

Texas Administrative Code

TITLE 31 NATURAL RESOURCES AND CONSERVATION  
PART 17 TEXAS STATE SOIL AND WATER CONSERVATION BOARD  
CHAPTER 517 FINANCIAL ASSISTANCE  
SUBCHAPTER B COST-SHARE ASSISTANCE FOR BRUSH CONTROL  
RULE §517.22

Purpose

The purpose of this program is to provide the needed incentive to landowners or operators for the implementation of brush control consistent with the purpose of conserving water.

The provisions of this §517.22 adopted to be effective February 13, 2003, 28 TexReg 1209.

RULE §517.23 Definitions

For the purposes of these rules the following definitions shall apply.

- (1) Allocated funds--Funds budgeted through the State Board for cost-share assistance.
- (2) Applicant--An eligible person who applies for cost-share assistance.
- (3) Available funds--Allocated funds that have not been obligated.
- (4) Average costs--The constructed cost, which is based on actual costs and current cost estimates, considered necessary to carry out a conservation practice.
- (5) Brush control--The selective control, removal, or reduction of noxious brush such as mesquite, juniper, salt cedar, or other phreatophytes that, as determined by the State Board, consumes water to a degree that is detrimental to water conservation; and the revegetation of land on which this brush has been controlled.
- (6) Brush control area--An area evaluated according to criteria established in §517.25 of this title and allocated cost-share funds by the Texas State Soil and Water Conservation Board.
- (7) Brush control area working group--The working group established in each brush control area to carry out the roles and responsibilities listed in §517.28(c) of this title. Membership is made up of Soil and Water Conservation District directors from each Soil and Water Conservation District in a brush control area.
- (8) Brush control contract--A legally binding 10-year agreement between the applicant, Soil and Water Conservation District, and Texas State Soil and Water Conservation

Board whereby the applicant agrees to implement all brush control practice(s) for which cost-share is to be provided in accordance with standards established by the Texas State Soil and Water Conservation Board. Only practice(s) that the Texas State Soil and Water Conservation Board has approved and are included in an approved brush control plan are eligible for inclusion in the brush control contract.

(9) Brush control plan--A site-specific plan for implementation of brush control, sound range management practices, and other soil and water conservation land improvement measures. It includes a record of the eligible person's decisions made during planning and the resource information needed for implementation and maintenance of the plan that has been reviewed and approved by the Soil and Water Conservation District.

(10) Cost-share assistance--An award of money made to an eligible person for brush control pursuant to the purpose(s) for which the funds were appropriated.

(11) Cost-share rate--The percent of the cost of brush control to be awarded an eligible person based on actual cost not to exceed average cost.

(12) Eligible land--Those lands within a brush control area that are eligible for application of brush control using cost-share assistance.

(13) Eligible person--Any individual, partnership, administrator for a trust or estate, family-owned corporation, or other legal entity who as an owner, lessee, tenant, or sharecropper participates in an agricultural or wildlife operation within a brush control area and is a cooperator with the local Soil and Water Conservation District shall be eligible for cost-share assistance.

(14) Field Office Technical Guide, herein referred to as FOTG--The official Natural Resources Conservation Service guidelines criteria, and standards for planning and applying conservation practices, management measures, and works of improvement that have the purpose of solving or reducing the severity of natural resource use problems or taking advantage of resource opportunities.

(15) Natural Resources Conservation Service, herein referred to as NRCS--An agency of the United States Department of Agriculture.

(16) Operator--Any person(s), firm or corporation with a contractual arrangement with the owner of the land that grants operational control of an agricultural enterprise.

(17) Obligated funds--Monies from a brush control area's allocated funds that have been committed to an applicant after final approval of the brush control contract by the Soil and Water Conservation District and Texas State Soil and Water Conservation Board.

(18) Performance agreement--A component of the brush control contract whereby the eligible person receiving the benefit of cost-share assistance provides written agreement

to the Soil and Water Conservation District to perform brush control in accordance with standards established by the Texas State Soil and Water Conservation Board and the terms of the brush control contract.

(19) Priority system--The system devised collectively by the brush control area working group, under guidelines of the State Board, for ranking brush control applications and for facilitating the disbursement of allocated funds in line with the brush control area's priorities.

