conditions, the accuracy and sophistication of warehouse accounting systems, and risky inspection conditions affect resources. When aware of potential violations, TDA suspends operations to prevent further movement of grain pending the results of the investigation. Violations may result in criminal or civil actions further impacting staffing.

HMPC Program – Market and general economic conditions impact an individual's ability to repay debts.

Challenges going forward will include managing cash flow as a sustained and reliable funding source and managing multi-year operational costs with only short term spending authority.

Staffing: Strategy 2.1.3 is funded 100% by the cost recovery program. There are five regional offices that coordinate the activities at the remote sites. By far the largest position classification for this cost recovery program is the inspectors (62%). The program specialist classification (29%) includes such positions as logistic specialists, data analysis specialists, and education specialists. The legal enforcement staff (6%) consists of attorneys, case preparation staff and support staff that are solely dedicated to the enforcement of related laws including prosecution of violators. The cost recovery program funds the staff shown in the table below.

| | <u>FTEs</u> |
|--------------------------------|-------------|
| Direct program - Staffing | |
| Management oversight | 0.3 |
| Program specialists | 4.7 |
| Inspectors | 9.9 |
| Legal Enforcement staff | 1.0 |
| Program administrative support | 0.1 |
| | <hr/> |
| Total - Direct Program Staff | <u>16.0</u> |

Condition of the program in January 2015: Comprehensive fee schedules for all programs were not readily available. The statutory directives for TDA regulatory programs are to recover direct and indirect costs where feasible, with a biennial submission of adopted program fees to LBB. As with any fee structure, the methodology and components of the various fee rates for this program need to be reviewed periodically. Past reviews of fee rates were based on a variety of factors, including reliance on historical funding from state general revenue. The most current program fee structure review was in 2003 for egg law fees and in the 2011-2013 time period for other program specific fees. Operating and indirect costs have changed since the fees were initially established, with no adjustments in recent years.

Strategy 2.1.3 Agriculture Commodity Regulation

COST RECOVERY RATE ANALYSIS

For the FY16-17 biennium, the LBB recommended, and the 84th Legislature adopted a budget for this agency with the intent that the agency fully recovers certain program costs without reliance on general revenue. The core of the cost recovery philosophy is that the businesses and individuals regulated by this program should pay for its consumer protection services. These costs are typically passed through to customers by the regulated industries, moving program costs to those consumers that directly benefit.

After the close of the 84th Legislative session, TDA performed a comprehensive and strategic review of agency cost recovery programs within the context of the FY16-17 budget. The analysis was designed to answer the question “what does it cost to operate the program on a total cost recovery basis?” The analysis considered the need for efficient and effective service delivery to meet agency goals and objectives, as well as a variety of other factors essential to recovering state costs. The goal of the comprehensive review was a sustainable method of financing for the agency’s cost recovery programs. The recommended rates should achieve this goal.

Cost Study: The program area and the Financial Services Division of TDA developed a cost model to use in the development of a fee structure that would result in the program being self-sufficient. The program area assessed factors relevant to the calculation of appropriate rates that are needed to cover program costs. As part of the assessment, revenue stream trends were reviewed and an evaluation of changes in staffing, the use of contracted services, and the program’s working capital requirements was performed.

A. Data Analyzed:

- Direct and indirect operating costs for the past two fiscal years
- Budgeted and projected expenditures and revenues for the past two fiscal years
- Shortfalls in the funding levels assumed in the biennial budget
- Preventative maintenance requirements
- Vehicle and equipment replacement cycle requirements
- Methods of finance for program components
- Impact of service delivery changes currently in development
- Applicable statutes for authority and limitations
- TDA rules for changes necessary for full cost recovery implementation

Exhibit B provides additional details on applicable statutes and administrative rules.

**Strategy 2.1.3 Agriculture Commodity Regulation
COST RECOVERY RATE ANALYSIS**

B. Cost Components

| | <u>FTEs</u> | <u>Amount</u> |
|-------------------------------------|-------------|-------------------------|
| Direct Labor costs | 16.0 | 1,231,969 |
| Indirect costs | | 353,915 |
| Operating Expenditures | | <u>504,894</u> |
| Total - GR - Fee Based costs | | <u>2,090,778</u> |

⁽¹⁾ Indirect costs include services performed for the program by the indirect strategies such as legal, accounting, procurement, records management, human resources, information technology, budget, risk management, executive administration and audit services.

Statewide "Other Direct and Indirect Costs" (ODIC) are automatically assessed against cost recovery programs through the biennial budget process. These costs, which are part of the Direct Labor costs, include active employee benefits and retiree healthcare. The amount of ODIC assessed is determined by program staffing, and it offsets the costs of state agencies charged with benefit and retirement fund management.

C. Assumptions

| | <u>Annual cost</u> |
|---|-----------------------|
| Base budget operating costs | 47,398 |
| Utilities (electricity, natural gas, waste disposal) | 700 |
| Telecommunication (internet, cell phone, trunk lines) | 7,900 |
| Fuel (16 miles/gal @ \$3/gal) | 37,600 |
| Uniforms for inspectors (10 inspectors) | 5,600 |
| Rent - Office space (4 regional offices) | 9,700 |
| Fleet management system | 5,200 |
| Mobi Logistics SW licenses (6 licenses) | 6,000 |
| Vehicle maintenance & Repair | 11,900 |
| Vehicle replacement plan | 22,000 |
| Computer - 4 yr replacement plan | 3,100 |
| Printer - 4 yr replacement plan | 600 |
| 60-days working capital/cost relief factor | <u>347,196</u> |
| Total - Operating expenditure detail | <u>504,894</u> |

Strategy 2.1.3 Agriculture Commodity Regulation
COST RECOVERY RATE ANALYSIS

D. Revenue Stream

Recent budget rules placed restrictions on the movement of funds within the agency and across fiscal years. This reduced flexibility in funds management creates a need to more tightly control cash flow in order to have consistent funds to meet ongoing and exceptional expenses.

Agricultural commodity programs are dependent upon annual inspection and licensing fees. Further complicating the analysis is public warehouse competition. Keeping rates within a certain range helps smaller Texas companies remain competitive.

The cost study identified areas where the fee rates need to be increased to fully support the program. In some cases, multiple fee structure scenarios were reviewed. The table below reflects the outcome of the analysis:

| Particulars | Annual Revenue Stream (amount) | |
|--------------------------------------|--------------------------------|------------------------|
| | Current Fee Structure | Proposed Fee Structure |
| Handle/Mkt of Perishable Commodities | 40,445 | 59,000 |
| Grain Warehouse | 510,184 | 845,310 |
| Egg Law | 638,804 | 1,185,468 |
| Late Fees | 4,333 | 1,000 |
| TOTAL | 1,193,766 | 2,090,778 |

Exhibit A provides additional detail on how these fee categories were calculated.

E. Results of Cost Study

Rate Increase Timeline: In order for the new fee rates to go into effect December 1, 2015, the following timeline must be met:

| | |
|----------------|--|
| Sept 24 | Submit to Legal division for publication preparation |
| Sept 28 (noon) | Submit for publication (deadline) |
| Oct 9 | Publication in Texas Register |
| Nov 8 | 30-day comment period ends, eligible for adoption |
| Nov 9 | Submit for adoption |
| Nov 29 | Adoption in effect |

Strategy 2.1.3 Agriculture Commodity Regulation

COST RECOVERY RATE ANALYSIS

Market Evaluation: *Comparisons were based generally on like fee types, and not on total fee structure or methods of program funding, which can impact individual rates.*

How do we compare with other states on Handling and Marketing of Perishable Commodities (HMPC) license fees?

- Other states have different fee types but in general, the proposed Texas HMPC license fees of \$150.00 annually plus \$30.00 for each transporting and buyer agent card appear to be comparable to other states. California fees are based on the annual dollar volume of California farm product purchases, and/or broker contracts, and/or consignment returns with \$136/year being the lowest and \$600/year being the highest charged.

Colorado fees are based on purchases over \$20,000 annually and no single purchase over \$2,500 with \$75.00/year being the lowest and \$425.00/year being the highest charged.

