

## **ATTACHMENT 9**

**A copy of the TSSWCB's most recent rules**

## **CHAPTER 517 - FINANCIAL ASSISTANCE**

### **SUBCHAPTER A: CONSERVATION ASSISTANCE**

#### **§§517.1 - 517.12**

#### **§517.1 Policy Statement**

It is the policy of the State Soil and Water Conservation Board to develop and implement a program to provide funds to districts on a matching basis to assist them with expenses incurred through the administration and implementation of conservation programs. In accordance with this purpose, §§517.1-517.12 of this title (relating to Conservation Assistance) are adopted.

Effective October 23, 1986

#### **§517.2 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **District** - A soil and water conservation district created under the Agriculture Code of Texas, Chapter 201.

(2) **State board** - The Texas State Soil and Water Conservation Board created under the Agriculture Code of Texas, Chapter 201.

Effective October 23, 1986

#### **§517.3 Use of Funds**

Funds appropriated from the general revenue fund and other sources for conservation assistance may be used by the state board to provide funds to districts on a matching basis, to assist them with expenses incurred through the administration and implementation of conservation programs and activities.

Effective October 23, 1986

#### **§517.4 Allocation of Funds**

The state board may allocate funds appropriated from the general revenue fund and other sources for conservation assistance to districts and may adjust allocations throughout the year as districts needs and ability to match funds change in order to achieve the most efficient use of state funds.

Effective October 23, 1986

### **§517.5 Requests for Allocations**

Districts must submit requests for allocations of conservation assistance funds under this subchapter to the state board on forms provided by the state board.

Effective October 23, 1986

### **§517.6 Approval of Allocations**

The state board may consider and approve, reject, or adjust district requests for allocations giving consideration to relative need for funding, district workload, and fund balances, as well as other information deemed necessary by the state board. Only districts for which the state board has established an allocation are eligible to claim funds under this subchapter.

Effective October 23, 1986

### **§517.7 Match Requirements**

In order to be eligible to receive funds under this subchapter, a district must have raised an amount of money that is equal to the amount to be received from funds under this subchapter. District-raised funds must be funds other than state funds or earnings from state funds and must have been deposited in a financial institution prior to submitting a claim.

Effective October 23, 1986

### **§517.8 Maximum Allocation**

The state board may establish a per district maximum annual allocation based on appropriation levels and district needs, and may adjust the maximum from time to time as available funds and district needs change.

Effective October 23, 1986

### **§517.9 Claims**

Claims for conservation assistance funds may be submitted to the state board as districts raise funds. Claims shall be submitted on forms provided by the state board and must include certification that an amount of funds equal to that claimed have been raised by the district from sources other than state funds or earnings from state funds and deposited in a local financial institution, since the beginning of the current fiscal year and prior to the date of the claim. Claims shall not be submitted more often than once each month.

Effective October 23, 1986

### **§517.10 Deadlines**

(a) The state board hereby establishes the following deadlines.

(1) By May 15, districts must have claimed 2/3 of their original annual allocation of conservation funds.

(2) By August 31, districts must have all claims for conservation assistance funds in the state office at Temple.

(b) Exceptions to these deadlines can only be made by the state board or the executive director with permission of the state board on a case-by-case basis.

Effective August 9, 2009

### **§517.11 Audits**

The State Board shall have access to all district records for the purpose of verifying compliance with the provisions of this subchapter and other state requirements. The State Board may withhold funds under this subchapter from districts found to be in violation of this subchapter or other state requirements and may require districts to reimburse the State Board for funds claimed and received in violation of this subsection or other state requirements. Any district which has not met the filing requirements of §525.7 of this title will not receive conservation assistance funds under this subchapter until such reports are received in the Temple office.

Effective May 8, 2000

### **§517.12 Nepotism**

The state board may withhold funds under these sections from districts or other entities found by the state board to be in violation of state nepotism statutes.

Effective October 23, 1986

**SUBCHAPTER B: COST-SHARE ASSISTANCE FOR BRUSH CONTROL**  
**§§517.22 - 517.37**

**§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.

Effective February 13, 2003

**§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.

Effective March 21, 2004

#### **§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.

Effective March 21, 2004

### **§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.

Effective March 21, 2004

#### **§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.

Effective March 21, 2004

#### **§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.

Effective March 21, 2004

### **§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.

Effective March 21, 2004

### **§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.

Effective March 21, 2004

### **§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 cooperator 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. The State Board may grant an exception to the RMS requirement if it finds an alternate plan adequate.

(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.

Effective October 11, 2007

### **§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.

Effective March 21, 2004

### **§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.

Effective February 13, 2003

### **§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.

Effective March 21, 2004

#### **§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.

Effective March 21, 2004

#### **§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.

Effective February 13, 2003

### **§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.

Effective March 21, 2004

### **§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.

Effective March 21, 2004

## **CHAPTER 518 - GENERAL PROCEDURES**

### **SUBCHAPTER A: EMPLOYEE TRAINING RULES**

#### **§§518.1 - 518.2**

##### **§518.1 Policy Statement**

Use of state funds. The Texas State Soil and Water Conservation Board may use state funds to provide training and education for its employees in accordance with provisions of the Texas Government Code, §§656.044 - 656.049.

(1) Training to be duty related. The training or education shall be related to the duties or prospective duties of the employee.

(2) Attendance may be required. A State Board employee may be required to attend, as part of the employee's duties, a training or education program related to the employee's duties or prospective duties.

(3) Training program outline. The training and educational program of the State Board may include the following elements:

- (A) preparing for technological and legal development;
- (B) increasing work capabilities; and
- (C) increasing the competence of State Board employees.

(4) Purposes for which public funds may be used. The State Board may spend public funds as appropriate to pay the salary, tuition and other fees, mileage and per diem, training, expenses of training materials, and other necessary expenses of an instructor, or an employee in a training or education program.

(5) Interagency coordination. The State Board may contract with another state, local or federal department, agency, or institution, including a state-supported college or university, to train or educate its employees or may join in presenting a training or educational program.

(6) Approval subject to available funds and workload. Approval to participate in a training program is not automatic and may be subject to the availability of funds within the State Board's budget or the current or anticipated workload of the employee requesting a specific time period for a training program.

(7) Components of program. The employee-training program for the board consists of training, seminars and conferences, as set out and described in paragraph (8) and (9) of this section.

(8) State Board-sponsored training. The State Board may pay for in-house training for State Board employees, as provided.

(9) Seminars and conferences. The State Board may also pay for training seminars or conferences unavailable in-house and related to a current or prospective duty assignment. Requests to attend an external training program, seminar or conference must be approved by the employee's direct program director. Training, seminars or conferences which are required to maintain a professional license will be considered a priority in allocating a program's training budget if the license is a requirement of the employee's job. Attendance at an approved training program, seminar or conference will be considered part of the employee's normal work duties. An employee will not be required to use accrued leave to attend an approved training program, seminar or conference.

Effective May 8, 2000

**§518.2 Approval to Participate in a Training Program, Including State Board-Sponsored Training, Seminars or Conferences Shall Not in Any Way Affect an Employee's at Will Status**

The approval of a training program is not a guarantee or indication that approval will be granted for subsequent training programs. Approval to participate in a training program, including State Board-sponsored training, seminars or conferences shall not in any way constitute a guarantee or indication of continued employment, nor shall it constitute a guarantee of future employment in a current prospective position.

Effective May 8, 2000

## **SUBCHAPTER B: HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM**

### **§518.5 Historically Underutilized Business Program**

The board adopts by reference the rules of the Texas Building and Procurement Commission in 1 Texas Administrative Code §§111.11 - 111.28, as amended, concerning Historically Underutilized Business Certification Program. Copies of the Texas Building and Procurement Commission rules, as amended, are filed at the agency headquarters, located at 311 North 5th Street, Temple, Texas.

Effective February 23, 2005

## **CHAPTER 519 - TECHNICAL ASSISTANCE**

### **SUBCHAPTER A: TECHNICAL ASSISTANCE PROGRAM**

#### **§§519.1 - 519.12**

##### **§519.1 Policy Statement**

It is the policy of the State Soil and Water Conservation Board to develop and implement a program to provide technical assistance for the development and implementation of soil and water conservation plans and soil and water conservation measures. In accordance with this purpose, §§519.1-519.12 of this title (relating to Technical Assistance Program) are adopted.

Effective May 8, 2000

##### **§519.2 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **District** - A soil and water conservation district created under the Agriculture Code of Texas, Chapter 201.

(2) **State board** - The Texas State Soil and Water Conservation Board created under the Agriculture Code of Texas, Chapter 201.

Effective October 23, 1986

##### **§519.3 Use of Funds**

Funds appropriated from the general revenue fund and other sources for technical assistance may be used by the state board to reimburse districts for salaries or wages paid to technical personnel of a district for performing or being trained to perform those duties included in §519.7(a) of this title (relating to Eligible Expenditures), and for other purposes specifically approved by the state board as provided for in §519.7(b) of this title (relating to Eligible Expenditures).