(20) Program year--The period from September 1 through August 31.

(21) Soil and Water Conservation District, herein referred to as SWCD-A government subdivision of this state and a public body corporate and politic, organized pursuant to the Agriculture Code of Texas, Chapter 201.

(22) State Board--The Texas State Soil and Water Conservation Board organized pursuant to the provisions of the Agriculture Code of Texas, Chapter 201.

(23) Texas Department of Agriculture, herein referred to as TDA—The government agency of this state organized pursuant to the Agriculture Code of Texas, Title 2, Chapter 11.

(24) Texas Parks and Wildlife Department, herein referred to as TPWD-The government agency of this state organized pursuant to the Parks and Wildlife Code of Texas, Title 2, Chapter 11.

(25) Texas Water Development Board, herein referred to as TWDB-The government agency of this state organized pursuant to the Water Code of Texas, Title 2, Subtitle A, Chapter 6.

(26) Water Conservation--The process of reducing water consumption and/or preventing future increases in water consumption. As related to the Brush Control Program, the process of reducing water consuming brush and subsequently, the enhancement of available water resources.

The provisions of this §517.23 adopted to be effective February 13, 2003, 28 TexReg 1209; amended to be effective March 21, 2004, 29 TexReg 2651.

#### RULE §517.24 State Brush Control Plan

(a) The State Board shall prepare and adopt a state brush control plan. The State Board shall review and may amend the plan at least every two years to take into consideration changed conditions.

(b) The State Brush Control Plan shall:

(1) include a comprehensive strategy for managing brush in all areas of the state where brush is contributing to a substantial water conservation problem, and

(2) rank areas of the state in need of a brush control program considering the criteria established in §517.25.

(c) Before the State Board adopts the plan, the State Board shall call and hold a public hearing to consider a proposed plan.

(1) In addition to providing notice in the Texas Register, the State Board shall mail written notice of the hearing to each SWCD in the state not less than 30 days before the date the hearing is to be held. The notice must include the date and place for holding the hearing state the purpose for holding the hearing and include instructions for each district to submit written comments on the proposed plan.

(2) At the hearing, representatives of a SWCD and any other person may appear and present testimony including information and suggestions for any changes in the proposed plan. The State Board shall enter into the record any written comments received on the proposed plan and shall consider all written comments and testimony before taking final action on the plan.

(3) After the conclusion of the hearing, the State Board shall consider the testimony including the information and suggestions made at the hearing and in written comments, and after making any changes in the proposed plan that it finds necessary, the State Board shall adopt the plan.

The provisions of this §517.24 adopted to be effective February 13, 2003, 28 TexReg 1209; amended to be effective March 21, 2004, 29 TexReg 2651.

#### RULE §517.25 Evaluating Brush Control Areas

(a) The State Board, in cooperation with affected SWCDs, other agencies, universities, and appropriate local interests, shall evaluate and rank brush control areas.

(b) Evaluations shall, where appropriate, assess brush type, density, and location; management methods; revegetation options; geology and soils data; water needs or potential needs; hydrology; potential water yield; wildlife concerns; economics; and landowner interest. The TPWD shall be consulted when evaluating wildlife concerns. The TWDB shall be consulted in regards to the effects of the brush control program on water quantity. The TDA shall be consulted in regards to the effects of the brush control program on agriculture.

(c) Specific areas for evaluation will be determined by the State Board in consultation with SWCDs, other agencies, and universities. SWCDs may submit written requests to the State Board for evaluation of areas for brush control.

(d) The State Board shall consider water needs of the area and potential for water yield when selecting areas for evaluation.

(e) Following evaluation, the State Board shall rank brush control areas considering:

(1) the location of various brush infestations;

(2) the type and severity of brush infestations;

(3) the various management methods that may be used to control brush;

(4) the amount of water produced by a project and the severity of water shortage in the project area;

(5) the cost effectiveness of utilizing brush control to conserve water;

(6) the potential water quality impacts;

(7) the availability of funding; and

(8) any other criteria that the State Board considers relevant to assure that the brush control program can be most effectively, efficiently, and economically implemented.

