

§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, but is not limited to agricultural, silvicultural, and urban runoff including construction activities. 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, in their entirety as a single functioning facility, may be considered a point or a nonpoint source depending on size, location, and other considerations. For the purposes of this chapter, all animal feeding operations not required to obtain a permit from the Texas Commission on Environmental Quality are 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, as well as available non-federal appropriations provided by the Texas Legislature, to initiate planning, assessment, education, demonstration, research, or implementation projects and 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 July 7, 2013

§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 resources for the programs specified in §523.1(b)(1) - (4) of this title, the State Board will consider the following:

(1) 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) 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) 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

(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 devised 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 the ownership of the lands being separated into a new operating unit has changed.

(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 assessment performed by the State Board on a water quality management plan for the purpose of determining adherence to the plan's implementation schedule and conservation plan of operations.

(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) Certification.

(1) 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 that constitute an operating unit for agricultural or silvicultural nonpoint source pollution abatement purposes. 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.

(2) The State Board may conditionally certify a water quality management plan for the purpose of demonstrating experimental technologies or alternative combinations of practice standards at the request of a landowner or operator. Conditional certification of a water quality management plan shall provide the landowner or operator all the benefits and limitations of certification under traditional circumstances. Conditional certification will remain applied to a water quality management plan until such time that the experimental technologies or alternative combinations of practice standards have been determined by the State Board to be equivalently effective as the traditionally applied practices for water quality criteria at the resource management system level within the NRCS FOTG. If the experimental technologies or alternative combinations of practice standards are determined to be not as effective as the traditionally applied practices for water quality criteria at the resource management system level within the NRCS FOTG, the State Board shall remove the conditional certification and the water quality management plan shall be considered not certified. Landowners or operators receiving

conditional certification must enter into an agreement with the State Board allowing for intense monitoring of soil and water quality and compliance with management measures contained within the water quality management plan.

(d) A water quality management plan should be modified and re-certified 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 or modifying 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 the provisions of subsection (c) of this section, the State Board may certify the plan.

(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.

(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) All poultry facilities producing poultry for commercial purposes are required to develop and implement a certified water quality management plan covering the poultry operating unit. Poultry facilities must request development and certification or recertification of a

water quality management plan prior to placing poultry at a new facility or placing additional poultry at an existing facility.

(2) Poultry facilities may obtain a water quality management plan as prescribed in subsections (e) - (h) of this section, unless a facility is unable to attain certification based on conditions prescribed in paragraph (3) of this subsection.

(3) After September 1, 2009 the State Board may not certify a water quality management plan for a proposed newly constructed poultry facility, or an existing poultry facility that proposes to expand by more than 50 percent the number of birds included in the existing certified water quality management plan as of September 1, 2009, that is located less than one half of one mile from a neighbor if the presence of the facility is likely to create a persistent nuisance odor for such neighbors, unless the facility provides an odor control plan the Texas Commission on Environmental Quality determines is sufficient to control odors. A facility that will house fewer than 10,000 total birds is unlikely to create a persistent nuisance odor. Within this paragraph and subparagraphs, the term neighbor includes business, off-site permanently inhabited residence, place of worship, or other poultry farm under separate ownership; and proposed facility has the meaning described [above] in paragraph (2) of this subsection.

(A) Factors that are considered likely to create a persistent nuisance odor and will require the proposed facility to submit an odor control plan are:

(i) Any neighbor within one quarter of one mile of a proposed facility;

(ii) Any neighbor between one quarter and one half of one mile in the prevailing wind direction of a proposed facility, considering both cool and warm seasons;

(iii) Any school, place of worship, healthcare facility, or other poultry facility within one half of one mile of a proposed facility;

(iv) Proposed facility will house more than 225,000 birds per flock;

(v) Proposed facility will use a liquid waste handling system; or

(vi) A notice of violation from the Texas Commission on Environmental Quality for odor has been issued to the proposed facility within the previous 12 months.

(B) If none of the factors in subparagraph (A) of this paragraph apply to the proposed facility, the following table will be used to assess the site to determine if the proposed facility is likely to create a persistent nuisance odor for neighbors. If the total score from the assessment of each of the factors exceeds 50 points, the presence of the proposed

facility is likely to cause a persistent nuisance odor for neighbors, and the proposed facility must provide an odor control plan the Texas Commission on Environmental Quality determines is sufficient to control odors.