Effective October 23, 1986

##### **§519.4 Allocation of Funds**

The state board may allocate funds appropriated from the general revenue fund and other sources for technical assistance to districts, and may adjust such allocations throughout the year as district needs and available funds change in order to achieve the most efficient

use of state funds. The state board may also allocate such funds for other purposes as provided for in §519.7(b) of this title (relating to Eligible Expenditures), and may adjust such allocations to meet changing conditions.

Effective October 23, 1986

### **§519.5 Requests for Allocations**

Districts must submit requests for allocations of technical assistance funds under this subchapter to the state board on forms provided by the state board, and shall include all information required by such forms.

Effective October 23, 1986

### **§519.6 Approval of Allocations**

The state board may consider and approve, reject or adjust district requests for allocations giving consideration to relative need for funding, district workload and fund balances, as well as other information deemed necessary by the state board. Only districts for which the state board has established an allocation are eligible to claim funds under this subchapter.

Effective October 23, 1986

### **§519.7 Eligible Expenditures**

(a) Expenditures eligible for reimbursement include the wages or salary paid to a district soil conservation technician. A soil conservation technician generally works with owners and operators of agricultural or other lands on activities associated with planning, administration, installation and maintenance of conservation practices.

(b) Other expenditures specifically approved as eligible expenditures by the state board include, but are not limited to:

- (1) Wages and salaries paid to technicians at plant materials centers.
- (2) Employer's matching on Social Security and Medicare wages.
- (3) Other activities contributing to the carrying out of district responsibilities.

Effective May 8, 2000

### **§519.8 Eligible Pay Rates**

The State Board hereby establishes maximum pay rate of \$15.00 per hour not to exceed a maximum of 40 hours per week. With the prior approval of the State Board a district

may exceed the maximum pay rate or maximum hours per week. Expenditures for wages or salaries that are above the maximum pay rate or expenditures for hours over the maximum hours per week will not otherwise be eligible for reimbursement.

Effective January 1, 2008

### **§519.9 Payment of State Funds**

(a) On the first working day of each fiscal year or as soon as possible thereafter, the State Board shall provide notice to each district of the amount allocated to that district for the fiscal year.

(b) payments shall be made on a reimbursement basis.

(1) each district receiving funds under provisions of this chapter shall file with the State Board a monthly report of expenditures no later than the 30th of the month following the end of each reporting period on forms provided by the State Board.

(2) upon verification that the reports are in order, the State Board shall cause payment for reimbursement of expenses to be made to the district.

(3) upon receipt of the last monthly report, the State Board shall perform a reconciliation of funds and pay the claim accordingly.

(4) the district has complied with the reporting requirements of §519.10 and §519.11 of this chapter.

Effective April 1, 2007

### **§519.10 Reports Required**

The district shall file an Annual Grant Summary Report on or before September 30 of each year on forms provided by the State Board.

Effective March 17, 2004

### **§519.11 Audits**

The State Board shall have access to all district records for the purpose of verifying compliance with the provisions of this subchapter and other state requirements. The State Board may withhold funds under this subchapter from districts found to be in violation of this subchapter or other state requirements and may require districts to reimburse the State Board for expenditures claimed and reimbursed that are found to be in violation of this subchapter or other state requirements. Any district which has not met the filing requirements of §525.7 of this title, will not receive reimbursements under this subchapter until such reports are received in the State Office in Temple.

Effective May 8, 2000

**§519.12 Nepotism**

The State Board may withhold funds under this subchapter from districts or other entities found by the State Board to be in violation of state nepotism statutes.

Effective May 8, 2000

## CHAPTER 520 - DISTRICT OPERATIONS

### SUBCHAPTER A: ELECTION PROCEDURES

#### §§520.1 - 520.6

##### §520.1 Policy Statement

It is the policy of the State Soil and Water Conservation Board to implement the intent of the 77th Legislature, 2001 and H.B. 2310 by developing procedures for soil and water conservation districts to conduct elections that afford an optimum opportunity for eligible voters, as defined in §201.003, Agriculture Code, to participate. In accordance with this purpose, §§520.1 - 520.6 of this title (relating to Election Procedures) are adopted to implement the Agriculture Code of Texas, Subchapter A, §§201.003 - 201.004 and Subchapter D, §§201.073 - 201.076.

Effective April 7, 2002

##### §520.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **District** - A soil and water conservation district created under the Agriculture Code of Texas, Chapter 201.

(2) **Executive Director** - The Executive Director of the Texas State Soil and Water Conservation Board.

(3) **State Board** - The Texas State Soil and Water Conservation Board created under the Agriculture Code of Texas, Chapter 201.

(4) **Eligible Voter** - A person or a family farm corporation designated corporate officer as defined in §201.003 Agriculture Code of Texas is eligible to vote in a district election.

(5) **State Office** - The State Board headquarters office located at 311 North 5th Street, Temple, Texas.

Effective April 7, 2002

##### §520.3 District Conducted Elections; Notice

(a) Districts shall:

(1) Adopt rules for conducting elections consistent with §201.073, Agriculture Code of Texas.

(2) Administer elections consistent with their adopted rules.

(3) Prior to adoption or any subsequent amending of election rules, submit a draft copy for approval by the Executive Director or his designee for the purpose of assuring uniformity and consistency with legal requirements as set out in Chapter 201, Agriculture Code of Texas.

(4) Maintain a copy of adopted rules with the State Board and maintain a copy of adopted rules at their office for public review.

(b) Districts are required to use all election forms prescribed by the State Board; file all original completed forms required by the State Board with the State Board and retain copies for their files.

(c) A district election conducted under §201.073, Agriculture Code of Texas shall be preceded by posting of notice(s) consistent with §201.004 and §201.073, Agriculture Code of Texas.

Effective April 7, 2002

#### **§520.4 State Board Conducted District Elections; Notice**

(a) Should the State Board call for a district election as provided in §201.076, Agriculture Code of Texas, then the State Board may call upon the Executive Director or his designee to:

(1) Conduct the election in the manner provided by §201.073, Agriculture Code of Texas, except that the State Board shall designate the date, time and place of the election and early voting.

(2) Conduct the election consistent with the rules adopted by the individual district, except the Executive Director shall designate all necessary election officials and shall decide all election issues required under the district election rules.

(3) Coordinate with the individual district to the extent possible.

(4) Utilize all election forms prescribed for district use and be responsible for their completion and filing and providing copies to the district.

(b) A district election called for by the State Board under §201.076, Agriculture Code of Texas, shall be preceded by the Executive Director or his designee posting notice(s) consistent with §201.004 and §201.073, Agriculture Code of Texas and district rules.

Effective April 7, 2002

**§520.5 Election Forms; Reporting**

(a) The State Board may consider and approve or amend certain election forms and require districts to utilize the forms for the purpose of assuring uniformity and consistency with legal requirements as set out in Chapter 201, Agriculture Code of Texas.

(b) The State Board may require districts to submit original copies of certain completed election forms to the State Board State Office for filing. Districts should retain copies of any originals submitted to the State Office.

(c) Original copies of requested election forms; recorded proceedings of the election and certification of the name and proper address of the person elected shall be sent to the State Board State Office no later than the fifth day after the date of the election, as specified in §201.073, Agriculture Code of Texas.

Effective April 7, 2002

**§520.6 Adherence to Rules Required**

Districts shall adhere to these rules and any subsequent rules adopted by the district relating to elections. The State Board shall have access to all district records for the purpose of verifying compliance with the provisions of this subchapter and other state requirements.

Effective April 7, 2002

**SUBCHAPTER B: REQUIREMENTS TO RECEIVE STATE FUNDS OR  
ADMINISTER STATE PROGRAMS**  
**§§520.11 - 520.13**

**§520.11 Policy Statement**

It is the policy of the State Soil and Water Conservation Board for soil and water conservation districts that receive state funds or administer programs for the state to implement internal controls for the handling of public funds and to conduct their board meetings in accordance with applicable laws and regulations.

Effective August 23, 2007

**§520.12 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) District--A soil and water conservation district created under the Agriculture Code of Texas, Chapter 201.

(2) State Board--The Texas State Soil and Water Conservation Board created under the Agriculture Code of Texas, Chapter 201.

Effective August 23, 2007

**§520.13 District Participation in State Board Programs**

(a) In accordance with Chapter 201, Agriculture Code of Texas, the State Board may allocate available funds to districts and may designate particular districts to administer certain programs and may adopt rules to carry out the programs.

(b) In order to be designated to administer certain programs and to receive funds and/or cost share assistance from the State Board, a district must provide evidence to the State Board that:

(1) it is conducting regularly scheduled meetings that are timely to properly handle financial and contractual obligations, and

(2) it is implementing internal controls for handling public funds that complies with Chapter 201, Agriculture Code, other applicable laws and regulations and State Board guidance documents, including the Manual of Fiscal Operations.