(f) In ranking brush control areas, the State Board shall give priority to areas with the most critical water conservation needs and in which brush control and revegetation projects will be most likely to produce substantial water conservation.

The provisions of this §517.25 adopted to be effective February 13, 2003, 28 TexReg 1209; amended to be effective March 21, 2004, 29 TexReg 2651.

#### RULE §517.26 Administration of Funds

(a) Project Development.

(1) SWCDs or other agencies in cooperation with SWCDs may develop project proposals in accordance with criteria established in the State Brush Control Plan.

(2) Project proposals shall be submitted to the State Board for its prioritization and approval.

(3) The State Board may initiate project development in cooperation with SWCDs.

(b) Priority of Projects.

(1) When prioritizing and approving projects, the State Board shall consider criteria established in the State Brush Control Plan.

(2) If the demand for funds under the cost-sharing program is greater than funds available, the State Board shall establish priorities favoring the areas with the most critical water conservation needs and projects that will be most likely to produce substantial water conservation.

(3) The State Board shall give more favorable consideration to a particular project if the participants agree to a lesser cost-share rate than that established by the State Board.

(4) The quantity of stream flows or groundwater or water conservation from the control of brush is a consideration in assigning priority.

(c) Allocation of funds. Allocations of resources shall be based on priority considerations and may be adjusted throughout the year as available funds and brush control area needs and priorities change in order to achieve the most efficient use of state funds.

(d) Requests for allocations. Brush control area working groups may submit written requests for cost-share allocations to the State Board.

(e) Approval of allocations. The State Board shall consider and approve, reject, or adjust allocations giving consideration to relative need for funding, workload and fund balances, as well as other information deemed necessary by the State Board.

The provisions of this §517.26 adopted to be effective February 13, 2003, 28 TexReg 1209; amended to be effective March 21, 2004, 29 TexReg 2651.

#### RULE §517.27 Approval of Brush Control Methods

(a) The State Board, in consultation with SWCDs, shall study and must approve all methods used to control brush considering the overall impact of the project.

(b) The State Board may approve a method for cost-sharing if the State Board finds that the proposed method:

(1) has proven to be an effective and efficient method for controlling brush;

(2) is cost efficient;

(3) will have a beneficial impact on the development of water sources and wildlife habitat;

(4) will conserve topsoil to prevent erosion or silting of any river or stream; and/or

(5) will allow the revegetation of the area after the brush is removed with plants that are beneficial to stream flows, groundwater levels, and livestock and wildlife.

(c) Approved methods shall be designated in program guidance established by the State Board.

(d) Request for approval of brush control methods. Brush control area working groups, as established by §517.28(b), may submit written requests to the State Board for approval of brush control methods for a brush control area.

The provisions of this §517.27 adopted to be effective February 13, 2003, 28 TexReg 1209; amended to be effective March 21, 2004, 29 TexReg 2651.

#### RULE §517.28 Powers and Duties of SWCDs

(a) The State Board has delegated the responsibilities in this section to the SWCDs.

(b) Establishment and composition of critical area working group.

(1) In each brush control area allocated funding by the State Board, a brush control area working group shall be established, composed of SWCD directors from each SWCD in the brush control area.

(2) The State Board shall serve as the facilitator for the brush control area working group.

(3) Agencies, universities, landowners and appropriate local interests may serve in an advisory capacity to the brush control area working group, but shall not have voting privileges.

(4) The brush control area working group shall hold an organizational meeting to:

(A) establish final membership

(i) SWCDs may elect to not participate by providing written notification of their decision.

(ii) In establishing the membership, each participating SWCD shall have one vote.

(iii) As approved by participating SWCDs within a brush control area, SWCDs may be allowed to have more than one SWCD director serve on the brush control area working group.

(iv) Once final membership is established, each member shall have one vote only.

(B) establish operating procedures

(i) The brush control area working group shall elect a chairman.

(ii) The brush control area working group shall establish the quorum necessary for decision-making. Only those members present shall be eligible to vote. Voting by proxy shall not be allowed.

(iii) The brush control area working group may establish attendance requirements and other necessary procedures.