How do we compare with other states' fees for grain warehouse?

- **Licensing Fees**—At \$500, the proposed licensing fees for a public grain warehouse in Texas is comparable to other states: Kansas charges \$400-\$3,225 based on storage capacity, Minnesota requires a license to buy grain (\$140-\$700) based on gross annual grain purchases plus a license to store of \$110 plus warehouse exam fees; North Dakota charges between \$300-\$500 for a license based on bushel capacity.
- **Inspection Fees**—Texas charges an inspection fee based on bushel capacity of the storage container. As an example, an average size grain warehouse would pay \$2960 under the proposed fees (which includes inspection site travel costs). In contrast, many states charge travel and inspection time directly. For example, Kansas charges a \$50 per hour fee with a 4 hour minimum, mileage to and from the facility, lodging costs and a per diem of \$43 per day.

How do we compare with other state's egg license and inspection fees?

- The proposed Texas egg inspection fees are generally comparable or lower than most states. Texas assesses an inspection fee, which is proposed for \$0.06 for each thirty-dozen case, while many states have inspection fees that are the same or up to double that amount. For example, Iowa egg inspection fees per a thirty-dozen case are \$0.06; Arizona inspection fees are \$0.09, as are Oklahoma's; and California inspection fees are \$0.125 per case. Indiana charges a flat inspection fee ranging from \$30.00 for production of less than 5 cases per week to \$100 for production of more than 50 cases per week.
- In addition to egg inspection fees, Texas also licenses egg dealers, wholesalers, processors, and brokers. License fees for egg dealers, wholesalers, and processors are graduated based on weekly egg production, whereas egg brokers are assessed a flat fee. Texas' graduated fee scale is unique, as most states assess a flat license fee. This makes fairly comparing Texas egg license fees to other states difficult.

Strategy 2.1.3 Agriculture Commodity Regulation COST RECOVERY RATE ANALYSIS

Revenue Stream: Timing of fee collection

- The current fee collection process has resulted in a revenue stream that is not constant. In FY16, TDA will be reviewing various options of providing for a more constant revenue stream which may result in such changes as consolidation of when licenses are renewed, auto renewal options, and out-sourcing of services.

Legislative Changes: Increase in accountability, decrease in authority

- The 84th Legislature eliminated TDA's authority to rollover excess fee revenue between the fiscal years of a biennium. In addition the Legislature eliminated TDA's authority to transfer budget between fee based programs beyond the standard allowance included in the GAA, Article IX. The Legislature shifted the funding burden by reducing general revenue support that previously covered program fee shortfalls.

Change Management: Engagement of program-specific associations, boards, and other affected organizations

- Early discussions with stakeholders on probable fee increases have occurred. Once the rate study is complete, further discussions on the study and its results will take place. Applicable associations and boards will be notified of the proposed fee rate changes as we welcome their input in the process.
- Some of the budgetary changes and impacts to the fee based programs were supported by various associations and boards, which should assist the fee transition process. For example, seed industry representatives worked directly with the Legislature on replacing general revenue with a more comprehensive cost recovery process.

Moving Forward: On-going processes will be established to:

- Monitor the level of service performed is in line with the projected service plan
- Ensure timely billing of fee renewals
- Timely follow-up on delayed payment of fees and/or fines
- Identify significant changes in expenditures of the program due to external factors such as higher fuel costs, unanticipated vehicle repairs, equip & material cost increases from vendors, deferred maintenance and infrastructure repairs, legislative changes (state and federal level), etc. and take correction actions
- Monitor cash flow and take corrective actions as necessary

See attached exhibits for additional supporting detail.

**Strategy 2.1.3 Agriculture Commodity Regulation
COST RECOVERY RATE ANALYSIS**

Exhibit A – Page 1

FEE TABLE

| Particulars | Current Fee Structure | Proposed Fee Structure |
|---|--|--|
| Handle/Mkt of Perishable Commodities | | |
| HMPC - Produce Recovery Fund | 250.00 | 250.00 |
| Buying Agents/Transporting Agents - ID Card Fee | 15.00 | 30.00 |
| Complaint - Claim Filing Fee | 20.00 | 50.00 |
| General License Fee | 115.00 | 150.00 |
| Grain Warehouse | | |
| Annual Inspection - Bushels | Greater of \$22 per/ 10,000 BU or \$100 | Greater of \$38 per/ 10,000 BU or \$200 |
| Combo License Application/Renewal for Each Add'l Facility | 160.00 | 300.00 |
| Combo License Application/Renewal Headquarters | 235.00 | 500.00 |
| Single License Application/Renewal | 235.00 | 500.00 |
| Requested Inspection - Bushel Capacity | Greater of \$22 per/ 10,000 BU or \$100 | Greater of \$38 per/ 10,000 BU or \$200 |
| Requested Inspection-Partial Inspection-Other issues | 100.00 | 150.00 |
| Egg Law | | |
| Broker - License | 420.00 | 500.00 |
| Dealer/Wholesaler - Class 1 (1-9 Cases/WK) | 20.00 | 100.00 |
| Dealer/Wholesaler - Class 2 (10-49 Cases/WK) | 40.00 | 100.00 |
| Dealer/Wholesaler - Class 3 (50-99 Cases/WK) | 60.00 | 100.00 |
| Dealer/Wholesaler - Class 4 (100-199 Cases/WK) | 100.00 | 300.00 |
| Dealer/Wholesaler - Class 5 (200-499 Cases/WK) | 180.00 | 300.00 |
| Dealer/Wholesaler - Class 6 (500-999 Cases/WK) | 270.00 | 500.00 |
| Dealer/Wholesaler - Class 7 (1000-1499 Cases/WK) | 360.00 | 500.00 |
| Dealer/Wholesaler - Class 8 (1500-2999 Cases/WK) | 720.00 | 1,000.00 |
| Dealer/Wholesaler - Class 9 (3000-4499 Cases/WK) | 900.00 | 1,200.00 |
| Dealer/Wholesaler - Class 10 (4500-6999 Cases/WK) | 1,200.00 | 1,500.00 |
| Dealer/Wholesaler - Class 11 (7000-9999 Cases/WK) | 1,800.00 | 2,100.00 |
| Dealer/Wholesaler - Class 12 (10000+ Cases/WK) | 2,400.00 | 2,700.00 |
| Processor - Class 1 (1-249 Cases/WK) | 60.00 | 100.00 |
| Processor - Class 2 (250-599 Cases/WK) | 120.00 | 175.00 |
| Processor - Class 3 (600-1499 Cases/WK) | 210.00 | 250.00 |
| Processor - Class 4 (1500+ Cases/WK) | 420.00 | 450.00 |
| Inspection/Case Fee | 0.03 | 0.06 |

**Strategy 2.1.3 Agriculture Commodity Regulation
COST RECOVERY RATE ANALYSIS**

Exhibit A – Page 2

FEE TABLE

| Particulars | Current Fee Structure | Proposed Fee Structure |
|--|---|---|
| Enforcement | | |
| Grain Warehouse - Enforcement - Penalties for Violations | Not more than \$10,000 per violation | Not more than \$10,000 per violation |
| Egg Law - Enforcement/Chptr 15 - Administrative Penalty | Not to Exceed \$500 per violation | Not to Exceed \$500 per violation |
| Late Fees | | |
| Grain WH - General License - Late Fees | | |
| Grain WH - License Application - Late Fees | 1.5 times fee if < 90 days late; 2 times fee if > 90 but <1 yr | 1.5 times fee if < 90 days late; 2 times fee if > 90 but <1 yr |
| Egg Law - Broker - License Late Fees | | |
| Egg Law - Dealer/Wholesaler - Late Fees | | |
| Egg Law - Processer - Late Fees | | |

The above fee rates were set by TDA, and were not mandated by the Legislature. (GAA Art. IX §6.16).