Effective August 23, 2007

## CHAPTER 521 - AGRICULTURAL WATER CONSERVATION

### SUBCHAPTER A: TECHNICAL ASSISTANCE PROGRAM FOR SOIL AND WATER CONSERVATION LAND IMPROVEMENT MEASURES

#### §§521.1 - 521.13

##### §521.1 Policy Statement

It is the policy of the State Soil and Water Conservation Board to implement the intent of the 69th Legislature, 1985, and House Bill 2, by developing a program for agricultural soil and water conservation to conserve the state's soil and water resources and provide resulting benefits to all of the state's citizens. In accordance with this purpose, §§521.1-521.13 of this title (relating to Technical Assistance Program for Soil and Water Conservation Land Improvement Measures) are adopted to implement the Agriculture Code of Texas, Subchapter H, §§201.201-201.204.

Effective May 8, 2000

##### §521.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **District** - A soil and water conservation district created under the Agriculture Code of Texas, Chapter 201.

(2) **Executive director** - The executive director of the Texas State Soil and Water Conservation Board.

(3) **State board** - The Texas State Soil and Water Conservation Board created under the Agriculture Code of Texas, Chapter 201.

(4) **Technical assistance** - Technical and professional services and activities deemed necessary by the state board for the development and implementation of soil and water conservation plans and soil and water conservation land improvement measures.

Effective April 21, 1986

##### §521.3 Guidelines

In accordance with the Texas Water Code, §15.435, and the Agriculture Code of Texas, §201.202(b), the state board will give priority in expenditure of funds to those areas of the state, which in the opinion of the board, have the most critical water conservation needs as brought to the attention of the state board, and to the activities, which in the

opinion of the state board, will be most likely to produce substantial agricultural soil and water conservation.

Effective April 21, 1986

#### **§521.4 Purpose**

In accordance with the Agriculture Code of Texas, §201.202, the state board may provide for technical assistance to landowners and operators for soil and water conservation land improvement measures and soil and water conservation plans developed jointly by landowners and operators and local soil and water conservation districts and endorsed and approved by the state board.

Effective April 21, 1986

#### **§521.5 Priorities**

The state board may approve areas within the state where critical soil and water conservation needs are known to the state board to exist and activities that will be most likely in the opinion of the state board to produce substantial soil and water conservation.

Effective April 21, 1986

#### **§521.6 Eligible Districts**

In accordance with the Agriculture Code of Texas, §201.203, a district, all or part of which is located within an area approved in accordance with §521. 5 of this title (relating to Priorities) may be considered eligible to administer technical assistance programs under these sections upon presentation of evidence satisfactory to the state board that such district is able to provide and supervise technical assistance to landowners and operators within its jurisdiction subject to availability of funds, and upon justification of the need for funds based upon current fund balances of the district.

Effective April 21, 1986

#### **§521.7 Eligible Expenditures**

(a) Eligible districts, upon approval by the state board, may receive funds for salaries or wages paid to district personnel for performing or being trained to perform technical assistance duties in relation to priorities established under §521.5 of this title (relating to Priorities). Such funds will be limited to the allocations set by the state board. Employment related expenses other than salaries or wages and the employer's matching of Social Security and Medicare taxes shall be borne by the district.

(b) Other activities approved by the State Board under these sections may be eligible for funding.

Effective May 8, 2000

### **§521.8 Applications**

Eligible districts may apply for allocations of technical assistance funds under these sections in the manner prescribed by the state board, and shall include such information as required by the state board.

Effective April 21, 1986

### **§521.9 Approval of Expenditures**

The state board may consider and approve or reject district applications, program expenditures, and fund allocations, giving consideration to the guidelines under §521.3 of this title (relating to Guidelines) and priorities under §521.5 of this title (relating to Priorities), as well as other information deemed necessary by the state board. The state board may adjust eligible expenditures and allocations throughout the year in order to achieve the most efficient use of state funds.

Effective April 21, 1986

### **§521.10 Payment of State Funds**

(a) On the first working day of each fiscal year or as soon as possible thereafter, the State Board shall cause to be paid to each district 25% of the amount allocated to that district for the fiscal year.

(b) Additional payments shall be made on a reimbursement basis.

(1) each district receiving funds under provisions of this chapter shall file with the state Board a monthly report of expenditures no later than the 30th of the month following the end of each reporting period on forms provided by the State Board.

(2) upon verification that the reports are in order, the State Board shall cause payment for reimbursement of expenses to be made to the district.

(3) upon receipt of the last monthly report, the State Board shall perform a reconciliation of funds and pay the claim accordingly.

(4) the district has complied with the reporting requirements of §521.11 and §521.12 of this chapter.

(c) any unexpended and unobligated balance on the district books at August 31 will be treated as a payment toward that district's allocation for the subsequent fiscal year.

Effective March 17, 2004

### **§521.11 Reports Required**

The district shall file an Annual Grant Summary Report on or before September 30 of each year on forms provided by the State Board.

Effective March 17, 2004

### **§521.12 Audits**

The State Board shall have access to all district records for the purpose of verifying compliance with the provisions of this subchapter and other state requirements. The State Board may withhold funds under this subchapter from districts found to be in violation of this subchapter or other state requirements and may require districts to reimburse the State Board for expenditures claimed and reimbursed that are found to be in violation of this subchapter or other state requirements. Any district which has not met the filing requirements of §525.7 of this title, will not receive reimbursements under this subchapter until such reports are received in the State Office in Temple.

Effective May 8, 2000

### **§521.13 Priority in Expenditure of Funds**

When requests for funding exceed available funds, the State Board will prioritize requests in accordance with the guidelines in §521.3 of this title (relating to Guidelines).

Effective May 8, 2000

## **CHAPTER 523 - AGRICULTURAL AND SILVICULTURAL WATER QUALITY MANAGEMENT**

### **§§523.1 - 523.8**

#### **§523.1 Scope and Jurisdiction**

(a) The Texas State Soil and Water Conservation Board (State Board) is the lead agency in this state for activity relating to abating agricultural and silvicultural nonpoint source pollution.

(1) Nonpoint source pollution is pollution caused by diffuse sources that are not regulated as point sources and normally is associated with agricultural, silvicultural, and urban runoff, runoff from construction activities, etc. Such pollution is the result of human-made or human-induced alteration of the chemical, physical, biological, and radiological integrity of water. In practical terms nonpoint source pollution does not result from a discharge at a specific, single location (such as a single pipe) but generally results from land runoff, precipitation, atmospheric deposition, or percolation. Pollution from nonpoint sources occurs when the rate at which pollutant materials entering water bodies or groundwater exceeds natural rates or total loadings exceed natural loadings.

(A) Possible nonpoint source pollutants associated with agricultural and silvicultural activities include nutrients, pesticides, organic matter, sediment, and animal wastes. These pollutants may be transported to surface waters in solution with runoff water, suspended in runoff water, or adsorbed on eroded soil particles. The primary concern about agricultural and silvicultural impacts on groundwater relate to use of pesticides, nutrients and potential leaching of these compounds to groundwater or surface runoff entering groundwater through avenues such as abandoned and improperly constructed wells.

(B) Animal feeding operations may be considered as point or nonpoint sources depending on size, location, and other considerations. For the purposes of these rules, all animal feeding operations not required to obtain a permit from the Texas Commission on Environmental Quality will be nonpoint sources.

(2) Agriculture includes, but is not limited to, the following activities: cultivating the soil; producing crops for human food, animal feed, planting seed, or fiber; floriculture; viticulture; horticulture; aquaculture; raising or keeping livestock or poultry; and planting cover crops or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure.

(3) Silviculture includes, but is not limited to, the following activities: practices to establish, nurture, protect, and enhance the desired growth of trees for human and/or wildlife benefit; natural or planted afforestation; the propagation and culture of tree

seedlings, tree saplings, and Christmas trees; controlling, suppressing, or culling unwanted woody or herbaceous vegetation in a forested area; establishing and/or maintaining strips or belts of trees for purposes of providing wildlife habitat, wind breaks, or riparian buffers; construction and maintenance of roads and fire lanes; practices and operations that facilitate the harvesting, handling, and removing timber products from a site where they were grown.

(b) As the lead agency, the State Board shall plan, implement, and manage programs and practices for abating agricultural and silvicultural nonpoint source pollution. At a minimum, these programs shall include:

(1) a water quality management plan certification program required by Agriculture Code §201.026(g);

(2) a nonpoint source grant program funded by §319(h) of the federal Clean Water Act and any planning, assessment, education, demonstration, or implementation programs associated with the effective administration of the Texas Nonpoint Source Management Program;

(3) a total maximum daily load program in cooperation with the Texas Commission on Environmental Quality and as required by §303(d) of the federal Clean Water Act; the State Board may enter into an agreement with the Texas Commission on Environmental Quality regarding the effective coordination of agricultural and silvicultural nonpoint source pollution components of total maximum daily loads and total maximum daily load implementation plans; and;

(4) a coastal nonpoint source pollution control program as required by §6217 of the Coastal Zone Act Reauthorization Amendments of 1990 in cooperation with the Coastal Coordination Council and the Texas Coastal Management Program as required by Natural Resources Code §33.052.

Effective December 23, 2008

### **§523.2 Identification of Problem Areas**

(a) On its own petition or on the petition of a soil and water conservation district, the State Board may delineate an area having the potential to develop agricultural or silvicultural nonpoint source water pollution problems.