(c) The brush control area working group shall:

(1) designate, from the State Board approved list, those brush control methods that will be eligible for cost-share;

(2) establish maximum cost-share rates not to exceed maximums set by the State Board in §517.29(d);

(3) develop average cost annually for each practice designated not to exceed costs established by the State Board;

(4) establish annually the maximum amount of cost-share available to each applicant not to exceed the maximum set by the State Board;

(5) administer the cost-share program within the funds allocated by the State Board;

(6) establish, under guidelines of the State Board, the priority system to be used for evaluation of applications;

(7) establish the period(s) of time for accepting applications;

(8) announce the cost-share program;

(9) establish the minimum amount of brush acreage that must be enrolled within sub-basins of the brush control area in order to qualify for funding;

(10) prioritize applications under the working group approved priority system; and

(11) submit meeting minutes, membership, and established operating procedures to the State Board.

(d) Each SWCD in the brush control areas allocated funding shall:

(1) accept and process cost-share applications;

(2) keep accurate records and logs of applications;

(3) determine eligibility for cost-share assistance according to the criteria listed in §517.30. If an applicant's land is in more than one SWCD, the respective SWCDs will

review the application and agree to oversee all works and administrate all contracts from one SWCD or prorate between the SWCDs;

(4) provide or arrange for technical assistance for eligible applicants according to priority established by the brush control area working group;

(5) examine brush control plans and contracts to assure inclusion of all necessary information and exhibits and that the criteria established in §517.33 are met;

(6) prepare comments and recommendations relating to the brush control plan and contract for submittal to the State Board;

(7) approve brush control plans and contracts that meet FOTG requirements on management units included in the brush control plan;

(8) forward SWCD approved brush control plans and contracts to the State Board for quality control and execution of contract;

(9) once approved by the State Board, notify the applicant that his/her contract has been approved for cost-share and to proceed with implementation as outlined in the applicant's brush control plan;

(10) file a copy of the approved contract;

(11) certify to the State Board that conservation land treatment measures have been completed according to standards and specifications prior to payment;

(12) submit required reports to the State Board; and

(13) as directed by the State Board, manage any problem that arises under a cost-sharing contract for brush control in that SWCD and report to the State Board.

The provisions of this §517.28 adopted to be effective February 13, 2003, 28 TexReg 1209; amended to be effective March 21, 2004, 29 TexReg 2651.

#### RULE §517.29 Cost-share for Brush Control

(a) Basis for cost-share. Cost-share shall be based on actual cost not to exceed average cost.

(b) Average costs.

(1) The State Board, in consultation with SWCDs in the brush control area, shall establish average costs for each practice considering the results of completed evaluations.

(2) The brush control area working group shall develop average costs annually for each approved practice not to exceed the average costs established by the State Board.

(3) The brush control area working group may submit a written request to the State Board to increase the average costs established for each practice.

(c) Maximum cost-share amount available.

(1) The maximum cost-share assistance that an eligible person may receive under the program in any one year, and the lifetime maximum cost-share assistance that an eligible person may receive is unrestricted by the State Board.

(2) The brush control area working group may establish the maximum cost-share assistance that an eligible person may receive under the program in any one year, and the lifetime maximum cost-share assistance that an eligible person may receive.

(d) Cost-share rates.

(1) The State Board shall establish, in program guidance, the cost-share rate for each practice approved for the brush control area considering the results of the completed evaluations.

(2) Not more than 70% of the total cost of a single brush control project may be made available as the state's share in cost sharing.

(3) 100% of the total cost of a single project on public lands may be made available as the state's share in cost sharing.

(4) The brush control area working group shall establish cost-share rates, not to exceed those established by the State Board.

The provisions of this §517.29 adopted to be effective February 13, 2003, 28 TexReg 1209; amended to be effective March 21, 2004, 29 TexReg 2651.

#### RULE §517.30 Eligibility for Cost-share Assistance

(a) Eligible person.

(1) Any individual, partnership, administrator for a trust or estate, family-owned corporation, or other legal entity who as an owner, lessee, tenant, or sharecropper participates in an agricultural or wildlife operation within a brush control area and is a cooperater with the local SWCD shall be eligible for cost-share assistance.

(2) A political subdivision is eligible for cost sharing under the brush control program, provided that the state's share may not exceed 50% of the total cost of a single project.