**Strategy 2.1.3 Agriculture Commodity Regulation
COST RECOVERY RATE ANALYSIS**

Exhibit B

FEE TABLE - AUTHORITY

| Particulars | Reg: Y/N Mand: Y/N | Authority: Rule/Statute | Last Update |
|---|-------------------------------|---|--------------------|
| Handle/Mkt of Perishable Commodities | | | |
| HMPC - Produce Recovery Fund | Y/N | Rule-TAC 4:1 §14.3 | 2012 |
| Buying Agents/Transporting Agents-ID Card Fee | Y/N | Rule-TAC 4:1 §14.3 | 2011 |
| Complaint - Claim Filing Fee | Y/Y | Rule-TAC 4:1 §14.3 | 2011 |
| General License Fee | Y/Y | Rule-TAC 4:1 §14.3 | 2011 |
| | | | |
| Grain Warehouse | | | |
| Annual Inspection - Bushels | Y/Y | Rule-TAC 4:1 §13.7 | 2011 |
| Combo License Application/Renewal for Each Add'l Facility | Y/Y | Rule-TAC 4:1 §13.7 | 2011 |
| Combo License Application/Renewal Headquarters | Y/Y | Rule-TAC 4:1 §13.7 | 2011 |
| Single License Application/Renewal | Y/Y | Rule-TAC 4:1 §13.7 | 2011 |
| Requested Inspection | Y/Y | Rule-TAC 4:1 §13.7 | 2011 |
| | | | |
| Egg Law | | | |
| Broker - License | Y/N | Rule-TAC 4:1 §15.4 | 2003 |
| Dealer/Wholesaler - Classes 1 thru 12 | Y/Y | Rule-TAC 4:1 §15.4 | 2003 |
| Processor - Classes 1 thru 4 | Y/Y | Rule-TAC 4:1 §15.4 | 2003 |
| Inspection/Case Fee | Y/Y | Rule-TAC 4:1 §15.5 | 1996 |
| | | | |
| Enforcement | | | |
| Grain Warehouse - Enforcement - Penalties for Violations | Y/Y | Statute-Tx Ag Code §12.020 | 2011 |
| Egg Law - Enforcement/Chptr 15 - Administrative Penalty | Y/Y | Rule-TAC 4:1 §15.5 | 1996 |
| | | | |
| Late Fees | Y/Y | Tx Ag Code §12.024 (b)&(c) TAC 4:1 §1.55 & §1.56 | 1993 |

Structural Pest Controls

- Structural Pest Control

Strategy 2.1.4 Structural Pest Controls

COST RECOVERY RATE ANALYSIS

Purpose: The Texas Department of Agriculture (“TDA”) is responsible for licensing and regulation of all persons engaged in the business of structural pest control. These duties include the licensing and certification of individuals providing services for commercial and noncommercial pest control, investigating and resolving complaints, performing inspections of business licensees and applicators to insure compliance with state and federal pesticide laws and regulations. The strategy also monitors the use of pesticides in public schools by monitoring integrated pest management programs implemented by school districts. The need to ensure the health, safety and welfare of the public by enhancing the educational and professional standards of license holders and the need to provide exceptional customer service to the public and the structural pest control industry.

Structural Pest Control has an industry advisory committee, a remnant of the former Structural Pest Control Board whose functions were moved to TDA in 2007.

Performance: Structural Pest Control is responsible for regulating persons engaged in the business of structural pest control. The program provides education and awareness to the public and the pest control industry through communication and compliance monitoring. TDA has implemented “convenience testing” by contracting with a test delivery vendor. This removes much of the administrative testing duties from TDA staff, and provides more flexibility in testing dates and locations for technicians and certified applicators.

The program also establishes standards for the use of pesticides and other pest control methods in schools through an Integrated Pest Management program.

Although there are a few TDA programs funded from non-cost recovery sources, the services included in this study are those with an expectation of full cost-recovery funding.

Challenges:

Changes in federal and state laws and regulations, Structural Pest Control Advisory Committee rulemaking, the number of new businesses seeking to become licensed, the level of noncompliance observed in the operations of license holders, and the numbers of complaints received are key areas that impact this strategy. TDA has implemented convenience testing for structural pest control applicators by using a contracted entity in lieu of TDA inspection and program staff to administer exams required for an applicator license. Also, TDA uses a risk based inspection strategy to better focus resources in areas that pose a greater risk to consumer protection.

Challenges going forward will include managing cash flow as a sustained and reliable funding source and managing multi-year operational costs with only short term spending authority

Staffing: Strategy 2.1.4 has two funding sources of which the cost recovery program makes of approximately 96%. Federal funds, which are dedicated for a specific purpose, are the remaining 4% of this strategy.

Strategy 2.1.4 Structural Pest Controls
COST RECOVERY RATE ANALYSIS

There are five regional offices that coordinate the activities at the remote sites. By far the largest position classification for this cost recovery program is the inspectors (60%). The program specialist classification (24%) includes such positions as data analysis specialists, education specialists and compliance specialists. The legal enforcement staff (11%) consists of attorneys, case preparation staff and support staff that are solely dedicated to the enforcement of related laws including prosecution of violators. The cost recovery program funds the staff shown in the table below.

| | <u>FTEs</u> |
|--------------------------------|-------------|
| Direct program - Staffing | |
| Management oversight | 0.6 |
| Program specialists | 5.9 |
| Inspectors | 15.0 |
| Legal Enforcement staff | 2.8 |
| Program administrative support | 0.7 |
| | <hr/> |
| Total - Direct Program Staff | <u>25.0</u> |

Condition of the program in January 2015: Comprehensive fee schedules for all programs were not readily available. The statutory directives for TDA regulatory programs are to recover direct and indirect costs where feasible, with a biennial submission of adopted program fees to LBB. As with any fee structure, the methodology and components of the various fee rates for this program need to be reviewed periodically. Past reviews of fee rates were based on a variety of factors, including reliance on historical funding from state general revenue. The most current fee structure review was in the 2011-2012 time period. Operating and indirect costs have changed since the fees were initially established, with no adjustments in recent years.

For the FY16-17 biennium, the LBB recommended, and the 84th Legislature adopted a budget for this agency with the intent that the agency fully recovers certain program costs without reliance on general revenue. The core of the cost recovery philosophy is that the businesses and individuals regulated by this program should pay for its consumer protection services. These costs are typically passed through to customers by the regulated industries, moving program costs to those consumers that directly benefit.

After the close of the 84th Legislative session, TDA performed a comprehensive and strategic review of agency cost recovery programs within the context of the FY16-17 budget. The analysis was designed to answer the question “what does it cost to operate the program on a total cost recovery basis?” The analysis considered the need for efficient and effective service delivery to meet agency goals and objectives, as well as a variety of other factors essential to recovering state costs. The goal of the comprehensive review was a sustainable method of financing for the agency’s cost recovery programs. The recommended rates should achieve this goal.

Strategy 2.1.4 Structural Pest Controls

COST RECOVERY RATE ANALYSIS

Cost Study: The program area and the Financial Services Division of TDA developed a cost model to use in the development of a fee structure that would result in the program being self-sufficient. The program area assessed factors relevant to the calculation of appropriate rates that are needed to cover program costs.

As part of the assessment, the legal framework and revenue stream trends for past years were reviewed; and an evaluation of changes in staffing, the use of contracted services, and the program's working capital requirements was performed.

A. Data reviewed:

- Direct and indirect operating costs for the past two fiscal years
- Budgeted and projected expenditures and revenues for the past two fiscal years
- Shortfalls in the funding levels assumed in the biennial budget
- Preventative maintenance requirements
- Vehicle and equipment replacement cycle requirements
- Methods of finance for program components
- Impact of service delivery changes currently in development
- Applicable statutes for authority and limitations
- TDA rules for changes necessary for full cost recovery implementation

Exhibit B provides additional details on applicable statutes and administrative rules.

B. Cost Components

| | FTEs | Amount |
|-------------------------------------|------|------------------|
| Direct Labor costs | 25.0 | 1,888,291 |
| Indirect costs ⁽¹⁾ | | 530,874 |
| Operating Expenditures | | 1,124,735 |
| Total - GR - Fee Based costs | | 3,543,900 |

⁽¹⁾ Indirect costs include services performed for the program by the indirect strategies such as legal, accounting, procurement, records management, human resources, information technology, budget, risk management, executive administration and audit services.

