

Part 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

Chapter 523. AGRICULTURAL AND SILVICULTURAL WATER QUALITY MANAGEMENT

31 TAC §§523.1 - 523.4, 523.6

The Texas State Soil and Water Conservation Board (State Board or agency) proposes amendments to §§523.1 - 523.4 and §523.6.

BACKGROUND AND JUSTIFICATION

The rules in Chapter 523 pertain to the abatement of agricultural and silvicultural nonpoint source pollution under the authority of the State Board. These rules include the State Board's scope and jurisdiction (§523.1), as well as the process by which the State Board identifies problem areas related to agricultural and silvicultural nonpoint source pollution (§523.2). The rules also include the administrative and technical procedures of (1) the Water Quality Management Plan Certification Program (§523.3) required by Agriculture Code §201.026(g), (2) resolving complaints related to agricultural and silvicultural nonpoint source pollution (§523.4), and (3) cost-sharing soil and water conservation land improvement measures (§523.6).

The overwhelming preponderance of amendments serves only to improve organization, increase ease of readability, and general clarification of existing rule.

The State Board proposes new §523.1(b) to more clearly declare the water quality programs currently administered by the State Board in implementing Agriculture Code §201.026 relating to the State Board's designation as the lead agency for abating agricultural and silvicultural nonpoint source pollution. The programs listed in §523.1(b) include a (1) water quality management plan certification program required by Agriculture Code §201.026(g), a (2) nonpoint source grant program funded by §319(h) of the federal Clean Water Act through which the State Board and the Texas Commission on Environmental Quality jointly administer the Texas Nonpoint Source Management Program, a (3) total maximum daily load program to address nonpoint source pollution in cooperation with the Texas Commission on Environmental Quality, and a (4) program to address the agricultural and silvicultural management measures of the Texas Coastal Nonpoint Source Management Pollution Control Program as required by Agriculture Code §201.026(g) and related responsibilities associated with the State Board's inclusion as a member of the Coastal Coordination Council. All of these programs are currently administered by the State Board and are funded through a combination of federal Clean Water Act, §319(h) funds and general revenue appropriated by the Texas Legislature.

The State Board proposes to include definitions in §523.3(a) for terms that are unique to the Water Quality Management Plan Certification Program for clarity of their use. The definition of "operating unit," currently only defined in existing §523.6(b)(13) relating to the cost-sharing of soil and water conservation land improvement measures, is proposed to be included as a definition in new §523.3(a) due to its relevance to the technical aspects of the overall program. This enhanced definition, although not proposed in a manner that modifies the geographic scope of an operating unit in any way, would include additional rule language to provide greater clarification of the State Board's intent of existing rule language.

The State Board proposes to amend existing §523.3(e)(2) to incorporate the agency's longstanding policy that the implementation of a water quality management plan based on the United States Department of Agriculture - Natural Resources Conservation Service Field Office Technical Guide represents the best available technology for abating nonpoint source pollution to an extent that Texas surface water quality standards are being achieved.

The State Board proposes to amend §523.6(b)(11), relating to the maintenance agreement between an eligible person and a soil and water conservation district for cost-share assistance, to clarify that it is the expectation that all water quality management plans be maintained by the program participant for an indefinite period of time. Existing rule language in this definition related to the minimum time periods for maintaining cost-shared soil and water conservation land improvement measures could be misinterpreted by the public as a time period after which an individual may qualify for additional cost-share funding. When misinterpreted, this definition could appear to be in conflict with existing §523.6(e)(2) which limits a participant's cost-share opportunities to one time per operating unit unless the criteria for a waiver has been met. The proposed amendment clarifies that the existence of a required minimum time period for maintaining cost-shared land improvement measures does not imply additional cost-share opportunities are available once it has expired.

SECTION-BY-SECTION DISCUSSION

Existing §523.1, Scope and Jurisdiction, would be amended to capitalize "State Board." Additionally, the inclusion of new §523(b), eliminates the option for an implied "(a)" at the beginning of the existing rule, therefore "(a)" has been added.