(b) Problem areas may be delineated based on the following criteria:

(1) data and information submitted by soil and water conservation districts;

(2) data and information obtained by the State Board;

(3) studies conducted by the State Board or soil and water conservation districts;

(4) assessments, special studies, and programs and research conducted relative to surface and underground water quality pursuant to the Federal Clean Water Act, §§106, 305b, 314, and 319; the Coastal Zone Act Reauthorization Amendments (CZARA), §6217; the National Estuary Program; the Federal Insecticide, Fungicide, and Rodenticide Act; the Texas Water Code, §26.0135; the Texas Clean Rivers Program and data and information collected or obtained by other local, state, or federal governmental entities;

(5) guidelines developed and promulgated by the State Board.

(c) Allocation of resources will be based on priority considerations. In allocating program resources, the State Board will consider the following:

(1) first, known problems, where the State Board has determined that adequate data show the existence of a water quality problem caused by agricultural or silvicultural nonpoint sources;

(2) second, potential problems, where the State Board has determined that the intensity and location of certain agricultural and silvicultural activities requires program implementation to prevent pollution problems caused by agricultural and silvicultural nonpoint source activities;

(3) third, corrective action plans needing to be implemented, the economic impact on producers, and benefits to water quality. Corrective action plans may include, but are not limited to, watershed protection plans, total maximum daily loads and associated implementation plans, nonpoint source grant project plans, or certified water quality management plans.

Effective December 23, 2008

### **§523.3 Water Quality Management Plan Certification Program**

(a) Purpose. The purpose of this program is to carry out the mandate in Agriculture Code §201.026(g) relating to the abatement of agricultural and silvicultural nonpoint source pollution through a water quality management plan certification program.

(b) Definitions. For the purposes of this section the following definitions shall apply.

(1) Animal feeding operation--A lot or facility (other than an aquatic animal production facility) where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and the animal confinement areas do not sustain crops, vegetation, forage growth, or postharvest residues in the normal growing season.

(2) Coastal Zone Act Reauthorization Amendments--The 1990 amendments to the federal Coastal Zone Act that created the Coastal Nonpoint Program under §6217, "Protecting Coastal Waters." Under §6217, all states with approved coastal zone management programs must develop a Coastal Nonpoint Program to control polluted runoff to coastal waters.

(3) Dry-litter poultry facility--A poultry animal feeding operation that does not use a liquid waste handling system.

(4) Clean Water Act--Federal Water Pollution Control Act, 33 USC, §§1251 - 1387 (1977, as amended).

(5) Field Office Technical Guide (FOTG)--The official Natural Resources Conservation Service guidelines, criteria, and standards for planning and applying conservation practices.

(6) Natural Resources Conservation Service (NRCS)--An agency of the United States Department of Agriculture which includes the agency formerly known as the Soil Conservation Service (SCS).

(7) Operating unit--Land or lands, whether contiguous or non-contiguous, owned and/or operated in a manner that contributes or has the potential to contribute agricultural or silvicultural nonpoint source pollution to water in the state. An operating unit must be determined through mutual agreement by the holder of the water quality management plan, the soil and water conservation district, and the State Board. When determining the applicability of an operating unit, the following criteria must be considered:

(A) Contiguous lands under the same ownership and/or operational control must be considered one operating unit.

(B) Non-contiguous lands under the same ownership and/or operational control may be considered as more than one operating unit when there is mutual agreement by the soil and water conservation district and the potential holder of the water quality management plan unless the lands are associated with an animal feeding operation.

(C) An operating unit, when designated for an animal feeding operation, must at a minimum encompass all land or lands owned and/or operated by the holder of the water quality management plan that are used to produce feed that is consumed by the animals, as well as all land or lands owned and/or operated by the potential holder of the water quality management plan where manures or other agricultural by-products are beneficially used as a source of nutrients to produce food or fiber for any use.

(D) Land or lands within the scope of an existing operating unit for a certified water quality management plan may not be separated from the existing operating unit to establish another operating unit unless a change of ownership has occurred.

(E) Where mutual agreement regarding an operating unit's consistency with these rules is not achieved by the potential holder of the water quality management plan, the soil and water conservation district, and the State Board, the State Board will make a final determination whether or not to certify the water quality management plan.

(8) Practice standard--A technical specification for a conservation practice within the NRCS FOTG that contains information on why and where the practice should be applied, and sets forth the minimum quality criteria that must be met during the application of that practice in order for it to achieve its intended purpose(s).

(9) Resource management system--a combination of conservation practices and resource management activities for the treatment of all identified resource concerns for soil, water, air, plants, animals, and humans that meets or exceeds the quality criteria in the NRCS FOTG for resource sustainability.

(10) Soil and water conservation district (SWCD)--A governmental subdivision of this state and a public body corporate and politic, organized pursuant to Chapter 201 of the Agriculture Code.

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

(12) Status review--An audit performed by the State Board on a water quality management plan for the purpose of determining adherence to the plan's implementation schedule.

(13) Texas Nonpoint Source Management Program--The comprehensive management strategy to protect and restore water impacted by nonpoint sources of pollution jointly developed and administered by the Texas Commission on Environmental Quality and the State Board and approved by the Governor of the State of Texas and the United States Environmental Protection Agency.

(14) Texas surface water quality standards--The designation of water bodies for desirable uses and the narrative and numerical criteria deemed necessary to protect those uses established by the Texas Commission on Environmental Quality.

(15) Water in the state--Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(16) Water quality management plan--a site specific plan for agricultural or silvicultural lands which includes appropriate land treatment practices, production practices, management measures, technologies or combinations thereof which when implemented will achieve a level of pollution prevention or abatement determined by the State Board in consultation with the local SWCD and Texas Commission on Environmental Quality to be consistent with Texas surface water quality standards.

(c) To be certified, a water quality management plan must at a minimum meet the resource quality criteria for water quality at the resource management system level specified within the NRCS FOTG and encompass all lands whether contiguous or non-contiguous that constitutes an operating unit for agricultural or silvicultural nonpoint source pollution abatement purposes.

(d) A water quality management plan should be modified when there is a land use change of any part of the operating unit; an addition or deletion of significant acreage to or from the operating unit covered by the water quality management plan; alteration of planned permanent practice measures including addition or deletion of such; changes identified by research and advanced technology as being needed to meet Texas surface water quality standards; or when more stringent measures become necessary to meet Texas surface water quality standards.

(e) Process for obtaining a Water Quality Management Plan.

(1) Landowners and operators may request the development of a plan or plan modification by the local SWCD. Landowners and operators, following consultation with their SWCD, will be encouraged and aided in working with the SWCD in the preparation of a plan or plan modification based on standards adopted by the State Board to prevent or abate their nonpoint source pollution.

(2) The SWCD will determine the priority of plan development or plan modification and subsequently cause the development and approval of the plan or plan modification.

(3) Landowners and operators may appeal SWCD decisions relative to practices and practice standards to the State Board in the manner prescribed by the State Board.

(4) When determined to be consistent with Texas surface water quality standards, taking into account the state of existing technology, economic feasibility and water quality needs, the State Board will certify the plan or plan modification.

(f) Practice selection.

(1) Practices eligible for water quality management planning will be selected by the State Board in consultation with the SWCD.

(2) Practices will address activities determined by the State Board in consultation with the SWCD to be in need of pollution prevention or abatement.

(3) Insofar as practicable, those practices shall be consistent with the Texas Nonpoint Source Management Program developed by the State Board and the Texas Commission on Environmental Quality pursuant to the federal Clean Water Act, §319 and Coastal Zone Act Reauthorization Amendments §6217.

(g) Practice standards.

(1) Practice standards will be based on specific local conditions.

(2) Practice standards will be based on criteria in the NRCS, FOTG; however, modification of those practice standards to ensure consistency with Texas surface water quality standards and the Texas Nonpoint Source Management Program will be made as necessary. It is the decision of the State Board that the implementation of a water quality management plan based on the NRCS FOTG, including all practices required to minimally meet the resource quality criteria for water quality at the resource management system level, represents the best available technology for meeting Texas surface water quality standards.

(3) Practice standards will be selected or developed in consultation with the local SWCD, with assistance and advice of the NRCS, Texas AgriLife Extension Service, Texas Forest Service, Texas AgriLife Research, Texas Commission on Environmental Quality, the local underground water conservation district and others as determined to be needed by the State Board.

(h) Implementation schedule.

(1) A water quality management plan must contain an implementation schedule.

(2) The implementation schedule will, as far as is practicable, balance the state's need for protecting water quality with need of agricultural and silvicultural producers to have sufficient time to implement practices in an economically feasible manner.

(3) Highest priority will be given to the implementation of the most cost effective and most needed pollution abatement practices.

(4) The State Board in consultation with affected SWCD will conduct status reviews of plan implementation.

(5) The State Board in consultation with the local SWCDs may withdraw certification of a water quality management plan that is not being implemented in accordance with its schedule. Prior to certification being withdrawn, a landowner will be notified and provided a reasonable period of time to implement the water quality

management plan according to the schedule or a modified schedule approved by the SWCD.