(b) Ineligible person.

(1) A person is not eligible to participate in the state brush control program or to receive money from the state brush control program if the person is simultaneously receiving any cost-share money for brush control on the same acreage from a federal government program.

(2) The State Board may grant an exception if the State Board finds that joint participation of the state brush control program and any federal brush control program will enhance the efficiency and effectiveness of a project, lessen the state's financial commitment to the project, and not exceed 80% of the total cost of the project.

(c) Eligible land. To be eligible for cost-share assistance, the land must be within a brush control area and fall into any of the following categories:

(1) land within the state that is privately owned by an eligible person;

(2) land leased by an eligible person over which the applicant has adequate control extending through the term of the contract period and written permission of the landowner; or

(3) land owned by the state, a political subdivision of the state, or a nonprofit organization that holds land in trust for the state.

(d) Ineligible lands. Allocated funds shall not be used on land outside of a brush control area or land not used for agricultural or wildlife production.

(e) Eligible purposes. Cost-share assistance shall be available only for brush control included in an approved brush control plan and contract and determined to be needed by SWCDs to conserve water.

(f) Eligible practices. Brush control methods, which the State Board has approved and which are included in the applicant's approved brush control plan and contract, shall be eligible for cost-share assistance. The brush control area working group shall designate their list of eligible methods from those approved by the State Board.

(g) Requirement to file an application. In order to qualify for cost-share assistance, an eligible person, including political subdivisions, shall file an application with the local SWCD.

(h) Requirement to develop a brush control plan. In order to qualify for cost-share assistance, an eligible person, including political subdivisions, shall develop a brush control plan. Brush control plans shall meet resource management system requirements on acres planned, as set forth in the FOTG.

(i) Persons authorized to sign applications and contracts. All applications, contracts, and performance certifications shall be signed by:

(1) the eligible person;

(2) any person designated to represent the eligible person, provided an appropriate notarized durable power of attorney has been filed with the SWCD office; or

(3) the responsible person or administrator, in cases of trusts or estates, provided that letters of administration or letters of testamentary have been submitted to the SWCD in lieu of a power of attorney.

The provisions of this §517.30 adopted to be effective February 13, 2003, 28 TexReg 1209; amended to be effective March 21, 2004, 29 TexReg 2651.

#### RULE §517.31 Responsibility of Applicants

(a) Applicants shall complete and submit an application form as provided by the State Board;

(b) Applicants shall complete a SWCD cooperative agreement if the applicant is not already a SWCD cooperator;

(c) Where an applicant does not have an approved brush control plan and has not determined the anticipated total cost of the proposed measure(s), he/she shall obtain a brush control plan approved by the local SWCD;

(d) Applicants shall complete, sign, and submit a cost-share contract based on the approved brush control plan to the SWCD along with any amendments to the contract;

(e) After being notified of approval, applicants may request technical assistance through the SWCD to design and lay out the approved brush control or request approval of alternate sources of technical assistance;

(f) Applicants shall perform the approved brush control or secure any approved contractor(s) needed and all contractual or other agreements necessary to perform the approved brush control. Cost-share will not be allowed for work begun before the application is approved; and

(g) Applicants shall supply the documents necessary to verify completion of the approved brush control along with copies of receipts for work to be cost-shared.

The provisions of this §517.31 adopted to be effective February 13, 2003, 28 TexReg 1209; amended to be effective March 21, 2004, 29 TexReg 2651.

#### RULE §517.32 Applications for cost-share

(a) A person who desires to participate with the state in a brush control project and to obtain cost-sharing participation by the state shall file an application with the SWCD in the SWCD in which the land on which the project is to be accomplished is located.

(b) Applications held in abeyance because of lack of funds. In those cases where funds are not available, the applications will be held by the SWCD until allocated funds become available or until the end of the program year. The SWCD may shift all unfunded applications held in abeyance because of lack of funds that are on hand at the end of a program to the new program year or require all new applications, as it deems appropriate.

(c) Applications denied for reasons other than lack of funds. Applications for funds, which are denied by the SWCD directors for other than lack of funds, shall be retained in the records of the SWCD in accordance with the SWCD's established record retention policy. Written notification of the denial shall be provided to the applicant along with the reason(s) that the application was denied.