Proposed new §523(b) would more clearly declare the water quality programs currently administered by the State Board in implementing Agriculture Code §201.026 relating to the State Board's designation as the lead agency for abating agricultural and silvicultural nonpoint source pollution. The programs listed in §523.1(b) include a (1) water quality management plan certification program required by Agriculture Code §201.026(g), a (2) nonpoint source grant program funded by §319(h) of the federal Clean Water Act through which the State Board and the Texas Commission on Environmental Quality jointly administer the Texas Nonpoint Source Management Program, a (3) total maximum daily load program to address nonpoint source pollution in cooperation with the Texas

Commission on Environmental Quality, and a (4) program to address the agricultural and silvicultural management measures of the Texas Coastal Nonpoint Source Management Pollution Control Program as required by Agriculture Code §201.026(g) and related responsibilities associated with the State Board's inclusion as a member of the Coastal Coordination Council. All of these programs are currently administered by the State Board and are funded through a combination of federal Clean Water Act, §319(h) funds and general revenue appropriated by the Texas Legislature.

Existing §523.2(a), Identification of Problem Areas, would be amended to capitalize "State Board." This specific amendment would be carried out in numerous other locations within §523.2 and will not be addressed again in this discussion section.

Existing §523.2(b)(4), relating to assessments, special studies, and programs and research conducted relative to surface and groundwater, would be amended to remove the presence of the acronym "(CZARA)" immediately located behind "Coastal Zone Act Reauthorization Amendments" because it is not present again in this section.

Existing §523.2(c)(3), relating to allocation of resources, would be amended to clarify that corrective actions plans to address problem areas may include watershed protection plans, total maximum daily loads, total maximum daily load implementation plans, nonpoint source grant project plans, or certified water quality management plans. The inclusion of these types of corrective action plans is necessary because, depending on the nature, scope, and severity of the problem, any of them may be used as the appropriate mechanism to deliver treatment depending on the situation.

Existing §523.3, Water Quality Management Plans, would be amended so that the title of the section is "Water Quality Management Plan Certification Program." This amendment is necessary to more closely reflect language used in Agriculture Code §201.026(g) which created the program. Additionally, existing §523.3(a), relating to the technical and certification requirements for water quality management plans would be moved to §523.3(c) to allow for the inclusion of new §523.3(a), Purpose, and new §523.3(b), Definitions. This also would result in a renumbering of existing §523.3(b) through existing §523.3(h) to be new §523.3(d) through new §523.3(j) for organizational purposes only.

Proposed new §523.3(a), Purpose, would establish the purpose of the program as being the State Board's need to carry out Agriculture Code §201.026(g) relating to the abatement of agricultural and silvicultural nonpoint source pollution through a water quality management plan certification program.

Proposed new §523.3(b), Definitions, would create a definitions section to clearly define terms that are unique to the Water Quality Management Plan Certification Program. Existing §523.3 did not offer a definitions section.

Proposed new §523.3(b)(1), Animal feeding operation, would be added to provide the definition for this term or phrase in this section.

Proposed new §523.3(b)(2), Coastal Zone Act Reauthorization Amendments, would be added to provide the definition for this term or phrase in this section.

Proposed new §523.3(b)(3), Dry-litter poultry facility, would be added to provide the definition for this term or phrase in this section.

Proposed new §523.3(b)(4), Clean Water Act, would be added to provide the definition for this term or phrase in this section.

Proposed new §523.3(b)(5), Field Office Technical Guide (FOTG), would be added to provide the definition for this term or phrase in this section.

Proposed new §523.3(b)(6), Natural Resources Conservation Service (NRCS), would be added to provide the definition for this term or phrase in this section.

Proposed new §523.3(b)(7), Operating unit, would be added to provide the definition for this term or phrase in this section. The definition of "operating unit," currently only defined in existing §523.6(b)(13) relating to the cost-sharing of soil and water conservation land improvement measures, is proposed to be included as a definition in new §523.3(a) due to its relevance to the technical aspects of the overall program. This enhanced definition, although not proposed in a manner that modifies the geographic scope of an operating unit in any way, would include additional rule language to provide greater clarification of the State Board's intent of existing rule language. The definition of "operating unit" in §523.6(b)(13) is proposed to be amended to be identical to the proposed new definition in §523.3(b)(7), previously existing §523.6(b)(13).

Proposed new §523.3(b)(8), Practice standard, would be added to provide the definition for this term or phrase in this section.

Proposed new §523.3(b)(9), Resource management system, would be added to provide the definition for this term or phrase in this section.

Proposed new §523.3(b)(10), Soil and water conservation district (SWCD), would be added to provide the definition for this term or phrase in this section.

Proposed new §523.3(b)(11), State Board, would be added to provide the definition for this term or phrase in this section.

Proposed new §523.3(b)(12), Status review, would be added to provide the definition for this term or phrase in this section.

Proposed new §523.3(b)(13), Texas Nonpoint Source Management Program, would be added to provide the definition for this term or phrase in this section.