(6) The holder of a certified water quality management plan shall notify the local SWCD in the event he or she deviates from the implementation schedule.

(i) Applicability of Texas surface water quality standards. To the extent allowed by available technology, water quality management plan development, approval and certification will be based on Texas surface water quality standards as established by the Texas Commission on Environmental Quality.

(j) Water Quality Management Plans for Poultry Facilities.

(1) After September 1, 2001 in accordance with the schedule in paragraph (2) of this subsection, all poultry facilities producing poultry for commercial purposes will be required to develop and implement a certified water quality management plan covering the poultry operating unit.

(2) Poultry facilities must request development and certification of a water quality management plan according to the following: Attached Graphic

(3) Poultry facilities may obtain a water quality management plan as prescribed in subsections (a) - (h).

(4) The State Board will maintain a listing of poultry facilities that have requested a certified water quality management plan. The list will indicate date of plan approval by the SWCD and date of certification by the State Board. The listing will also indicate status of implementation.

(5) The State Board in consultation with the local SWCD will conduct status reviews of certified water quality management plans covering poultry facilities on a schedule determined by the State Board.

(6) The State Board, in consultation with the local SWCD may withdraw certification of a water quality management plan that is not being implemented according to its schedule. Prior to certification being withdrawn, the owner/operator of the facilities will be notified and provided a reasonable period of time, as determined by the State Board, to implement the water quality management plan, which may, at the discretion of the local SWCD in accordance with State Board guidance be modified to allow implementation to occur.

(7) The list developed and maintained under paragraph (4) of this subsection will be made available to the Texas Commission on Environmental Quality.

(8) Landowners and operators after consultation with the SWCD may appeal SWCD decisions to the State Board.

#### **§523.4 Resolution of Complaints**

Complaints concerning the violation of a water quality management plan or a violation of a law or rule relating to nonpoint source pollution will be addressed as follows.

- (1) The State Board will investigate complaints regarding:
  - (A) agricultural and silvicultural nonpoint sources;
  - (B) operations with a certified water quality management plan;
  - (C) operations that have applied for a water quality management plan;
  - (D) nonpoint source problems related to operations needing a water quality management plan; and
  - (E) general complaints regarding agricultural and silvicultural nonpoint source related pollution.
- (2) Determination of the need for action.
  - (A) The State Board in consultation with the soil and water conservation district will make a determination relative to the need for action.
  - (B) To the extent practicable, the complainant will be interviewed by the State Board and the soil and water conservation district prior to an investigation.
  - (C) The State Board in consultation with the local soil and water conservation district will, based on complainant interviews and investigations, including a review of the water quality management plan on file with the State Board and/or the soil and water conservation district, determine whether or not the need for corrective action exists.
  - (D) The State Board will inform the complainant of the outcome of a determination upon completion of the investigation and it is determined whether the need for corrective action exists.
  - (E) Upon completion of an investigation by the State Board and all pertinent soil and water conservation districts, and provision of the final investigative determination to all complainants and operators interviewed and investigated, any complainant or operator interviewed or investigated shall be provided an opportunity for a hearing before members of the soil and water conservation district or districts involved in the investigation.

(F) Subsequent to a hearing before members of the local soil and water conservation district or districts involved in the investigation, any complainant or operator interviewed or investigated may request a hearing before the State Board. The State Board may provide for the requested hearing at its discretion.

(3) Corrective action plan. Once the determination of the need for action is made, a corrective action plan will be developed.

(A) The corrective action plan must meet all requirements of a certified water quality management plan.

(B) The corrective action plan will be developed in consultation with the soil and water conservation district in the same manner as a water quality management plan is developed.

(C) The corrective action plan will be developed with the technical assistance from the Natural Resources Conservation Service, Texas AgriLife Extension Service, Texas Forest Service, the local underground water conservation district, and/or State Board as appropriate.

(4) If the person upon whom the complaint was filed fails or refuses to take warranted corrective action within 45 days of notification of the outcome of the investigation, the State Board shall refer the complaint to the Texas Commission on Environmental Quality.

Effective December 23, 2008

### **§523.5 \*Memorandum of Understanding between the Texas State Soil and Water Conservation Board and the Texas Commission on Environmental Quality**

The Texas State Soil and Water Conservation Board may enter into and maintain a Memorandum of Understanding with the Texas Commission on Environmental Quality which sets forth the coordination of jurisdictional authority, program responsibility, and procedural mechanisms for point and nonpoint source pollution programs.

Effective March 21, 2004

### **§523.6 Cost-Share Assistance for Soil and Water Conservation Land Improvement Measures**

(a) Purpose. The purpose of this program is to provide the needed incentive to landowners or operators for the installation of soil and water conservation land improvement measures consistent with the purpose of controlling erosion, conserving water, and/or protecting water quality.

(b) Definitions. For the purposes of this section the following definitions shall apply.

(1) Allocated funds--Funds budgeted through the State Board to a soil and water conservation district for cost-share assistance.

(2) Applicant--A person who applies for cost-share assistance from the soil and water conservation district.

(3) Available funds--Monies budgeted, unobligated and approved by the State Board for cost-share assistance.

(4) Conservation practice(s)--The conservation land improvement measure(s) approved by the State Board and applied to the land to control soil erosion or improve the quality and/or quantity of water.

(5) Cost-share assistance--An award of money made to an eligible person for conservation land improvement measures pursuant to the terms of Agriculture Code §201.301.

(6) District director--A member of the governing board of a soil and water conservation district.

(7) Eligible land--Those lands that are eligible for application of conservation land improvement measures using cost-share assistance.

(8) Eligible person--Any of the land holders eligible to apply for cost-share assistance or any person designated to represent the applicant as provided by a durable power of attorney, court order or other valid legal document.

(9) Eligible practices--Those conservation land improvement measures that have been approved by the State Board.

(10) Landowner--Any person, firm or corporation holding title to land lying within a soil and water conservation district.

(11) Maintenance agreement--A written agreement between the eligible person and the soil and water conservation district wherein the eligible person(s) agrees, as a condition of the receipt of State cost-share funds, to implement and maintain all measures in the certified water quality management plan consistent with its implementation schedule. The maintenance agreement shall remain in effect for a minimum period of two years after the certified water quality management plan is completely implemented for all practices except those cost-shared. The maintenance agreement shall remain in effect on cost-shared practices for the expected life of the practice as established by the State Board or for a period of two years after the certified water quality management plan is completely implemented, whichever period of time is longer. It is the expectation of the

State Board that a water quality management plan be maintained by the landowner for an indefinite period of time. The maintenance agreement is only intended to ensure a minimum period of time during which the State of Texas can realize the conservation and water quality benefits of its investment of technical and financial assistance to a landowner.

(12) Obligated funds--Monies from a soil and water conservation district's allocated funds which have been committed to an applicant after final approval of the application.

(13) Operating Unit--Land or lands, whether contiguous or non-contiguous, owned and/or operated in a manner that contributes or has the potential to contribute agricultural or silvicultural nonpoint source pollution to water in the state. An operating unit must be determined through mutual agreement by the holder of the water quality management plan, the soil and water conservation district, and the State Board.

(A) Contiguous lands under the same ownership and/or operational control must be considered one operating unit.

(B) Non-contiguous lands under the same ownership and/or operational control may be considered as more than one operating unit when there is mutual agreement by the soil and water conservation district and the potential holder of the water quality management plan unless the lands are associated with an animal feeding operation.

(C) An operating unit, when designated for an animal feeding operation, must at a minimum encompass all land or lands owned and/or operated by the holder of the water quality management plan that are used to produce feed that is consumed by the animals, as well as all land or lands owned and/or operated by the potential holder of the water quality management plan where manures or other agricultural by-products are beneficially used as a source of nutrients to produce food or fiber for any use.

(D) Land or lands within the scope of an existing operating unit for certified water quality management plan may not be separated from the existing operating unit to establish another operating unit unless a change of ownership has occurred.

(E) Where mutual agreement regarding an operating unit's consistency with these rules is not achieved by the potential holder of the water quality management plan, the soil and water conservation district, and the State Board, the State Board will make a final determination whether or not to certify the water quality management plan.

(14) Performance agreement--A written agreement between the eligible person and the soil and water conservation district wherein the eligible person agrees to perform conservation land improvement measures for which allocated funds are being paid.

(15) Practice standard--A technical specification for a conservation practice within the NRCS FOTG that contains information on why and where the practice should be applied, and sets forth the minimum quality criteria that must be met during the application of that practice in order for it to achieve its intended purpose(s).

(16) Priority system--The system devised by the soil and water conservation district, under guidelines of the State Board, for ranking approved conservation practices and for facilitating the disbursement of allocated funds in line with the soil and water conservation district's priorities.

(17) Program year--The period from September 1 to August 31.

(18) Soil and water conservation district (SWCD)--A governmental subdivision of this state and a public body corporate and politic, organized pursuant to Chapter 201 of the Agriculture Code. (19) State Board--The Texas State Soil and Water Conservation Board organized pursuant to Chapter 201 of the Agriculture Code.