(d) Applications withdrawn. An application may be withdrawn by the applicant at any time prior to receipt of cost-share assistance by notifying the SWCD in writing that withdrawal is desired. Applications withdrawn by the applicant shall be retained in the records of the SWCD in accordance with the SWCD's established record retention policy. The provisions of this §517.32 adopted to be effective February 13, 2003, 28 TexReg 1209.

#### RULE §517.33 Contracts for Cost-share

(a) According to the priority of an application, the SWCD shall negotiate a ten-year brush control contract with the successful applicant in the brush control area subject to:

(1) Guidelines established by the State Board.

(2) Development of a brush control plan. As a condition for receipt of cost-share assistance for brush control, the eligible person receiving the benefit of such assistance shall agree to develop a brush control plan.

(3) Signature of a performance agreement. As a condition for receipt of cost-share assistance for brush control, the eligible person receiving the benefit of such assistance shall agree to perform the brush control in accordance with standards established by the State Board and the terms of the cost-share agreement. Completion of the performance agreement and the signature of the eligible person are required prior to payment.

(4) Management of treated areas.

(A) Requirements for follow-up brush control will be included in the cost-share contract with management recommendations outlined in the eligible person's brush control plan. These will be reviewed with the eligible person prior to signature and

initiation of the cost-share contract. Requirements for follow-up brush control are subject to funding availability.

(B) The SWCD may require refund of any or all of the cost-share paid to an eligible person when acres where brush control was applied has not been managed in compliance with applicable standards and specifications for the practice in accordance with the terms of the cost-share contract as agreed to by the eligible person.

(C) In cases of hardship, death of the participant, or at the time of transfer of ownership of land where brush control has been applied using cost-share assistance and the term of the contract has not expired, the participant, heir(s), or buyer(s) respectively, must agree to properly manage the treated area or the participant, heir(s) or the buyer by agreement with seller must refund all or a portion of the cost-share funds received for the practice as determined by the SWCD. The State Board, on a case-by-case basis in consultation with the SWCD, may grant a waiver to this requirement.

(b) Criteria to consider. In approving a contract for cost sharing, the SWCD, in accordance with criteria established by the brush control area working group, shall consider:

- (1) the location of the project;
- (2) the method of control that is to be used by the applicant;
- (3) the plans for revegetation;
- (4) the total cost of the brush control;
- (5) the amount of land to be included;
- (6) whether the applicant is financially able to provide the applicant's share of the money for the brush control;
- (7) the cost-share percentage, if an applicant agrees to a higher degree of financial commitment;
- (8) any comments and recommendations submitted by the TDA, TWDB, or TPWD; and
- (9) any other pertinent information considered necessary by the SWCD.

(c) Approval of contracts. The SWCD may approve a contract if, after considering the factors listed in §517.33(c) and any other relevant factors, the SWCD finds:

- (1) the owner of the land fully agrees to cooperate in the project;
- (2) the method of control is a method approved by the brush control

area working group; and

(3) the brush control is to be carried out in an area eligible for funding as prioritized under the State Brush Control Plan.

(d) On completion of the negotiations by the SWCD, it shall submit the proposed contract to the State Board for execution.

(e) The State Board shall examine the contract and if the State Board finds that the contract meets all the conditions established in this section and the guidelines, it shall execute the contract and provide to the individual on completion of the project the money that constitutes the state's share of the project.

(f) Amending contracts.

(1) In the event that an adjustment to the estimated cost of brush control is necessitated by the final design, the applicant shall either agree to assume the additional cost or complete and submit an amendment to his/her contract for cost-share to the SWCD for approval or denial by the SWCD.

(2) The amount of funds obligated for brush control may be adjusted, provided funds are available and the adjustment is considered a priority according to the brush control area working group priority system.

(3) In the event additional funds are not available, the brush control may be redesigned, if possible, to a level commensurate with available funds, provided the redesign still meets standards established by the State Board; or the applicant can agree to assume full financial responsibility for the portion of the cost of brush control in excess of the amount authorized.

(g) Audits. It is the policy of the State Board to develop and implement audit guidelines that adequately safeguard assets administered within the purview of this agency in a cost effective manner.