Proposed new §523.3(b)(14), Texas surface water quality standards, would be added to provide the definition for this term or phrase in this section.

Proposed new §523.3(b)(15), Water in the state, would be added to provide the definition for this term or phrase in this section.

Proposed new §523.3(b)(16), Water quality management plan, would be added to provide the definition for this term or phrase in this section. A definition for "water quality management plan" is currently only defined in existing §523.3(a); proposed new §523.3(b)(16) moves this definition to the proposed new definitions section.

Proposed new §523.3(c), previously existing §523.3(a), would be amended to remove the definition of "water quality management plan" from this section. This definition would be added in proposed new §523.3(b)(16). Additionally, the remaining rule language from existing §523.3(a) remains in §523.3(c) with the proposed inclusion of "at a minimum" with respect to the level of technical planning that is required for the State Board to certify a water quality management plan. This rule language would clarify that water quality management plans must minimally meet the resource quality criteria for water quality at the resource management system level specified within the United States Department of Agriculture - Natural Resources Conservation Service Field Office Technical Guide. The rule language "at the resource management system level" would be added to this section, but does not represent a substantive amendment as this is already a requirement of the program. The phrase "nonpoint source pollution abatement" would be included to emphasize that water quality management plans are solely for that purpose.

Proposed new §523.3(d), previously existing §523.3(b), would be amended to include "Texas surface" in front of existing rule language "water quality standards." This amendment would make reference to the standards using their appropriate name found in 30 TAC Chapter 307. This specific amendment would be carried out in numerous other locations within §523.3 and will not be addressed again in this discussion section.

Proposed new §523.3(e), Process for obtaining a Water Quality Management Plan, previously existing §523.3(c), would be amended in numerous locations to establish a consistent manner to refer to a soil and water conservation district or districts. All references would be either "soil and water conservation district" or "SWCD." This specific amendment would be carried out in numerous other locations within §523.3 and will not be addressed again in this discussion section.

Proposed new §523.3(f), Practice selection, previously existing §523.3(d), would be amended to replace "Agricultural and Silvicultural Nonpoint Source Management Program" with "Texas Nonpoint Source Management Program" to create consistency with the program's current appropriate name. In the past, the State Board referred to the agricultural and silvicultural aspects of the overall Texas Nonpoint Source Management Program in a manner that implied it was a formal or separate program named the Texas Agricultural and Silvicultural Nonpoint Source Management Program. The overall Texas Nonpoint Source Management Program is jointly administered by the State Board and the Texas Commission on Environmental Quality in a unified manner, so there is no purpose in referencing it as a separate component. This specific amendment would be carried out in numerous other locations within §523.3 and will not be addressed again in this

discussion section. Additionally, a statement referencing this joint administration of the program would be included, the term "federal" would be shown in lower case, and the acronym for Coastal Zone Act Reauthorization Amendments, or CZARA, would be replaced with the fully spelled-out title because it does not reoccur in this section.

Proposed new §523.3(g), Practice standards, previously existing §523.3(e), would be amended by replacing "Natural Resources Conservation Service" with the acronym "NRCS," and "Field Office Technical Guide" with "FOTG." These acronyms are present in the definitions section at proposed new §523.3(b)(5) and (6) and would be used in each subsequent case. Additionally, a statement would be included that clarifies the State Board's longstanding determination that the implementation of a water quality management plan based on the United States Department of Agriculture - Natural Resources Conservation Service Field Office Technical Guide represents the best available technology for abating nonpoint source pollution to an extent that Texas surface water quality standards are being achieved. This determination was made by the State Board immediately following the passage of Senate Bill 503 during the 73rd Legislative Session, and remains unchanged. The State Board proposes to add the phrase "selected or" to the statement that describes how practice standards are chosen for use in water quality management plans. Because the Field Office Technical Guide has been adopted by the State Board as the technical basis for water quality management plans, and because the Field Office Technical Guide already includes technical specifications for practice standards, the rule language in this section would be amended to indicate that "selecting" practice standards from it is a more accurate way to describe the process. The term "developed" would remain for situations where special practice standards need to be developed prior to inclusion. Additionally, the names of several research partners would be updated to reflect their current names. No additional entities are proposed to be included.

Proposed new §523.3(j)(3), previously existing §523.3(h), would be amended by replacing reference to existing §523.3(f) with new §523.3(h) due to the renumbering of existing §523.3(b) through existing §523.3(h) to be new §523.3(d) through new §523.3(j).