Statewide "Other Direct and Indirect Costs" (ODIC) are automatically assessed against cost recovery programs through the biennial budget process. These costs, which are part of the Direct Labor costs, include active employee benefits and retiree healthcare. The amount of ODIC assessed is determined by program staffing, and it offsets the costs of state agencies charged with benefit and retirement fund management.

Strategy 2.1.4 Structural Pest Controls
COST RECOVERY RATE ANALYSIS

C. Assumptions

| | <u>Annual cost</u> |
|---|-------------------------|
| Base budget operating costs | 125,430 |
| Utilities (electricity, natural gas, waste disposal) | 1,200 |
| Telecommunication (internet, cell phone, trunk lines) | 13,400 |
| Fuel (16 miles/gal @ \$3/gal) | 60,400 |
| Uniforms for inspectors (15 inspectors) | 9,100 |
| Rent - Office space (4 regional offices) | 16,400 |
| Fleet management system | 8,400 |
| Mobi Logistics SW licenses (13 licenses) | 13,000 |
| Vehicle maintenance & Repair | 19,200 |
| Vehicle replacement plan | 34,500 |
| Computer - 4 yr replacement plan | 4,900 |
| Printer - 4 yr replacement plan | 1,000 |
| Contract - SPC exam | 247,000 |
| 60-days working capital/cost relief factor | <u>570,805</u> |
| Total - Operating expenditure detail | <u>1,124,735</u> |

D. Revenue Stream

Recent budget rules placed restrictions on the movement of funds within the agency and across fiscal years. This reduced flexibility in funds management creates a need to more tightly control cash flow in order to have consistent funds to meet ongoing and exceptional expenses.

Structural Pest Control programs are primarily dependent upon annual licensing fees. Previously, licensing renewal was based on the date of application. This allowed TDA to spread the workload throughout the year. However, in order to manage operations on an annual "use it or lose it" budget, the revenue will need to be collected at the beginning of each year to allow for full expenditure by the end of the year.

The cost study identified areas where the fee rates need to be increased to fully support the program. In some cases, multiple fee structure scenarios were reviewed.

Strategy 2.1.4 Structural Pest Controls COST RECOVERY RATE ANALYSIS

The table below reflects the outcome of the analysis:

| Particulars | Annual Revenue Stream (amount) | |
|-------------------------|--------------------------------|------------------------|
| | Current Fee Structure | Proposed Fee Structure |
| Structural Pest Control | 2,231,236 | 3,543,900 |

Exhibit A provides additional detail on how these fee categories were calculated.

E. Results of Cost Study

- In order for the new Fee rates to go into effect December 1, 2015, the following timeline must be met:

| | |
|----------------|--|
| Sept 24 | Submit to Legal division for publication preparation |
| Sept 28 (noon) | Submit for publication (deadline) |
| Oct 9 | Publication in Texas Register |
| Nov 8 | 30-day comment period ends, eligible for adoption |
| Nov 9 | Submit for adoption |
| Nov 29 | Adoption in effect |

Market Evaluation: Comparisons were based generally on like fee types, and not on total fee structure or methods of program funding, which can impact individual rates.

How do we compare with other states' regulatory charges?

- Comparing Texas structural pest control license fees with other states' license fees is difficult, as many states define their license categories differently and/or may not have a license equivalent. However, some adjoining states have license categories that are similar enough to allow for a general comparison with those fees proposed by Texas.
- In Arkansas, structural commercial applicators are assessed a \$150 fee for the first license category and \$100 for each additional category, but not to exceed \$300. Texas is proposing a \$125 fee for commercial applicators regardless of the number of categories. On average, Texas structural applicators are licensed in four categories. In Arkansas, a comparable commercial applicator license would cost \$300.
- Texas has a structural pest control business license fee while some states do not. Many states that do have a business license fee charge per category of operation while Texas charges a flat fee. Oklahoma charges structural pest control businesses \$100 per category, but not to exceed \$500. Texas is proposing a \$300 fee for structural pest control businesses. On average, structural pest control businesses are licensed in four categories. In Oklahoma, a comparable commercial business license would cost \$400.

Strategy 2.1.4 Structural Pest Controls

COST RECOVERY RATE ANALYSIS

- Texas does not charge a non-commercial business license fee as do some other states such as Oklahoma. In Oklahoma, this fee is \$50 per license category, but not to exceed \$250.

Revenue Stream: Timing of fee collection

- The current fee collection process has resulted in a revenue stream that is not constant. In FY16, TDA will be reviewing various options of providing for a more constant revenue stream which may result in such changes as consolidation of when licenses are renewed, auto renewal options, and out-sourcing of services.

Legislative Changes: Increase in accountability, decrease in authority

- The 84th Legislature eliminated TDA's authority to rollover excess fee revenue between the fiscal years of a biennium. In addition the Legislature eliminated TDA's authority to transfer budget between fee based programs beyond the standard allowance included in the GAA, Article IX. The Legislature shifted the funding burden by reducing general revenue support that previously covered program fee shortfalls.

Change Management: Engagement of program-specific associations, boards, and other affected organizations

- Early discussions with stakeholders on probable fee increases have occurred. Once the rate study is complete, further discussions on the study and its results will take place. Applicable associations and boards will be notified of the proposed fee rate changes as we welcome their input in the process.
- Some of the budgetary changes and impacts to the fee based programs were supported by various associations and boards, which should assist the fee transition process. Seed industry representatives worked directly with the Legislature on replacing general revenue with a more comprehensive cost recovery process.

Moving Forward: On-going processes will be established to:

- Monitor the level of service performed is in line with the projected service plan
- Ensure timely billing of fee renewals
- Timely follow-up on delayed payment of fees and/or fines
- Identify significant changes in expenditures of the program due to external factors such as higher fuel costs, unanticipated vehicle repairs, equip & material cost increases from vendors, deferred maintenance and infrastructure repairs, legislative changes (state and federal level), etc. and take correction actions
- Monitor cash flow and take corrective actions as necessary

See attached exhibits for additional supporting detail.

**Strategy 2.1.4 Structural Pest Controls
COST RECOVERY RATE ANALYSIS**

Exhibit A

FEE TABLE

| Particulars | Current Fee Structure | Proposed Fee Structure |
|---|--|--|
| Structural Pest Control | | |
| Business License | see below | 300.00 |
| Business License - original/renewal | 224.00/224.00 | - |
| Commercial /Noncommercial Certified Applicator License | see below | 125.00 |
| Commercial /Noncommercial Certified Applicator License - original/renewal | 108.00/100.00 | - |
| Commercial /Noncommercial Technician License | see below | 125.00 |
| Commercial /Noncommercial - Renewal Technician License - original/renewal | 81.00/76.00 | - |
| Licensing - Reissue license for loss or name change | 30.00 | eliminated |
| Testing - Exam Fee - all categories | 64.00 | 64.00 |
| SPCS CEU Approval - Continuing Education Course | 48.00 | eliminated |
| Late Fees | 1.5 times fee if < 90 days late; 2 times fee if > 90 but <1 yr | 1.5 times fee if < 90 days late; 2 times fee if > 90 but <1 yr |
| Enforcement | | |
| Administrative Penalties (SPCS) - Violations | Up to \$5,000/per violation/per day | Up to \$5,000/per violation/per day |

The above fee rates were set by TDA, and were not mandated by the Legislature. (GAA Art. IX §6.16).