(c) Responsibilities.

(1) The State Board shall:

(A) Establish a procedure to allocate funds to designated SWCDs for their use in cost-share assistance.

(B) Establish conservation practices eligible for cost-share and their standards, specifications, maintenance and expected life.

(C) Establish maximum cost-share rate for each conservation practice approved for cost-share.

(D) Establish the minimum cost-share assistance prior to September 1 each year that may be made under the program and the maximum cost-share assistance that an eligible person may receive under the program in any one year.

(E) Perform clerical, administrative and record-keeping responsibilities required for carrying out the cost-share program.

(F) Receive and maintain monthly reports from SWCDs showing the unobligated balance of allocated funds as shown on each ledger at the close of the last day of each month.

(G) Receive requests for reallocated funds and funds reverted from participating SWCDs.

(H) Act on appeals filed by applicants.

(I) Process vouchers and issue warrants for cost-share to eligible recipients.

(2) The SWCDs shall:

(A) Designate, from State Board approved list, those conservation practices that will be eligible for cost-share in their SWCD.

(B) Administer the cost-share program within the funds allocated by the State Board.

(C) Establish, under guidelines of the State Board, the priority system to be used for evaluation of applications.

(D) Establish the period(s) of time for accepting applications and announce the cost-share program locally.

(E) Accept and process cost-share applications.

(F) Determine eligibility of lands and persons for cost-share assistance under guidelines established by the State Board.

(G) Notify applicants of the SWCD's decisions on approval of applications.

(H) File approved applications in the SWCD's copy of the applicant's water quality management plan.

(I) Obligate allocated funds for applications receiving final approval.

(J) Provide or arrange for technical assistance to applicants, or approve applicant and provide for an alternate source of technical assistance.

(K) Certify completed conservation practices to the State Board prior to payment.

(L) Submit required reports on the unobligated balance of allocated funds and on accomplishments to the State Board.

(d) Administration of Funds.

(1) Allocation of Funds. The State Board may allocate funds appropriated from general revenue fund and other sources for cost-share assistance among particular soil and water conservation land improvement measures or among areas of the state and may adjust such allocations throughout the year as available funds and SWCD needs and priorities change in order to achieve the most efficient use of state funds. The State Board

may designate a portion of the funds allocated to a SWCD to reimburse the SWCD for obligations incurred in administering the cost-share program.

(2) Requests for Allocations. SWCDs within areas designated for cost-share program must submit requests for a cost-share fund allocation to the State Board by September 1st each year.

(3) Approval of Allocations. The State Board shall consider and approve, reject or adjust SWCD requests for allocations giving consideration to relative need for funding, SWCD workload and fund balances, as well as other information deemed necessary by the State Board. Only SWCDs for which the State Board has established an allocation are eligible to claim cost-share funds.

(4) Maximum Allowable Amount of Cost-Share Funds per Operating Unit. The maximum allowable amount of cost-share funds that may be applied to any single operating unit is \$15,000. This provision applies only to general revenue funds appropriated by the Texas Legislature to assist program participants with the implementation of soil and water conservation land improvement measures as allowed by Agriculture Code §201.301.

(e) Eligibility for Cost-Share Assistance.

(1) 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 silvicultural operation and has a certified water quality management plan on an operating unit within the SWCD shall be eligible for cost-share assistance.

(2) In accordance with the terms of the maintenance agreement an eligible person may receive cost-share only once for an operating unit. The State Board on a case by case, project or watershed basis in consultation with the SWCD may grant a waiver to this requirement in situations where:

(A) Research and/or advanced technology indicate(s) a plan modification to include additional measures to meet Texas surface water quality standards is needed

(B) the operating unit is significantly increased in size by the addition of new land areas that require conservation practices in order to meet Texas surface water quality standards;

(C) more stringent measures become necessary to meet Texas surface water quality standards;

(D) a landowner has assumed the responsibility of a maintenance agreement in cases where the landowner was not the applicant;

(E) the life expectancy of a conservation practice or practices that was/were previously cost-shared through this program has/have expired and the practice or practices is/are mandated by state law or the laws, rules, or regulations of a political subdivision. This waiver is only applicable to the mandated practice or practices; or

(F) a landowner has previously received cost-share through this program but an additional practice or practices has/have been subsequently mandated by state law or the laws, rules, or regulations of a political subdivision. This waiver is only applicable to the mandated practice or practices.

(3) Eligible land. Any of the following categories of land shall be eligible for cost-share assistance:

(A) Land within the State that is privately owned by an eligible person.

(B) Land leased by an eligible person over which he/she has adequate control and which land is utilized as a part of his/her operating unit.

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

(4) Ineligible lands. Allocated funds shall not be used:

(A) To reimburse other units of government for implementing conservation practices.

(B) On privately owned land not used for agricultural or silvicultural production.

(5) Eligible purposes. Cost-share assistance shall be available only for those eligible practice measures included in an approved water quality management plan and determined to be needed by the SWCD to:

(A) Reduce erosion, and/or

(B) Improve water quality and/or quantity.

(6) Eligible practices. Conservation practices which the State Board has approved and which are included in the applicant's approved water quality management plan shall be eligible for cost-share assistance. The list of eligible practices will be approved as needed by the State Board. The SWCDs shall designate their list of eligible practices from those practices approved by the State Board. SWCDs may request the State Board's approval to offer cost-share assistance for conservation practices not included in the State Board's list of approved practices. The use of special conservation practices is limited to those measures that can solve unique problems in a SWCD and which conform with one or more of the purposes of the cost-share program. Requests for special conservation

practices will be filed in writing with the State Board in time to obtain action and notification in writing from the State Board of its decision(s) prior to announcing the cost-share program locally for the program year. Conservation practices may be included in a SWCD's list of eligible practices offered for cost-share assistance only as approved by the State Board.

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

(8) Persons required to sign applications and agreements. All applications and agreements shall be signed by:

(A) The eligible person and;

(B) the landowner in cases where the eligible person does not hold title to the land constituting the operating unit.

(f) Cost-Share Assistance Processing Procedures.

(1) Responsibility of applicants. Applicants for cost-share assistance for conservation practices shall:

(A) Complete and submit an application to the SWCD.

(B) Where an applicant does not have an approved water quality management plan and has not determined the anticipated total cost of the requested measure(s), he/she, as part of the application, may request assistance from the SWCD in developing such plan and determining costs.

(C) After being notified of approval and obligation of funds by the SWCD, request technical assistance through the SWCD to design and layout the approved practices or request approval of alternate sources of technical assistance.

(D) Secure any approved contractor(s) needed and all contractual or other agreements necessary to construct or perform the approved practice(s). Cost-share will not be allowed for work begun before the application is approved.

(E) Complete and sign performance and maintenance agreements and any amendments to those agreements.

(F) Supply the documents necessary to verify completion of the approved practice(s) along with a completed and signed certification of cost.

(2) Responsibilities of SWCDs. SWCDs shall:

(A) Establish the period(s) of time for accepting applications and announce the cost-share program locally.

(B) Accept cost-share applications at the SWCD's office.

(C) Determine eligibility of lands and persons for cost-share assistance. If an applicant's land is in more than one SWCD, the respective SWCD boards of directors will review the application and agree to oversee all works, administrate all contracts and obligate all funds from one SWCD or prorate the funding between SWCDs.

(D) Give initial approval to those applications that meet the eligibility requirements.

(E) Evaluate the initially approved applications under the SWCD's priority system and give final approval to the high priority applications that can be funded by the SWCD's allocated funds.

(F) Obligate funds for the approved conservation practices that can be funded and notify the applicant(s) that his/her conservation practice(s) has/have been approved for cost-share and to proceed with installation. Allocated funds must be obligated by the last day of April of the fiscal year allocated. All unobligated allocations shall revert back as of May 1st of that fiscal year.

(G) Determine compliance with standards and specifications and certify completed conservation land treatment measure(s) that meet standards.

(3) Amended Applications for Allocated Funds.

(A) In the event that an adjustment to the estimated cost of conservation practice(s) 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 application for allocated funds to the SWCD for approval or denial by the SWCD.

(B) The SWCD may elect to adjust the amount of funds obligated for the conservation practices, provided funds are available, or to request additional funds from the State Board.

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

(4) Performance Agreement. As a condition for receipt of cost-share assistance for conservation practices, the eligible person receiving the benefit of such assistance shall agree to perform those measures in accordance with standards established by the State

Board. Completion of the performance agreement and the signature of the eligible person are required prior to payment.

(5) Maintenance Agreement. As a condition for receipt of cost-share assistance, the person(s) receiving the assistance shall agree to implement and maintain all measures in the certified water quality management plan consistent with its implementation schedule. The maintenance agreement shall remain in effect for a minimum period of two years after the certified water quality management plan is completely implemented for all practices except those cost-shared. The maintenance agreement shall remain in effect on cost-shared practices for the expected life of the cost-shared practice(s) as established by the State Board or for a period of two years after the certified water quality management plan is completely implemented, whichever period of time is longer. The landowner must sign the application for cost-share pursuant to subsection (e)(8) of this section and assumes the responsibility of the maintenance agreement. Completion of the maintenance agreement and all appropriate signatures are required prior to payment.