Proposed new §523.3(j)(4), previously existing §523.3(h)(4), would be amended by replacing "State Soil and Water Conservation Board" with "State Board."

Existing §523.4, Resolution of Complaints, would be amended to replace "Water Quality Management Plan" with "water quality management plan." This specific amendment would be carried out in numerous other locations within §523.4 and will not be addressed again in this discussion section.

Existing §523.4(3)(C) would be amended to replace reference to "Texas Cooperative Extension" with "Texas AgriLife Extension Service" due to a change in the entity's name.

Existing §523.6(b), Definitions, would be amended so that the definitions would apply to Existing §523.6 only. Existing rule language implies the definitions may apply to other sections of Chapter 523.

Existing §523.6(b)(1), the definition of Allocated funds, would be defined with "soil and water conservation district" spelled-out rather than be defined using the acronym "SWCD." All subsequent references would be either "soil and water conservation district" or "SWCD" in existing §523.6; reference would be "soil and water conservation district" in all places prior to the actual definition of "soil and water conservation district" in proposed new §523.6(b)(18), existing §523.6(b)(17); all subsequent references would be "SWCD" because the acronym is provided in proposed §523.6(b)(18). This specific amendment would be carried out in numerous other locations within §523.6 and will not be addressed again in this discussion section.

Existing §523.6(b)(2), the definition of "applicant," would be amended to reference "person" rather than "persons" for grammatical correction only.

Existing §523.6(b)(4), the definition of Conservation land treatment measures(s), would be amended to be "conservation practices" rather than "conservation land treatment measures." The phrases "conservation practices," "conservation land treatment measures," and "soil and water conservation land improvement measures" have been used indiscriminately throughout Chapter 523, and in §523.6 in particular. With the exception of one instance, the State Board proposes to amend all references to any of these three phrases to be "conservation practice(s)" for consistency purposes, as the three phrases are considered to be synonymous. The one remaining exception would be the presence of "soil and water conservation land improvement measures" in the title of §523.6 due to its use in Agriculture Code §201.301, which is the enabling legislation for the cost-share program. Specific amendments pertaining to this issue would be carried out in numerous other locations within §523.6 and will not be addressed again in this discussion section.

Existing §523.6(b)(5), the definition of Cost-share assistance, would be amended to reference "Agriculture Code §201.301" rather than "Senate Bill 503, 73rd Texas Legislature." The statute established by Senate Bill 503 has been amended by the Legislature numerous times since the passage of the initial legislation; therefore the State Board proposes to reference the statute citation rather than the legislation for accuracy purposes and to avoid confusion by the public.

Existing §523.6(b)(11), the definition of Maintenance agreement, would be amended to include "measures" rather than "measure(s)" because it is impossible for a water quality management plan to include only a single "measure." Additionally, existing §523.6(b)(11) would be amended to include rule language to clarify that it is the expectation that all water quality management plans be maintained by the program participant for an indefinite period of time. Existing rule language in this definition related to the minimum time periods for maintaining cost-shared soil and water conservation land improvement measures could be misinterpreted by the public as a time period after which an individual may qualify for additional cost-share funding. When

misinterpreted, this definition could appear to be in conflict with existing §523.6(e)(2) which limits a participant's cost-share opportunities to one time per operating unit unless the criteria for a waiver has been met. The proposed amendment clarifies that the existence of a required minimum time period for maintaining cost-shared land improvement measures does not allow for additional cost-share opportunities are available once it has expired.

Existing §523.6(b)(13), the definition of Operating Unit, would be amended to be consistent with the proposed new definition in §523.3(b)(7). This enhanced definition, although not proposed in a manner that modifies the geographic scope of an operating unit in any way, would include additional rule language to provide greater clarification of the State Board's intent of existing rule language. The existing definition only provided that an operating unit was "Land, whether contiguous or noncontiguous, owned and/or operated by the applicant as an independent management unit for agricultural or silvicultural purposes." The proposed enhanced definition would clarify the State Board's existing intent that an operating unit must be determined in a manner that has the abatement of agricultural or silvicultural nonpoint source pollution as the primary goal. Additionally, the enhanced definition would clarify that an operating unit must be mutually agreed upon by the holder of the water quality management plan, the soil and water conservation district, and the State Board. The enhanced definition would also provide further clarification on determining operating units for contiguous lands, non-contiguous lands, and lands associated with an animal feeding operation. The proposed amendment to the definition would also clarify the State Board's intent that land or lands already within the scope of another operating unit for a water quality management plan may not be separated from the existing operating unit unless a change of ownership has occurred; misinterpretation of the existing definition, in conjunction with misinterpretation of existing §523.6(b)(11) pertaining to the maintenance agreement, could lead some members of the public to believe that effectively "carving out" a new operating unit establishes grounds for additional cost-share assistance. That belief, though factually inaccurate due to the presence of existing §523.6(e)(2) which clearly establishes a one time cost-share opportunity per operating unit, has created confusion to the extent that the State Board wishes to propose this amendment for clarification purposes. The enhanced definition would also explicitly clarify that the State Board already makes a final determination on the appropriateness of all operating units through a decision whether or not to certify the water quality management plan.