**Strategy 2.1.4 Structural Pest Controls
COST RECOVERY RATE ANALYSIS**

Exhibit B

FEE TABLE - AUTHORITY

| Particulars | Reg: Y/N Mand: Y/N | Authority: Rule/Statute | Last Update |
|---|-------------------------------|--|--------------------|
| Structural Pest Control | | | |
| Business - Original Business License | Y/Y | Rule-TAC 4:1 §7.127 | 2012 |
| Business - Renewal Business License | Y/Y | Rule-TAC 4:1 §7.127 | 2012 |
| Commercial /Noncommercial - Original Certified Applicator License | Y/Y | Rule-TAC 4:1 §7.127 | 2012 |
| Commercial /Noncommercial - Renewal Certified Applicator License | Y/Y | Rule-TAC 4:1 §7.127 | 2012 |
| Commercial /Noncommercial - Original Technician License | Y/Y | Rule-TAC 4:1 §7.127 | 2012 |
| Commercial /Noncommercial - Renewal Technician License | Y/Y | Rule-TAC 4:1 §7.127 | 2012 |
| Licensing - Reissue license for loss or name change | Y/Y | Rule-TAC 4:1 §7.127 | 2012 |
| Testing - Exam Fee - all categories | Y/Y | Rule-TAC 4:1 §7.127 | 2012 |
| SPCS CEU Approval - Continuing Education Course | Y/Y | Rule-TAC 4:1 §7.127 | 2012 |
| Renewal Late Fees - Commercial Technician | Y/Y | Tx Ag Code §12.024 (b) & (c) Rule-TAC 4:1 §1.55 & §1.56 | 1993 |
| | | | |
| Enforcement | | | |
| Administrative Penalties (SPCS) - Violations | Y/Y | Statute-Tx Ag Code 12.020 | 2011 |

Inspect Measuring Devices

- Devices – Weights & Measures
- Tolerance Test – Metrology
- Volume Measures – Metrology
- Weight Adjustments – Metrology
- Lottery Balls (no change in fee) – Metrology
- License Service Companies
- Weights & Measures – Other
- Motor Fuel Testing – Fuel Quality

Strategy 3.1.1 Inspect Measuring Devices COST RECOVERY RATE ANALYSIS

Purpose: The Texas Department of Agriculture (“TDA”) is statutorily responsible for ensuring fuel pumps and other weighing and measuring devices are accurately calibrated and that packages declaring net contents are accurately packed. Texas consumers and businesses have an expectation that the goods and services sold by weight or measure adhere to uniform weights and measures standards. Likewise, Texas motorists expect the fuel they purchased meets the highest quality standards.

Performance: TDA’s Weights & Measures Program (“WM” or “the program”) provides a full range of inspection services to ensure consumer goods are properly measured, weighed, labeled and priced. Consumer protection services include inspection of weighing and measuring devices (e.g., grocery store scales, grain warehouse scales, livestock scales, large-capacity vehicle scales, liquid measuring devices, precious metal scales); and the investigation of packaging complaints to ensure that the labeled quantity is the quantity the consumer receives. These investigations can encompass prepackaged products such as meat and dry good commodities.

WM charges commercial users for most of its inspection related services. The program services included in this study are those funded on a full cost-recovery basis. Consumer protection services not considered for cost recovery include investigation of price verification complaints to ensure consumers are charged the correct price for commodities purchased.

WM inspectors also conduct fuel quality inspections to ensure that consumers are receiving motor fuels that are properly labeled for octane and ethanol content as well as meet national quality standards. The fuel component of the WM program has been studied separately.

Challenges: The number of weighing and measuring devices in the State, changing levels of consumer interest, and awareness of product weight and measurement accuracy can impact the level of service that TDA can provide with current staff and budget. To manage workload growth with decreasing budget flexibility, weights and measures inspections are closely studied to develop more efficient inspection processes. In some areas of the weights and measures program, risk-based inspections have been implemented in order to focus the program’s inspection resources on the greatest areas of risk. TDA has also implemented convenience testing for weights and measures service technicians by using a contracted entity in lieu of TDA staff to administer exams required for a technician license.

Challenges going forward will include managing cash flow as a sustained and reliable funding source and managing multi-year operational costs with only short term spending authority.

Staffing: Strategy 3.1.1 has multiple funding sources of which the cost recovery program comprises approx. 60% of the budget. Appropriated receipts and general revenue are the funding sources for the remaining 40% of this strategy and they are dedicated for specific purposes.

There are five regional offices that coordinate the inspection activities across the state. By far the largest position classification for this cost recovery program is the inspectors (64%). The program specialist classification (19%) includes such positions as metrologists,

Strategy 3.1.1 Inspect Measuring Devices
COST RECOVERY RATE ANALYSIS

laboratory technicians, program development specialists, training & education specialists, and inspection logistics specialists. The legal enforcement staff (6%) consists of attorneys, case preparation staff, and support staff that are solely dedicated to the enforcement of related laws including civil prosecution of violators. The cost recovery program funds staff as shown in the table below.

| | <u>FTEs</u> |
|--------------------------------|-------------|
| Direct program - Staffing | |
| Management oversight | 2.4 |
| Program specialists | 18.0 |
| Inspectors | 61.5 |
| Legal Enforcement staff | 5.6 |
| Program administrative support | 8.1 |
| | <hr/> |
| Total - Direct Program Staff | <u>95.6</u> |

Condition of the program in January 2015: Comprehensive fee schedules for all programs were not readily available. The statutory directives for TDA regulatory programs are to recover direct and indirect costs where feasible, with a biennial submission of adopted program fees to LBB. As with any fee structure, the methodology and components of the various fee rates for this program need to be reviewed periodically. Past reviews of fee rates were based on a variety of factors, including reliance on historical funding from state general revenue. The most current fee structure review was in the 2011-2013 time period. Operating and indirect costs have changed since the fees were initially established, with no adjustments in recent years.

For the FY16-17 biennium, the LBB recommended, and the 84th Legislature adopted a budget for this agency with the intent that the agency fully recovers certain program costs without reliance on general revenue. The core of the cost recovery philosophy is that the businesses and individuals regulated by this program should pay for its consumer protection services. These costs are typically passed through to customers by the regulated industries, moving program costs to those consumers that directly benefit.

After the close of the 84th Legislative session, TDA performed a comprehensive and strategic review of agency cost recovery programs within the context of the FY16-17 budget. The analysis was designed to answer the question “what does it cost to operate the program on a total cost recovery basis?” The analysis considered the need for efficient and effective service delivery to meet agency goals and objectives, as well as a variety of other factors essential to recovering state costs. The goal of the comprehensive review was a sustainable method of financing for the agency’s cost recovery programs. The recommended rates should achieve this goal.

Strategy 3.1.1 Inspect Measuring Devices COST RECOVERY RATE ANALYSIS

Cost Study: The WM program and the Financial Services division of TDA developed a cost model to use in the development of a fee structure that would result in moving program operations closer to private industry funding models. The program area assessed factors relevant to the calculation of appropriate rates that are needed to cover program costs.

As part of the assessment, revenue stream trends were reviewed and an evaluation of the revenue trends, changes in staffing, the use of contracted services, and the program's working capital requirements was performed.

Data Analyzed:

- Direct and indirect operating costs for the past two fiscal years
- Budgeted and projected expenditures and revenues for the past two fiscal years
- Shortfalls in the funding levels assumed in the biennial budget
- Preventative maintenance requirements
- Vehicle and equipment replacement cycle requirements
- Methods of finance for program components
- Applicable statutes for authority and limitations
- TDA rules for changes necessary for full cost recovery implementation

Exhibit B provides additional details on applicable statutes and administrative rules.

A. Cost Components

| | FTEs | Amount |
|-----------------------------------|------|-------------------|
| Direct Labor costs | 96.0 | 6,784,058 |
| Indirect costs ⁽¹⁾ | | 953,143 |
| Operating Expenditures | | 3,551,920 |
| Total - GR-Fee Based costs | | 11,289,121 |

⁽¹⁾ Indirect costs include services performed for the program by the indirect strategies such as legal, accounting, procurement, records management, human resources, information technology, budget, risk management, executive administration and audit services.

Statewide "Other Direct and Indirect Costs" (ODIC) are automatically assessed against cost recovery programs through the biennial budget process. These costs include active employee benefits and retiree healthcare. The amount assessed is determined by program staffing, and it offsets the costs of state agencies charged with benefit and retirement fund management.