(1) All parties to the contract are subject to audit by the State Board and/or SWCD for a period of two years after termination of the contract.

(2) The State Board and/or SWCD shall have access to all relevant applicant records, including all records of contractors and/or subcontractors that are pertinent to the contract, for the purpose of verifying compliance of contracts with the provisions of this subchapter and other state requirements. All parties shall maintain copies of performance certifications, contractor billing, and cancelled checks for a period of two years after termination as applicable to each party.

(3) The State Board and/or SWCD may withhold funds under this subchapter from applicants found to be in violation of the terms of the contract, this subchapter or other

state requirements and may require applicants to reimburse the State Board for funds claimed and received in violation of this subsection or other state requirements.

(4) The State Board and/or SWCD may terminate a contract, in whole or in part, or negotiate a contract amendment in the event of a failure to comply with the terms of the contract provided that no such action may be effected unless the applicant is given not less than ten days written notice (delivered by certified mail, return receipt requested).

(A) Upon receipt of a termination action, applicant will promptly discontinue all services affected, and deliver all materials and deliverables as may have been accumulated by applicant in performing this contract whether completed or in the process.

(B) If the State Board terminates this contract then, without prejudice to any other right or remedy of the State Board, applicant will be reimbursed for actual incurred costs that are allowable and eligible limited to the total maximum amount of the contract. The provisions of this §517.33 adopted to be effective February 13, 2003, 28 TexReg 1209; amended to be effective March 21,2004, 29 TexReg 2651.

#### RULE §517.34 Payment to Recipients

(a) The SWCD shall determine eligibility of the applicant to receive payment of cost-share assistance, and provide certification to the State Board that measure(s) have been installed consistent with the FOTG.

(b) Upon satisfactory receipt of performance certifications, invoices, and other required documentation the State Board shall cause payment for cost-share assistance to be issued to the applicant.

(c) Partial payment can be requested for brush control methods completed on identifiable land units as they are completed, provided required management can be applied.

(d) State money may not be provided in advance for work remaining to be done. The provisions of this §517.34 adopted to be effective February 13, 2003, 28 TexReg 1209; amended to be effective March 21, 2004, 29 TexReg 2651.

#### RULE §517.35 Determining status of brush control during transfer of land ownership

(a) A seller of agricultural land with respect to which a performance agreement is in effect may request the SWCD to inspect the practice. If the practice has been properly managed the SWCD shall issue a written statement that the seller has satisfactorily managed the treated area as of the date of the statement.

(b) The buyer of lands covered by a performance agreement may also request that the SWCD inspect the lands to determine whether the treated area has been properly managed as of the date of the inspection. If so, the SWCD will provide the buyer with a statement specifying the extent of compliance or noncompliance as of the date of the statement.

(c) The seller and the buyer, if known, shall be given notice of the time of inspection so that they may be present during the inspection to express their views as to compliance. The provisions of this §517.35 adopted to be effective February 13, 2003, 28 TexReg 1209.

#### RULE §517.36 Reporting and Accounting

The State Board shall receive and maintain required reports showing the unobligated balance of funds for each brush control area as shown on each ledger at the close of the last day of each month.

The provisions of this §517.36 adopted to be effective February 13, 2003, 28 TexReg 1209; amended to be effective March 21, 2004, 29 TexReg 2651.

#### RULE §517.37 Consultation with Other Agencies

(a) The State Board shall consult with the Texas Parks and Wildlife Department (TPWD), the Texas Water Development Board and the Texas Department of Agriculture as set forth in §203.016, Agriculture Code.

(b) The Texas Parks and Wildlife Department, the Texas Water Development, the Texas Department of Agriculture and other agricultural interests in the affected area shall be notified of all critical area working group meetings. The TPWD will provide technical assistance to the critical area working group in the development and implementation of the brush control plans.

(c) Comments and recommendations from the TPWD shall be considered when passing on applications for cost-share.

(d) Applicants shall be notified that the TPWD provides free technical guidance to landowners regarding the management of wildlife resources and habitats on their lands. The provisions of this §517.37 adopted to be effective February 13, 2003, 28 TexReg 1209; amended to be effective March 21, 2004, 29 TexReg 2651.