Proposed new §523.6(b)(15) would add a definition for "practice standard." "Practice standard" is used frequently throughout §523.6 and the inclusion of a definition is needed for understandability and to prevent confusion between "practices" and "practice standards."

Existing §523.6(b)(15), the definition of Priority system, would be moved to proposed new §523.6(b)(16) due to the inclusion of proposed new §523.6(b)(15), the definition of Practice standard. The purpose of this amendment is organizational in purpose only.

Existing §523.6(b)(16), the definition of Program year, would be moved to proposed new §523.6(b)(17) due to the inclusion of proposed new §523.6(b)(15), the definition of Practice standard. The purpose of this amendment is organizational in purpose only.

Existing §523.6(b)(17), the definition of Soil and water conservation district (SWCD), would be moved to proposed new §523.6(b)(18) due to the inclusion of proposed new §523.6(b)(15), the definition of Practice standard. Additionally, the definition would use the term "governmental" rather than "government" for grammatical correction, and remove "of Texas" from the end of the phrase "Chapter 201 of the Agriculture Code" because it is implicit and unnecessary.

Existing §523.6(b)(18), the definition of Texas State Soil and Water Conservation Board, would be moved to proposed new §523.6(b)(19) due to the inclusion of proposed new §523.6(b)(15), the definition of Practice standard. Additionally, "the provisions of" would be removed from in front of "Chapter 201 of the Agriculture Code" because it is redundant and unnecessary, and "of Texas" would be removed from the end of the phrase "Chapter 201 of the Agriculture Code" because it is implicit and unnecessary.

Existing §523.6(c)(2)(H), relating to a soil and water conservation district's responsibilities for filing applications during program administration, would be amended for ease of readability; "water quality management plan" would replace "Water Quality Management Plan."

Proposed new §523.6(d)(4), Maximum Allowable Amount of Cost-Share Funds per Operating Unit, would establish the maximum amount at \$15,000 in rule, and would specify that the provision only applies to general revenue funds appropriated by the Texas Legislature. Since the inception of the Water Quality Management Plan Program, the State Board has adopted and maintained a maximum allowable cost-share amount. This amount has never been included in rule prior to this proposal; however, the State Board wishes to include the amount in rule to offer the public the opportunity to comment on future changes. Presently, the maximum cost-share rate is already adopted by the State Board to be \$15,000 per operating unit, therefore, ultimately a decision by the State Board to remove this section prior to adoption will not result in a reversion to any previous amount; that eventuality would only result in the amount not being included in rule. Occasionally funding from federal sources becomes available for use as cost-share for providing an incentive toward the development and implementation of water quality management plans. Because in these cases special circumstances sometimes require conservation practices that so far exceed the established maximum allowable cost-share amount, the State Board proposes to clarify that it retains the right to adopt a different maximum amount when the funds are from sources other than general revenue.

Existing §523.6(e)(2), relating to a one time cost-share opportunity per operating unit, would be amended to replace "cost share" with "cost-share" for consistency with how the term is used throughout the remainder of the section.

The State Board proposes to remove capitalization of the first word in each of existing §523.6(e)(2)(A) - (D), as well as to place a semi-colon at the end of each previously mentioned section for grammatical correctness.

Existing §523.6(e)(2)(A) would be amended to replace "indicates" with "indicate(s)" for grammatical correctness, and "Texas surface" would be included in front of "water quality standards" for consistency with other sections of the chapter.

Existing §523.6(e)(2)(B) would be amended to replace "land treatment measures" with "practices" for consistency with other sections of the chapter, and "Texas surface" would be included in front of "water quality standards" for consistency with other sections of the chapter.

Existing §523.6(e)(2)(C) would be amended to include "Texas surface" in front of "water quality standards" for consistency with other sections of the chapter.