**Strategy 3.1.1 Inspect Measuring Devices
COST RECOVERY RATE ANALYSIS**

B. Assumptions

| | <u>Annual cost</u> |
|---|-------------------------|
| Base budget operating costs | 485,826 |
| Utilities (electricity, natural gas, waste disposal) | 43,600 |
| Telecommunication (internet, cell phone, trunk lines) | 63,600 |
| Fuel (16 miles/gal @ \$3/gal) | 318,500 |
| Uniforms for inspectors (62 inspectors) | 39,500 |
| Rent - Office space (4 regional offices) | 72,300 |
| Fleet management system | 36,300 |
| Mobi Logistics SW licenses (80 licenses) | 80,500 |
| Vehicle maintenance & Repair | 92,600 |
| Vehicle replacement plan (7 vehicles/year) | 154,200 |
| Computer - 4 yr replacement plan | 21,400 |
| Printer - 4 yr replacement plan | 4,200 |
| Replacement schedule for 5 gal test provers and weights | 42,000 |
| MLPP - Metrology Lab loan repayment (amortized) | 148,000 |
| MLPP - weight truck replacement (15 yr amort - 1 truck) | 26,000 |
| 60-days working capital/cost relief factor | <u>1,923,394</u> |
| Total - Operating expenditure detail | <u>3,551,920</u> |

The metrology lab loan funded the construction of the Giddings metrology lab in 2004. The Lab is currently utilized for testing only when the ambient outdoor temperature and humidity allow for the facility to fall into the National Institute of Standards and Technology ("NIST") range of compliance. This causes delays in testing which translates into ineffective utilization of agency resources. Funding to repair the lab's climate control systems to a level that would allow for more a consistent provision of metrology services was requested from but not provided by the 84th Legislature. The repairs are estimated to cost approx. \$1.1 million.

Deferred maintenance and repair funding was provided to the Texas Facilities Commission, but those funds were primarily for Capitol Complex needs. Long term infrastructure repair or replacement needs for TDA facilities outside of the SFA building has not been considered in the assumptions.

**Strategy 3.1.1 Inspect Measuring Devices
COST RECOVERY RATE ANALYSIS**

C. Revenue Stream

The cost study identified areas where the fee rates in place need to be increased to fully support the program. In some cases, multiple fee structure scenarios were reviewed. The table below reflects the outcome of the analysis:

| Particulars | Annual Revenue Stream (amount) | |
|--|--------------------------------|------------------------|
| | Current Fee Structure | Proposed Fee Structure |
| Devices - Weights & Measures | 5,250,181 | 10,472,014 |
| Precision Test Fees - Metrology note: do not have certification due to lack of environmental controls | - | - |
| Tolerance Test Fees - Metrology | 288,510 | 317,080 |
| Volume Measures Fees - Metrology | 39,496 | 49,227 |
| Weight Adjustment Fees - Metrology | 17,755 | 32,800 |
| Lottery Balls - Metrology | 32,710 | 32,000 |
| License Service Companies | 44,580 | 70,500 |
| Weights & Measures - Other | 164,635 | 170,500 |
| Late Fees | 152,151 | 145,000 |
| TOTAL | 5,990,018 | 11,289,121 |

Exhibit A provides additional detail on how these fee categories were calculated.

D. Results of Cost Study

Rate Increase Timeline: In order for the new fee rates to go into effect December 1, 2015, the following timeline must be met:

| | |
|----------------|---|
| Sept 24 | Last day to submit to Legal for publication preparation |
| Sept 28 (noon) | Deadline to submit for publication |
| Oct 9 | Publication in Texas Register |
| Nov 8 | 30-day comment period ends, eligible for adoption |
| Nov 9 | Submit for adoption |
| Nov 29 | Adoption in effect |

Strategy 3.1.1 Inspect Measuring Devices

COST RECOVERY RATE ANALYSIS

Market Evaluation: *Comparisons were based generally on like fee types, and not on total fee structure or methods of program funding, which can impact individual rates.*

How do we compare with other states' regulatory charges?

- Comparing Texas weights and measures device registration fees with other states regulatory fee schedules is challenging, as many states fund activities and define regulated devices in different ways. For example, Texas registers scales by capacity and in some cases application of use. Similarly, motor fuel dispensing devices are registered according to flow rate and the type of product dispensed.
- Some state WM programs are not funded through device registration fees, but rather through a tax levied on each gallon of fuel sold. Idaho and Alabama weights and measures programs are completely financed by general fund appropriations and are not subject to cost recovery requirements. Some states even charge a flat fee per device regardless of the type of device.
- Some states do have weights and measures device fee structures that are similar to Texas'. For example, Oregon charges \$32.00 for a small scale. Washington collects \$10.00, \$40.00, and \$75.00 for each small scale (0 to 400 pounds), intermediate scale (401 pounds to 5,000 pounds), and large scale (over 5,000 pounds), respectively. In addition, Washington collects \$800.00 for each railroad track scale, while Texas does not register this type of scale at all.
- Many states charge a per hour fee for metrology services (ranging from about \$145.00 to \$185.00/ hr), further complicating an "apples to apples" comparison.

Revenue Stream: Timing of fee renewals

- The current fee collection process has resulted in a revenue stream that is not constant. In some cases, the fee is a statutorily set multi-year license resulting in revenue swings between years. In FY16, TDA will be reviewing various options of providing for a more constant revenue stream which may result in such changes as consolidation of when licenses are renewed, auto renewal options, and out-sourcing of services.

Legislative Changes: Increase in accountability, decrease in authority

- The 84th Legislature eliminated TDA's authority to rollover excess fee revenue between the fiscal years of a biennium. In addition the Legislature eliminated TDA's authority to transfer budget between cost recovery programs beyond the standard allowance included in the GAA, Article IX. The Legislature shifted the funding burden to the cost recovery programs by reducing general revenue support that previously covered some program costs.

Strategy 3.1.1 Inspect Measuring Devices
COST RECOVERY RATE ANALYSIS

Change Management: Engagement of program-specific associations, boards, and other affected organizations

- Early discussions with stakeholders on probable fee increases have occurred. Once the rate study is complete, further discussions on the study and its results will take place. Applicable associations and boards will be notified of the proposed fee rate changes as we welcome their input in the process.
- Some of the budgetary changes and impacts to the cost recovery programs were supported by various associations and boards, which should assist the cost recovery fee transition.

Moving Forward: On-going processes will be established to:

- Monitor the level of service performed is in line with the projected service plan
- Ensure timely billing of fee renewals
- Timely follow-up on delayed payment of fees and/or fines
- Identify significant changes in expenditures of the program due to external factors such as higher fuel costs, unanticipated vehicle repairs, equip & material cost increases from vendors, deferred maintenance and infrastructure repairs, legislative changes (state and federal level), etc. and take correction actions
- Monitor cash flow and take corrective actions as necessary

See attached exhibits for additional supporting detail.

**Strategy 3.1.1 Inspect Measuring Devices
COST RECOVERY RATE ANALYSIS**

Exhibit A – Page 1

FEE TABLE

| Particulars | Current Fee Structure | Proposed Fee Structure |
|---|-----------------------|------------------------|
| Devices - Weights & Measures | | |
| Bulk Meter (rated flow >100 GPM) | 36.00 | 250.00 |
| LPG Meter | 32.00 | 65.00 |
| Bulk Meter (rated flow 20 GPM-100 GPM) | 36.00 | 75.00 |
| Livestock Scale (5,000 pounds or greater) | 172.00 | 350.00 |
| Other Scales (greater than 2,000 pounds) | 120.00 | 250.00 |
| Ranch Scale | 16.00 | 32.00 |
| Scales (0-2,000 pound capacity) | 16.00 | 35.00 |
| Truck Scale (5,000 pounds or greater) | 172.00 | 400.00 |
| Consumer Information Sticker (1 page of 8) | 8.00 | 8.00 |
| Fuel Pump - Diesel (one product per nozzle) | 7.20 | 12.00 |
| Fuel Pump - E85-Fuel Ethanol (one product per nozzle) | 7.20 | 12.00 |
| Fuel Pump - Gasoline (one product per nozzle) | 7.20 | 12.00 |
| Fuel Pump (multiple products per nozzle) | 21.20 | 36.00 |
| Precision Test Fees - Metrology | | |
| Up to and including 3 kilograms | 70.00 | 70.00 |
| > 3 kilograms but =< 30 kilograms | 110.00 | 110.00 |
| > 30 kilograms | 140.00 | 140.00 |
| note: do not have certification due to lack of environmental controls | | |
| Tolerance Test Fees - Metrology | | |
| <10 pounds | 20.00 | 20.00 |
| >10 pounds but <500 pounds | 30.00 | 30.00 |
| >500 pounds but < 2,500 pounds | 60.00 | 60.00 |
| > 2,500 pounds | 110.00 | 110.00 |