(6) 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 established standards.

(B) The State Board shall issue warrants for payment of cost share assistance.

(7) 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. When additional funds are received, the SWCD will obligate those funds. 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 year to the new program year or require all new applications as it deems appropriate.

(8) 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.

(9) 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.

(10) Appeals.

(A) An applicant may appeal the SWCD decisions relative to his/her application for allocated funds.

(B) The applicant shall make any appeal in writing to the SWCD which received his/her application for allocated funds and shall set forth the basis for the appeal.

(C) The SWCD shall have 60 days in which to make a decision and notify the applicant in writing.

(D) The decision of the SWCD may be appealed by the applicant to the State Board.

(E) All appeals made to the State Board shall be made in writing and shall set forth the basis for the appeal.

(F) All State Board decisions shall be final.

(g) Maintenance of Practices.

(1) Requirements for maintenance of practices applied using cost-share funds will be outlined in the eligible person's water quality management plan and reviewed with the eligible person at the time of application for cost-share.

(2) A properly executed maintenance agreement shall be signed by the successful applicant prior to receipt of payment of cost-share assistance from the SWCD for a conservation practice(s) installed.

(3) The SWCD will require refund of any or all of the cost-share paid to an eligible person when the applied conservation practice(s) has not been maintained in compliance with applicable design standards and specifications for the practice during its expected life as agreed to by the eligible person. The State Board may grant a waiver to this requirement on a case-by-case basis in consultation with the SWCD.

(4) Failed Practice Restoration.

(A) When conservation practices that have been successfully completed and which later fail as the result of floods, drought, or other natural disasters, and not the fault of the applicant; the applicant may apply for and SWCD may allocate additional cost-share funds to restore them to their original design standards and specifications. These funds cannot exceed the amount of the original cost-share practice and must come from the SWCD's current program year allocation.

(B) When conservation practices that have been successfully completed and which later fail as the result of error or omission on the part of the State Board staff, the SWCD staff, or the Natural Resources Conservation Service staff while assisting the SWCD, and not the fault of the applicant; the State Board may approve additional cost-

share funds to restore the measure(s) to the correct design standards and specifications, where an investigation approved by the Executive Director or his designee shows good cause. These funds cannot exceed the amount of the original cost-share practice and must come from the SWCD's current program year allocation.

(5) In cases of hardship, death of the participant, or at the time of transfer of ownership of land where a conservation practice(s) has been applied using cost-share assistance and the expected life assigned the practice has not expired, the participant, heir(s), or buyer(s) respectively, must agree to maintain the practice(s) 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.

(h) Determining Status of Practices During Transfer of Land Ownership

(1) A seller of agricultural land with respect to which a maintenance agreement is in effect may request the SWCD to inspect the practices. If the practices have not been removed, altered, or modified, the SWCD shall issue a written statement that the seller has satisfactorily maintained the permanent practice as of the date of the statement.

(2) The buyer of lands covered by a maintenance agreement may also request that the SWCD inspect the lands to determine whether any practice has been removed, altered, or modified as of the date of the inspection. If so, the SWCD will provide the buyer with a statement specifying the extent of noncompliance as of the date of the statement.

(3) 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.

(i) Reporting and Accounting. The State Board shall receive and maintain required reports from SWCDs showing the unobligated balance of allocated funds as shown on each ledger at the close of the last day of each month.

(j) Pursuant to Agriculture Code §201.311, one or more SWCDs may be designated to administer portions of this section as determined by the State Board.

Effective December 23, 2008

**§523.7 Incentives for Composting Animal Manure**

(a) Purpose. The purpose of this program is to expand the efforts and activities of the Texas State Soil and Water Conservation Board (State Board) and local Soil and Water Conservation Districts (SWCD/District) in the reduction of Nonpoint Source Pollution loadings in watersheds impacted by nutrients from agricultural activities. This program will promote the hauling of excess manure from animal feeding operations located in the

North and Upper North Bosque River (Segments 1226 and 1255) and Leon River (Segments 1221 and 1223) Watersheds to certified compost facilities instead of application to land off-site of the facility and in the impacted watersheds.

(b) Reimbursement Payment. In watershed areas specified by the State Board, expenses for hauling manure, consistent with all provisions in this section (§523.7 Incentives for Composting Animal Manure), to compost facilities certified by the Texas Commission on Environmental Quality (TCEQ) and approved by the State Board, will be paid by the State Board according to reimbursement rates established under subsection (c) of this section, Reimbursement Rates.

(c) Reimbursement Rates. Reimbursement rates shall be established by the State Board on a ton per mile rate based on the conditions in the watersheds.

(d) Reimbursement Procedures. Reimbursement for specified hauling expenses will be paid directly to the hauler, upon submittal of expenses on reimbursement forms, approved by the State Board, to the State Board designated agent in the watershed, and upon necessary processing by the State Board and submission to the State Comptroller for payment.

(e) Reimbursement Forms. Reimbursement forms will be issued by the State Board and will be available, upon request from the designated agent of the State Board, in the watershed.

(f) Required Signatures. Reimbursement forms will provide for and require the following signatures:

(1) The owner/operator or the designated agent of the Animal Feeding Operation (AFO) from which the load originates, certifying the location, date and weight of the load leaving the AFO.

(2) The owner/operator or the designated agent of the certified compost facility where the load is delivered, certifying delivery, location, date and weight received.

(3) The hauler, certifying delivery date, weight and mileage.

(g) Rejected Goods. The State Board will not reimburse hauling expenses for loads not accepted by a certified compost facility. It is the responsibility of the AFO owner/operator or the designated agent to arrange for acceptance by the compost facility prior to initiating delivery.

(h) Assistance. The owner/operator or the designated agent of an AFO may obtain assistance in locating haulers and certified compost facilities by contacting the designated agent of the State Board in the watershed.

(i) Eligible Haulers. In order to be eligible for reimbursement payments, haulers must participate in a workshop conducted by the State Board designated agent covering proper procedures for reimbursement payments. Reimbursement will not be paid for loads invoiced not consistent with State Board approved procedures.

(j) Designated Agent of the State Board. The State Board designated agent will be responsible for the day-to-day activities of the project in the watershed. The State Board designated agent may employ or contract with a person or entity to carry out this responsibility. The location and telephone number of the designated agent will be available from the State Board office in Temple.

Effective February 13, 2006

### **§523.7 Incentives for Composting Animal Manure**

(a) Purpose. The purpose of this program is to expand the efforts and activities of the Texas State Soil and Water Conservation Board (State Board) and local Soil and Water Conservation Districts (SWCD/District) in the reduction of Nonpoint Source Pollution loadings in watersheds impacted by nutrients from agricultural activities. This program will promote the hauling of excess manure from animal feeding operations located in the North and Upper North Bosque River (Segments 1226 and 1255) and Leon River (Segments 1221 and 1223) Watersheds to certified compost facilities instead of application to land off-site of the facility and in the impacted watersheds.

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Effective February 13, 2006

# CHAPTER 525 - AUDIT REQUIREMENTS FOR SOIL AND WATER CONSERVATION DISTRICTS

## SUBCHAPTER A: AUDITS OF DISTRICTS §§525.1 - 525.9

### §525.1 Policy Statement

It is the policy of the State Soil and Water Conservation Board to develop and implement audit guidelines that adequately safeguard assets administered within the purview of this agency in a cost effective manner. In accordance with this purpose, §§525.1-525.8 of this title (relating to Audits of Districts) are adopted.

Effective June 17, 1999

### §525.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **District** - soil and water conservation district created under the Agriculture Code of Texas, Chapter 201.

(2) **Manual of Fiscal Operations** - An accounting manual prepared by the State Board designed to be used by each district as a manual of operations.

(3) **State Board** - The Texas State Soil and Water Conservation Board created under the Agriculture Code of Texas, Chapter 201.

Effective June 17, 1999

### §525.3 Duty to Audit

(a) The directors of each district created under Chapter 201, Agriculture Code of Texas, shall have the district's fiscal accounts and records audited as of August 31 of each even numbered year.

(b) The person who performs the audit shall be a certified public accountant or public accountant holding a permit from the Texas State Board of Public Accountancy.

(c) The audit required by this section shall be completed no later than 120 days after the end of each biennial audit period.

Effective June 17, 1999

#### **§525.4 Form of the Audit**

Except as otherwise provided by the Manual of Fiscal Operations, the audit shall be performed according to the generally accepted auditing standards adopted by the American Institute of Certified Public Accountants and shall include the auditor's opinion as to the fair presentation of the financial statements taken as a whole.

Effective June 17, 1999

#### **§525.5 Audit Exemption**

(a) A district may elect to file an annual financial report as of August 31 of each year in lieu of the district's compliance with §525.3 of this title (relating to Duty to Audit) provided:

(1) the district had no long term (more than one year) liabilities outstanding during the biennial period other than rent/lease contracts;

(2) the district did not have gross state revenues in excess of \$40,000 in any year of the biennial period;

(3) the district's State Fund cash, receivables, and short term investments balances were not in excess of \$25,000 in any year of the biennial period; and

(4) the district is not otherwise required to have its accounts and records audited in compliance with a funding agreement with any federal, county, or other agency.