Existing §523.6(e)(2)(E) would be amended to replace "The life expectancy of the previously cost-shared best management practice(s) has expired" with "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..." This amendment is proposed by the State Board to eliminate possible confusion by the public regarding the State Board's intent for this waiver. Some members of the public could misinterpret existing §523.6(e)(2)(D) to mean that once a cost-shared practice's life expectancy has expired, the holder of the water quality management plan may reapply and be granted more cost-share assistance for the same and/or different practices. That is an incorrect interpretation and is not consistent with the intent of the State Board; therefore this amendment is proposed by the State Board to clarify their intent, which is that no operating unit may receive cost-share more than once unless a mandate for the practice exists in law or the criteria for a waiver has been met.

Proposed new §523.6(e)(2)(F) would clarify that if the holder of a water quality management plan has previously received cost-share through this program but an additional practice or practices has/have been subsequently mandated by law, the instance of the previous cost-share does not preclude the holder of the water quality management plan from being eligible for future cost-share assistance for the mandated practice or practices.

Existing §523.6(e)(3)(B) would be amended to replace "his" with "his/her."

Existing §523.6(e)(6) would be amended to include "as needed" with respect to the State Board's approval of a list of eligible practices, and the phrase "at the beginning of each fiscal year" would be removed because the State Board has the flexibility to make changes to the list at any point during the year. "Cost-share assistance for" would be inserted into the sentence regarding a soil and water conservation district's request to the

State Board for the cost-sharing of a practice not already on the State Board's approved list because the purpose of the request is for cost-sharing a practice, not merely the practice itself. "Conform" would replace "conforms" for grammatical correctness.

Existing §523.6(f)(2)(F) would be amended to replace "applicants" with "applicant(s)" for grammatical correctness.

Existing §523.6(f)(3)(C) would be amended to include the term "practice" in front of "standard" for technical accuracy and consistency with the definition of "practice standard."

Existing §523.6(f)(4) would be amended to refer to the "State Board" rather than the "Texas State Soil and Water Conservation Board" because the agency is referred to as "State Board" in all previous instances in the chapter.

Existing §523.6(f)(5) would be amended to refer to subsection "(e)(8)" rather than "(e)(8)(B)" for technical accuracy.

Existing §523.6(f)(7) would be amended to include "year" after the word program for consistency with the State Board's intent and for clarification purposes.

Existing §523.6(g)(1) would be amended to replace "persons" with "person's" for grammatical correctness.

Existing §523.6(g)(4)(B) would be amended to replace "fails" with "fail" for grammatical correctness.

Existing §523.6(j) would be amended to remove "the Texas" from in front of "Agriculture Code" because it is implicit and unnecessary, and "Section" would be replaced with "§" for consistency with other sections of the chapter.

FISCAL NOTE

Mr. Kenny Zajicek, Fiscal Officer, Texas State Soil and Water Conservation Board, has determined that for the first five year period there will be no fiscal implications for state or local government as a result of administering these amended rules.

PUBLIC BENEFITS AND COSTS

Mr. Zajicek has also determined that for the first five year period these amended rules are in effect, the public benefit anticipated as a result of administering these amended rules will be a consistency of terms and definitions and better understanding of the program by any and all individuals involved with and/or concerned with this program.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ASSESSMENT

There is no anticipated cost to small businesses or individuals resulting from these amended rules.

SUBMITTAL OF COMMENTS

Comments on the proposed amended rules may be submitted in writing to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503, (254) 773-2250 ext. 231.

STATUTORY AUTHORITY

The amended rules are proposed under the Agriculture Code of Texas, Title 7, Chapter 201, §201.020, which authorizes the Texas State Soil and Water Conservation Board to adopt rules that are necessary for the performance of its functions under the Agriculture Code.

No other statutes, articles, or codes are affected by this proposal.

§523.1.Scope and Jurisdiction.

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

(1) - (3) (No change.)

(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.

§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 [~~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) (No change.)

(2) data and information obtained by the State Board [~~state board~~];

(3) studies conducted by the State Board [~~state board~~] or soil and water conservation districts;

(4) (No change.)

(5) guidelines developed and promulgated by the State Board [~~state board~~].

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

(1) first, known problems, where the State Board [~~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 [~~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.

§523.3. Water Quality Management Plan Certification Program [~~Plans~~].