**Strategy 3.1.1 Inspect Measuring Devices
COST RECOVERY RATE ANALYSIS**

Exhibit A – Page 2

FEE TABLE

| Particulars | Current Fee Structure | Proposed Fee Structure |
|---|--|--|
| Volume Measures Fees - Metrology | | |
| <=5 gallons | 55.00 | 55.00 |
| Fee—all containers over 5 gallons | \$65 (+ \$1 for each gal > 5 gal) | \$65 (+ \$1 for each gal > 5 gal) |
| LPG Provers—25 gals or less | 150.00 | 150.00 |
| LPG Provers—over 25 gals | 325.00 | 325.00 |
| Weight Measure Fees - Metrology | | |
| Prover Neck Calibration | 50.00 | 50.00 |
| Weight adj. > 1,000 lbs | 20.00 | 40.00 |
| Weight adj. > 100 lbs to 1,000 lbs | 10.00 | 20.00 |
| Weight adj >10 lbs to 100 lbs | 5.00 | 10.00 |
| Weight adj <10lbs | 5.00 | 10.00 |
| Lottery Balls - Metrology | | |
| Lottery Ball Testing (note: IAC; Mandatory) | 10.00 | 10.00 |
| License Service Companies | | |
| License | 100.00 | 150.00 |
| Weights & Measures - Other | | |
| Public Weighers - Certificate of Authority | 485.00 | 500.00 |
| Registered Technicians - 5-year License (Not issued-Exam is License) | 60.00 | 0.00 |
| Examination Fee - must retest every 5 years | 60.00 | 60.00 |
| Late Fees | 1.5 times fee if < 90 days late; 2 times fee if > 90 but <1 yr | 1.5 times fee if < 90 days late; 2 times fee if > 90 but <1 yr |

The above fee rates were set by TDA, and were not mandated by the Legislature. (GAA Art. IX §6.16).

**Strategy 3.1.1 Inspect Measuring Devices
COST RECOVERY RATE ANALYSIS**

Exhibit B

FEE TABLE - AUTHORITY

| Particulars | Reg: Y/N Mand: Y/N | Authority: Rule/Statute | Last Update |
|---|-------------------------------|--|--------------------|
| Devices - Weights & Measures | Y/Y | Rule-TAC 4:1 §12.12 | 2013 |
| License Service Companies | Y/Y | Rule-TAC 4:1 §12.43 | 2011 |
| Weights & Measures - Other | | | |
| Public Weighers - Certificate of Authority | Y/Y | Rule-TAC 4:1 §12.73 | 2011 |
| Registered Technicians - 5-year License (Not issued-Exam is License) | Y/Y | Rule-TAC 4:1 §12.60 | 2013 |
| Examination Fee - must retest every 5 years | Y/Y | Rule-TAC 4:1 §5.6 | 2013 |
| Precision Test Fees - Metrology | Y/N | Rule-TAC 4:1 §12.30 | 2011 |
| Tolerance Test Fees - Metrology | Y/N | Rule-TAC 4:1 §12.30 | 2011 |
| Volume Measures Fees - Metrology | Y/N | Rule-TAC 4:1 §12.30 | 2011 |
| Weight Measure Fees - Metrology | Y/N | Rule-TAC 4:1 §12.30 | 2013 |
| Lottery Balls - Metrology | Y/Y | IAC | -- |
| Late Fees | Y/Y | Tx Ag Code §12.024 (b) & (c) Rule-TAC 4:1 §1.55 & §1.56 | 1993 |

Strategy 3.1.1 Inspect Measuring Devices

APPROPRIATED RECEIPTS RATE ANALYSIS

Purpose: The Texas Department of Agriculture (“TDA”) is statutorily responsible for ensuring fuel pumps and other weighing and measuring devices are accurately calibrated. Texas consumers and businesses have an expectation that the goods and services sold by weight or measure adhere to uniform weights and measures standards. Likewise, Texas motorists expect the fuel they purchased meets the octane rating advertised and highest quality standards for fuel.

Performance: TDA’s Weights & Measures Program (“WM” or “the program”) provides a full range of inspection services to ensure consumer goods are properly measured, weighed, labeled and priced. Consumer protection services include inspection of weighing and measuring devices (e.g., grocery store scales, grain warehouse scales, livestock scales, large-capacity vehicle scales, liquid measuring devices, precious metal scales); and the investigation of packaging complaints to ensure that the labeled quantity is the quantity the consumer receives.

WM inspectors conduct fuel device and fuel quality inspections to ensure that consumers are receiving motor fuels that are accurately dispensed and properly labeled for octane and ethanol content as well as meet national quality standards.

WM charges commercial users for most of its inspection related services. While the majority of the services are considered cost recovery (funded by general revenue which is reimbursed by fee revenue), fuel inspection services are funded by appropriated receipts (third party payments), which this study is focused.

Challenges: The service levels TDA can provide with current staff and budget are affected by the number of fuel dispensing devices in the State, changing levels of consumer interest, and awareness of product measurement complaint processes. To manage workload growth with decreasing budget flexibility, inspections are closely studied to develop more efficient processes. Maintaining the use of portable octane analyzers has provided inspectors with the ability to conduct more thorough and efficient inspections on site, which saves compliance money by reducing the need for laboratory analysis on every octane test. Due to the number of gas stations and multiple pump configurations, risk-based inspections have been implemented in order to focus the program’s inspection resources on the greatest areas of risk. TDA is currently developing plans for increasing the frequency of fuel quality and pump inspections.

Challenges going forward will include managing cash flow as a sustained and reliable funding source and managing multi-year operational costs with only short term spending authority.

Staffing: Strategy 3.1.1 has multiple funding sources of which appropriated receipts comprises approx. 13% of the budget. The cost recovery program and general revenue are the funding sources for the remaining 87% of this strategy and they are dedicated for specific purposes.

Strategy 3.1.1 Inspect Measuring Devices
APPROPRIATED RECEIPTS RATE ANALYSIS

There are five regional offices that coordinate the inspection activities across the state. By far the largest position classification for this appropriated receipts program is the inspectors (66%). The program specialist classification (23%) includes such positions as program development specialists, training & education specialists, and inspection logistics specialists. The legal enforcement staff (6%) consists of attorneys, case preparation staff, and support staff that are solely dedicated to the enforcement of related laws including civil prosecution of violators. The appropriated receipts program funds staff as shown in the table below.

| | <u>FTEs</u> |
|--------------------------------|-------------|
| Direct program - Staffing | |
| Management oversight | 0.2 |
| Program specialists | 2.6 |
| Inspectors | 7.5 |
| Legal Enforcement staff | 0.7 |
| Program administrative support | 0.3 |
| | <hr/> |
| Total - Direct Program Staff | <u>11.3</u> |

Condition of the program in January 2015: Comprehensive fee schedules for all programs were not readily available. The statutory directives for TDA regulatory programs are to recover direct and indirect costs where feasible, with a biennial submission of adopted program fees to LBB. As with any fee structure, the methodology and components of the various fee rates for this program need to be reviewed periodically. Past reviews of fee rates were based on a variety of factors, including reliance on historical funding from state general revenue. The most current fee structure review was in the 2011 time period. Operating and indirect costs have changed since the fees were initially established, with no adjustments in recent years.

For the FY16-17 biennium, the LBB recommended, and the 84th Legislature adopted a budget for this agency with the intent that the agency fully recovers certain program costs without reliance on general revenue. The core of the cost recovery philosophy is that the businesses and individuals regulated by this program should pay for its consumer protection services. These costs are typically passed through to customers by the regulated industries, moving program costs to those consumers that directly benefit.

After the close of the 84th Legislative session, TDA performed a comprehensive and strategic review of agency cost recovery programs within the context of the FY16-17 budget. The analysis was designed to answer the question “what does it cost to operate the program on a total cost recovery basis?” The analysis considered the need for efficient and effective service delivery to meet agency goals and objectives, as well as a variety of other factors essential to recovering state costs. The goal of the comprehensive review was a sustainable method of financing for the agency’s cost recovery programs. The recommended rates should achieve this goal.