(b) A district may elect to file a review with required procedures completed by a certified public accountant as of August 31 of each year in lieu of the district's compliance with §525.3 of this title (relating to Duty to Audit) provided that the district has no more than one long term (more than one year) liabilities outstanding during the biennial period other than rent/lease contracts and that the one liability consists of real property utilized by the district as it's primary office location.

(c) The annual financial report must be reviewed and approved by the district directors and so recorded in the minutes of the board meeting at which such action was taken.

(d) The annual financial report must be accompanied by an affidavit signed by the district's current chairman, vice chairman, and secretary attesting to the accuracy and authenticity of the financial report.

(e) Districts governed by this section are subject to periodic audits by the State Board.

Effective January 27, 2005

### **§525.6 Access to and Maintenance of District Records**

The State Board shall have access to all vouchers, checks, receipts, district fiscal and financial records, and other district records, which the State Board considers necessary for the review of an audit report or annual financial report.

Effective June 17, 1999

### **§525.7 Filing of Audits and Annual Financial Reports**

(a) A copy of the Audit Report or the Annual Financial Report required by this subchapter shall be filed with the Governor's Office, the Legislative Budget Board, and the State Board.

(b) Districts not exempted by §525.5 of this title (relating to audit exemption) must file three copies of the Audit Report with the State Board no later than 120 days after August 31 of even numbered years.

(c) Districts governed by the provisions of §525.5 of this title must file three copies of the Annual Financial Report with the State Board no later than 60 days after August 31 of each year.

(d) The filings required by subsections (b) and (c) of this section will satisfy the filing requirement for subsection (a) of this section.

(e) After proper review the State Board will forward the required copies of the Audit Report or the Annual Financial Report to the Governor's Office and the Legislative Budget Board.

Effective June 17, 1999

### **§525.8 Compliance Contingencies**

(a) The Annual Financial Report must be filed no later than 60 days after August 31 of each fiscal year.

(1) A District's funds will be considered out of compliance and placed on "hold" status if an Annual Financial Statement is not received by the State Soil and Water Conservation Board by October 30 of each fiscal year.

(2) A District's funds will be placed on "hold" status if the Annual Financial Statement has been received by the due date but the District has not corrected errors on the Annual Financial Statement by December 31 of each fiscal year.

(b) The Audit Report must be filed no later than 120 days after August 31 of each even numbered years.

(1) A District's funds will be considered out of compliance and placed on "hold" status if an Audit Report is not received by the State Soil and Water Conservation Board by January 1 of each odd numbered year.

(2) A District's funds will be placed on "hold" status if the Audit Report has been received by the due date but the District has not corrected errors on the Audit Report by February 28 of odd numbered years.

Effective June 30, 2002

### **§525.9 District Divisions and Reorganizations**

(a) Other sections of this subchapter notwithstanding an audit of the accounts and records of a district dividing, reorganizing, or dissolving under the provisions of Chapter 201, Subchapter C, of the Agriculture Code must be performed by an individual meeting the requirements of §525.3(c) of this title (relating to Duty to Audit).

(b) The period to be covered by the audit is from the date of the most recent audit or financial report through the date of division, reorganization, or dissolution.

(c) Three copies of the audit required by this section must be filed with the State Board no later than 15 days prior to the date of division, reorganization, or dissolution.

Effective January 7, 2002

## **CHAPTER 527 - REMOVAL OF A DISTRICT DIRECTOR**

### **§§527.1 - 527.7**

#### **§527.1 Policy Statement**

It is the policy of the State Soil and Water Conservation Board to encourage the service of qualified individuals as district directors and to encourage they regularly attend and actively participate in all scheduled district meetings; carry out the duties and responsibilities of their office and comport themselves as trusted public officials. The State Soil and Water Conservation Board will develop and implement a procedure to remove a district director, if and when, facts lead to a determination they:

- (1) neglect the duty of office;
- (2) are unable, due to illness or disability, to discharge the duties of office;
- (3) are guilty of malfeasance in office: or
- (4) are disqualified as a voter in the conservation district or are disqualified to be a director in the numbered subdivision they represent.

Effective October 14, 2004

#### **§527.2 Definitions**

The following words and terms, when used in this chapter in any derivative form, shall have the following meanings, unless the context clearly indicates otherwise:

- (1) District--A Soil and Water Conservation District created under Chapter 201, Agriculture Code of Texas.
- (2) State Board--The Texas State Soil and Water Conservation Board created under Chapter 201, Agriculture Code of Texas.
- (3) Neglects the duty of office--This includes, but is not limited to, the district director being absent from more than six (6) consecutive regularly scheduled district board meetings that the district director is eligible and obligated to attend or are absent from more than half of the regularly scheduled meetings they are eligible and obligated to attend in any 12 month period, without an excuse approved by a majority vote of the district board and recorded in district board meeting minutes. It may also include those cases where, because of long-term illness or disability, the district director is unable to discharge the duties of office and the attending medical doctor does not believe recovery will allow the director to attend meetings during the remainder of their term.
- (4) Malfeasance in office--This includes, but is not limited to, the district director being found guilty in a court of law of misconduct or wrongdoing for an offense relating

to bribery and corrupt influence; perjury and other falsification; obstructing governmental operation; or abuse of office as defined in the Penal Code or an offense that imposes a legal disability to vote.

(5) Disqualified as a voter in the district--The district director is found to be less than 18 years of age; the district director does not hold title to farmland or ranchland lying within the conservation district; the district director is not actively engaged in the business of farming or animal husbandry; or the district director is not a resident of a county all or part of which is included in the district.

(6) Disqualified as a director in the numbered subdivision they represent--The district director does not have, or does not maintain the qualifications to be a district director by not owning land within the numbered subdivision from which they were elected or appointed.

Effective October 14, 2004

### **§527.3 Petition**

(a) The State Board may not consider removal of a district director for neglecting the duty of office unless a petition, on a form prescribed by the State Board, signed by a majority of the district board of directors is submitted to the State Board. The State Board shall consider if the action requested by the petition is sufficient to warrant further action and notify the district of their decision

(b) A petition to remove a district director for neglect of duty, should have documentation attached that, at a minimum shows:

(1) that the district has made a reasonable effort to notify the director when meetings were scheduled;

(2) that the district has made a reasonable effort to inform the director of the importance of attending and participating in scheduled meetings.

(3) that the district has fair, reasonable, and unbiased policies for granting excused absences when notified that a director has a conflict with a board meeting.

(4) that the district has notified the director by certified mail they were proceeding with removal procedures and received no response, or have documentation of any response.

(5) if the removal petition is for medical reasons, the district must have a copy of a statement from the attending medical doctor expressing their belief that the director will not recover sufficiently to attend meeting for the remainder of their term.

(c) The State Board may investigate and if warranted consider the removal of a district director for malfeasance in office or for being disqualified as a voter in the district or for being disqualified as a director in the subdivision they represent in the conservation district when petitioned, on a form prescribed by the State Board, signed by one or more district directors is submitted to the State Board or when presented with an allegation by a member of the public.

Effective October 14, 2004

#### **§527.4 Notice**

The State Board shall direct the Executive Director to contact the district director that is the subject of the hearing; the district that the district director is a member of; and any other party who may have brought allegations by Registered Mail, return receipt requested, informing the recipients of the charges or allegations being considered in the hearing and informing the recipients of the date, time and place of the hearing and informing them they may present any facts they feel relevant to the issue. Should the subject of the hearing not sign for receipt of registered mail, the State Board may consider the use of a local process server. The hearing notice shall be published and posted consistent with the requirements of §201.004, Agriculture Code of Texas.

Effective October 14, 2004

#### **§527.5 Hearing**

If, after receiving a petition to remove a district director, the State Board determines that cause exists, they shall direct the Executive Director to have such public hearings conducted as may be needed to obtain documentation and other facts necessary to consider the removal of a district director for the reasons described in the petition.

Effective October 14, 2004

#### **§527.6 Determination**

A report of the public hearing(s) shall be presented to the State Board. After reviewing all relative facts obtained at the hearing, the State Board shall determine if the facts support removal of a district director for the reason(s) described in the petition. The State Board shall record their vote for removal and if a majority of the State Board votes for removal, the district director is removed under the authority of §201.076(e), Agriculture Code of Texas. Should the subject of the public hearing, after being duly notified, does not respond and does not react to the public hearing(s), the State Board may consider the lack of response to be a plea of nolo contendere.

Effective October 14, 2004

#### **§527.7 Vacancy**

If a vacancy occurs in the office of district director for any reason, the remaining district directors by majority vote shall, within six months appoint a director for the unexpired term. The name of the district appointee, in a form prescribed by the State Board, signed by a majority of the district board of directors must be submitted for approval by the State Board before taking office.

Effective October 14, 2004