(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) [(a)] [A water quality management plan is 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 soil and water conservation district and Texas Commission on Environmental Quality to be consistent with state water quality standards.] 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 ~~[cover]~~ all lands whether contiguous or non-contiguous that constitutes an operating unit for agricultural or silvicultural nonpoint source pollution abatement purposes.~~

~~(d) [(b)]~~ 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) [(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 ~~[soil and water conservation district]~~. Landowners and operators, following consultation with their SWCD ~~[soil and water conservation district]~~, will be encouraged and aided in working with the SWCD ~~[district]~~ 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 [~~soil and water conservation district~~] 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 [~~district~~] 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 [~~state~~] 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) [~~(d)~~] Practice selection.

(1) Practices eligible for water quality management planning will be selected by the State Board in consultation with the SWCD [~~soil and water conservation district~~].

(2) Practices will address activities determined by the State Board in consultation with the SWCD [~~soil and water conservation district~~] to be in need of pollution prevention or abatement.

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

(g) [~~(e)~~] Practice standards.

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

(2) Practice standards will be based on criteria in the NRCS FOTG [~~Natural Resources Conservation Service Field Office Technical Guide~~]; however, modification of those practice standards to ensure consistency with Texas surface [~~state~~] water quality standards and the Texas Nonpoint Source Management Program [~~state agricultural and silvicultural 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 [~~soil and water conservation district~~], with assistance and advice of the NRCS [~~USDA, the Natural Resources Conservation Service~~], Texas AgriLife [~~Cooperative~~] Extension Service, Texas Forest Service, Texas AgriLife Research [~~Agricultural Experiment~~]

~~Station~~], Texas Commission on Environmental Quality, the local underground water conservation district and others as determined to be needed by the State Board.

(h) [~~(f)~~] 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 [~~soil and water conservation district~~] will conduct status reviews of plan implementation.

(5) The State Board in consultation with the local SWCDs [~~soil and water conservation districts~~] 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 [~~soil and water conservation district~~].

(6) The holder of a certified water quality management plan shall notify the local SWCD [~~soil and water conservation district~~] in the event he or she deviates from the implementation schedule.

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

(j) [~~(h)~~] 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:

[Figure: 31 TAC §523.3\(j\)\(2\)](#)

[~~Figure: 31 TAC §523.3(h)(2)~~]

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

(4) The State Board [~~Texas State Soil and Water Conservation Board (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 [~~soil and water conservation district~~] 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 [~~soil and water conservation district~~] 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 [~~soil and water conservation district~~] 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 [~~district~~] 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 [~~district~~] may appeal SWCD [~~district~~] decisions to the State Board.

§523.4.Resolution of Complaints.

Complaints concerning the violation of a water quality management plan [~~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) (No change.)

(B) operations with a certified water quality management plan [~~Water Quality Management Plan~~];

(C) operations that have applied for a water quality management plan [~~Water Quality Management Plan~~];

(D) nonpoint source problems related to operations needing a water quality management plan [~~Water Quality Management Plan~~]; and

(E) (No change.)

(2) Determination of the need for action.

(A) - (B) (No change.)

(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 [~~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) - (F) (No change.)

(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 [~~Water Quality Management Plan~~].

(B) (No change.)

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

(4) (No change.)

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

(a) (No change.)

(b) Definitions. For the purposes of this section [~~these rules~~] the following definitions shall apply.

(1) Allocated funds--Funds budgeted through the State Board to a soil and water conservation district [~~SWCD~~].

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

(3) (No change.)

(4) Conservation practice(s) [~~land treatment measure(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 [~~Senate Bill 503, 73rd Texas Legislature~~].

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

(7) - (9) (No change.)

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

(11) Maintenance agreement--A written agreement between the eligible person and the soil and water conservation district [~~SWCD~~] wherein the eligible person(s) agrees, as a condition of the receipt of State cost-share funds, to implement and maintain all measures [~~measure(s)~~] 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 [~~SWCD'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. [~~Land, whether contiguous or noncontiguous, owned and/or operated by the applicant as an independent management unit for agricultural or silvicultural purposes.~~]

(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 [~~SWCD~~] 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) [~~(15)~~] Priority system--The system devised by the soil and water conservation district [~~SWCD~~], under guidelines of the State Board, for ranking approved conservation practices [~~land treatment measures~~] and for facilitating the disbursement of allocated funds in line with the soil and water conservation district's [~~SWCD's~~] priorities.

(17) [~~(16)~~] Program year--The period from September 1 to August 31.

(18) [~~(17)~~] Soil and water conservation district (SWCD) [~~, herein referred to as SWCD~~]--A governmental [~~government~~] subdivision of this state and a public body corporate and politic, organized pursuant to Chapter 201 of the Agriculture Code [~~of Texas~~].