Strategy 3.1.1 Inspect Measuring Devices
APPROPRIATED RECEIPTS RATE ANALYSIS

Cost Study: The program area and the Financial Services Division of TDA developed a cost model to use in the development of a fee structure that would result in moving program operations closer to private industry funding models. The program area assessed factors relevant to the calculation of appropriate rates that are needed to cover program costs.

As part of the assessment, revenue stream trends were reviewed and an evaluation of changes in staffing, the use of contracted services, and the program's working capital requirements was performed.

Data Analyzed:

- Direct and indirect operating costs for the past two fiscal years
- Budgeted and projected expenditures and revenues for the past two fiscal years
- Shortfalls in the funding levels assumed in the biennial budget
- Preventative maintenance requirements
- Vehicle and equipment replacement cycle requirements
- Methods of finance for program components
- Impact of service delivery changes currently in development
- Applicable statutes for authority and limitations
- TDA rules for changes necessary for full cost recovery implementation

Exhibit B provides additional details on applicable statutes and administrative rules.

A. Cost Components

| | <u>FTEs</u> | <u>Amount</u> |
|-------------------------------|-------------|-------------------------|
| Direct Labor costs | 11.3 | 730,345 |
| Indirect costs ⁽¹⁾ | | - |
| Operating Expenditures | | <u>849,600</u> |
| Total - AR costs | | <u>1,579,945</u> |

⁽¹⁾ Indirect costs include services performed for the program by the indirect strategies such as legal, accounting, procurement, records management, human resources, information technology, budget, risk management, executive administration and audit services.

Statewide "Other Direct and Indirect Costs" (ODIC) are automatically assessed against cost recovery programs through the biennial budget process. These costs, which are part of the Direct Labor costs, include active employee benefits and retiree healthcare. The amount of ODIC assessed is determined by program staffing, and it offsets the costs of state agencies charged with benefit and retirement fund management.

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B. Assumptions

| | <u>Annual cost</u> |
|---|-----------------------|
| Base budget operating costs | 26,307 |
| Utilities (electricity, natural gas, waste disposal) | 500 |
| Telecommunication (internet, cell phone, trunk lines) | 6,500 |
| Fuel (16 miles/gal @ \$3/gal) | 35,300 |
| Uniforms for inspectors | 4,000 |
| Rent - Office space (4 regional offices) | 8,200 |
| Fleet management system | 4,700 |
| Mobi Logistics SW licenses (4 licenses) | 4,000 |
| Vehicle maintenance & Repair | 9,700 |
| Vehicle replacement plan | 15,700 |
| Computer - 4 yr replacement plan | 2,200 |
| Printer - 4 yr replacement plan | 400 |
| Replacement schedule for octane analyzers | 140,000 |
| Contracted Services - Fuel Quality | 296,000 |
| 60-days working capital/cost relief factor | <u>296,093</u> |
| Total - Operating expenditure detail | <u>849,600</u> |

C. Revenue Stream

The cost study identified areas where the fee rates in place need to be increased to fully support the program. In some cases, multiple fee structure scenarios were reviewed. The table below reflects the outcome of the analysis:

| Particulars | Annual Revenue Stream (amount) | |
|--|--------------------------------|------------------------|
| | Current Fee Structure | Proposed Fee Structure |
| Motor Fuel Testing - Fuel Quality - Octane | 1,247,372 | 1,570,945 |
| Late Fees | 7,720 | 9,000 |
| TOTAL | 1,255,092 | 1,579,945 |

Exhibit A provides additional detail on how the fee categories in the above table were calculated.

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D. Results of Cost Study

Rate Increase Timeline: In order for the new fee rates to go into effect December 1, 2015, the following timeline must be met:

| | |
|----------------|---|
| Sept 24 | Last day to submit to Legal for publication preparation |
| Sept 28 (noon) | Deadline to submit for publication |
| Oct 9 | Publication in Texas Register |
| Nov 8 | 30-day comment period ends, eligible for adoption |
| Nov 9 | Submit for adoption |
| Nov 29 | Adoption in effect |

Market Evaluation: *Comparisons were based generally on like fee types, and not on total fee structure or methods of program funding, which can impact individual rates.*

How do we compare with other states' regulatory charges?

- Comparing Texas fuel quality inspection fees with other states regulatory fee schedules is challenging, as many states fund fuel quality inspection activities and define regulatory programs in different ways. For example, Texas charges a fuel quality inspection fee for each device registered through the weights and measures program.
- Some state fuel quality programs are strictly funded through device registration fees or through a tax levied on each gallon of fuel sold. For example, Florida collects 1/8 cent per gallon whereas North Carolina collects 1/4 cent for every gallon sold. Missouri, on the other hand, collects 2.5 cents for each 50 gallon barrel of fuel sold. Idaho and Alabama fuel quality programs are completely financed by general fund appropriations and are not subject to cost recovery requirements. Some states even charge a flat fee per device regardless of the type of device.

Revenue Stream: Timing of fee renewals

- The current fee collection process has resulted in a revenue stream that is not constant. In FY16, TDA will be reviewing various options of providing for a more constant revenue stream which may result in such changes as consolidation of when licenses are renewed, auto renewal options, and out-sourcing of services.

Legislative Changes: Increase in accountability, decrease in authority

- The 84th Legislature eliminated TDA's authority to rollover excess fee revenue between the fiscal years of a biennium. In addition the Legislature eliminated TDA's authority to transfer budget between fee based programs beyond the standard allowance included in the GAA, Article IX. The Legislature shifted the funding burden by reducing general revenue support that previously covered program fee shortfalls.

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Change Management: Engagement of program-specific associations, boards, and other affected organizations

- Early discussions with stakeholders on probable fee increases have occurred. Once the rate study is complete, further discussions on the study and its results will take place. Applicable associations and boards will be notified of the proposed fee rate changes as we welcome their input in the process.
- Some of the budgetary changes and impacts to the fee based programs were supported by various associations and boards, which should assist the fee transition process.

Moving Forward: On-going processes will be established to:

- Monitor the level of service performed is in line with the projected service plan
- Ensure timely billing of fee renewals
- Timely follow-up on delayed payment of fees and/or fines
- Identify significant changes in expenditures of the program due to external factors such as higher fuel costs, unanticipated vehicle repairs, equip & material cost increases from vendors, deferred maintenance and infrastructure repairs, legislative changes (state and federal level), etc. and take correction actions
- Monitor cash flow and take corrective actions as necessary

See attached exhibits for additional supporting detail.

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Exhibit A

FEE TABLE

| Particulars | Current Fee Structure | Proposed Fee Structure |
|---|--|--|
| Motor Fuel Testing - Fuel Quality - Octane | | |
| One Gas Product Per Nozzle | 3.30 | 4.00 |
| Multiple Gas Products Per Nozzle | 9.90 | 12.00 |
| One Fuel Product Per Nozzle - Not Gas | 0.80 | 1.00 |
| Multiple Fuel Products Per Nozzle - Not Gas | 2.40 | 3.00 |
| Distributor, Jobber, Wholesaler | 20.00 | 40.00 |
| Supplier | 1,500.00 | 1,500.00 |
| Late Fees | 1.5 times fee if < 90 days late; 2 times fee if > 90 but <1 yr | 1.5 times fee if < 90 days late; 2 times fee if > 90 but <1 yr |

The above fee rates were set by TDA, and were not mandated by the Legislature. (GAA Art. IX §6.16).

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Exhibit B

FEE TABLE - AUTHORITY

| Particulars | Reg: Y/N Mand: Y/N | Authority: Rule/Statute | Last Update |
|--|-------------------------------|--|--------------------|
| Motor Fuel Testing - Fuel Quality - Octane | Y/Y | Rule-TAC 4:1 §5.6 | 2011 |
| Late Fees | Y/Y | Tx Ag Code §12.024 (b) & (c) Rule-TAC 4:1 §1.55 & §1.56 | 1993 |