(19) [~~(18)~~] State Board--The Texas State Soil and Water Conservation Board organized pursuant to [~~the provisions of~~] Chapter 201 of the Agriculture Code [~~of Texas~~].

(c) Responsibilities.

(1) The State Board shall:

(A) (No change.)

(B) Establish conservation practices [~~land treatment measures~~] eligible for cost-share and their standards, specifications, maintenance and expected life.

(C) Establish maximum cost-share rate for each conservation practice [~~land treatment measures~~] approved for cost-share.

(D) - (I) (No change.)

(2) The SWCDs shall:

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

(B) - (F) (No change.)

(G) Notify applicants of the SWCD's [~~district's~~] decisions on approval of applications.

(H) File approved [~~Approved~~] applications [~~will be filed~~] in the SWCD's [~~Districts~~] copy of the applicant's water quality management plan [~~Water Quality Management Plan~~].

(I) - (J) (No change.)

(K) Certify completed conservation practices [~~land treatment measures~~] to the State Board prior to payment.

(L) (No change.)

(d) Administration of Funds.

(1) - (2) (No change.)

(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 [~~districts~~] 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) (No change.)

(2) In accordance with the terms of the maintenance agreement an eligible person may receive cost-share [~~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 [~~soil and water conservation district~~] may grant a waiver to this requirement in situations where:

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

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

(C) more [~~More~~] stringent measures become necessary to meet Texas surface water quality standards ;[-]

(D) a [~~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 [~~The life expectancy of the previously cost-shared best management practice(s) has expired.~~]

(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) (No change.)

(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 [~~his~~] operating unit.

(C) (No change.)

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

(A) To reimburse other units of government for implementing conservation practices [~~land treatment measures~~].

(B) (No change.)

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

(A) - (B) (No change.)

(6) Eligible practices. Conservation practices [~~land treatment measures~~] 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 [~~at the beginning of each fiscal year~~]. 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 [~~land treatment measures~~] not included in the State Board's list of approved practices. The use of special conservation practices [~~land treatment measures~~] is limited to those measures that can solve unique problems in a SWCD and which conform [~~conforms~~] with one or more of the purposes of the cost-share program. Requests for special conservation practices [~~land treatment measures~~] 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 [~~land treatment measures~~] 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 [~~soil and water conservation district~~].

(8) (No change.)

(f) Cost-Share Assistance Processing Procedures.

(1) Responsibility of applicants. Applicants for cost-share assistance for conservation practices [~~land treatment measures~~] shall:

(A) - (B) (No change.)

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

(D) - (F) (No change.)

(2) Responsibilities of SWCDs. SWCDs shall:

(A) - (E) (No change.)

(F) Obligate funds for the approved conservation practices [~~land treatment measures~~] that can be funded and notify the applicant(s) [~~applicants~~] that his/her conservation practices [~~land treatment measures(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) (No change.)

(3) Amended Applications for Allocated Funds.

(A) In the event that an adjustment to the estimated cost of conservation practice(s) [~~land treatment measure(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 [~~land treatment measures~~], 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) [~~land treatment measure(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) [~~land treatment measure(s)~~] in excess of the amount authorized.

(4) Performance Agreement. As a condition for receipt of cost-share assistance for conservation practices [~~land treatment measures~~], the eligible person receiving the benefit of such assistance shall agree to perform those measures in accordance with standards established by the [~~Texas State Soil and Water Conservation~~] 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)[~~(B)~~] 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) (No change.)

(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) (No change.)

(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 [~~district~~] in accordance with the SWCD's established record retention policy.

(10) (No change.)

(g) Maintenance of Practices.

(1) Requirements for maintenance of practices applied using cost-share funds will be outlined in the eligible person's [~~persons~~] 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) [~~land treatment measure(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) [~~land treatment measure(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 [~~land treatment measures~~] 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 [~~district~~] 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 [~~district's~~] current program year allocation.

(B) When conservation practices [~~land treatment measures~~] that have been successfully completed and which later fail [~~fails~~] 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 [~~district'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) [~~land treatment measure(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 [~~soil and water conservation district~~] may grant a waiver to this requirement.

(h) - (i) (No change.)

(j) Pursuant to [~~the Texas~~] Agriculture Code [~~§~~] §201.311 [~~Section 201.311~~], one or more SWCDs [~~SWCD's~~] may be designated to administer portions of this section as determined by the State Board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 11, 2008.

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Texas State Soil and Water Conservation Board

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