Figure: 31 TAC §523.3(j)(3)(B)

SITE ASSESSMENT TOOL				
	POTENTIAL FOR PERSISTENT ODOR NUISANCE			
FACTOR	LOW	MEDIUM	HIGH	SCORE
Birds Per Flock	<100,000 = 1 pt	100K-165K = 20 pts	>165K = 30 pts	
Maximum Length of Flocks	<42 days = 1 pt	42-49 days = 10 pts	>49 days = 30 pts	
Litter Application Planned On-Farm	No = 0 pts	N/A	Yes = 30 pts	
Number of Neighbors	1 = 3 pts	2 = 5 pts	>2 = 10 pts	
Topography Influence*	None = 0 pts	Medium = 5 pts	High = 10 pts	
Number of Incinerators	None = 0 pts	1 = 5 pts	>1 = 10 pts	
Vegetation (as odor buffer)*	Heavy = 1 pt	Medium = 3 pts	None = 5 pts	
Property Line Distance	>300' = 0 pts	150-300' = 3 pts	<150' = 5 pts	
<p>*Vegetation (as buffer between proposed facility and any neighbor to filter dust and dilute odors)</p> <p>None: no significant vegetation capable of dispersing or deflecting odors.</p> <p>Medium: scattered or intermittent brushy herbaceous vegetation and trees with under-, mid-, and overstories.</p> <p>Heavy: continuous 3-tiered forested woody vegetation.</p>				
<p>*Topography Influence</p> <p>None: topography is level, upslope from proposed facility, or hill/ridge separates proposed facility and any neighbors.</p> <p>Medium: topography is downslope from proposed facility toward any neighbor, but no valley.</p> <p>High: topography forms downslope valley from proposed facility toward any neighbor.</p>				

(C) Any facility whose water quality management plan was previously certified by meeting the conditions of subparagraphs (A) or (B) of this paragraph or an approved odor control plan and proposes to expand the number of poultry at the facility, regardless of the

percent of the expansion, must again submit to the process in subparagraphs (A) or (B) before the water quality management plan can be recertified.

(D) Alternatively to meeting conditions of subparagraphs (A), (B), or (C) of this paragraph a proposed facility may obtain certification of a water quality management plan if subsections (e) - (h) of this section are met and each neighbor within one half of one mile of the proposed facility provides a consent form properly signed by the neighbor or authorized legal representative(s) of the neighbor. The form must contain the name, physical and mailing addresses of the neighbor and consent to location and operation of permanent odor sources of a poultry facility within one half of one mile of the neighbor. Such form(s) must be contained in the water quality management plan.

(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.

Effective July 7, 2013

§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 INCENTIVE FUNDING FOR
SOIL AND WATER CONSERVATION LAND IMPROVEMENT MEASURES**

(a) Purpose. The purpose of cost-share funding is to provide an incentive to landowners or operators to install soil and water conservation land improvement measures consistent with the purpose of controlling erosion, conserving water, and/or protecting water quality in accordance with a water quality management plan certified by the State Board.

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

(1) Allocated funds--Funds budgeted through the State Board either allocated directly to a specific soil and water conservation district or to a cost-share incentive priority for utilization by multiple soil and water conservation districts. For the purposes of the chapter, funds directly allocated to a specific soil and water conservation district shall be referred to as a direct allocation.

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

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

(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 incentive funding--An award of money made to an eligible person for conservation land improvement measures pursuant to the terms of Agriculture Code §201.301.

(6) Cost-share incentive priority--A geographic location such as a watershed, a soil and water conservation district or other political subdivision boundary, or a specific agricultural or silvicultural activity, or a combination thereof, that is adopted by the State Board as a specified priority for receiving an allocation of cost-share incentive funding. Cost-share incentive priorities must be consistent with the purpose of controlling erosion, conserving water, and/or protecting water quality.

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

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

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

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

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

(12) Maintenance agreement-- A written agreement between the eligible person and the soil and water conservation district wherein the eligible person(s) agrees to implement and maintain all conservation practices included in the water quality management plan in accordance with the implementation schedule, all technical requirements of the applicable practice standards, and specified life expectancies of practices until such time that the certification of the State Board is withdrawn. The maintenance agreement shall specify that any practices installed through the payment of cost-share incentive funding, to any extent, must be maintained in accordance with the applicable practice standards and specified life expectancies regardless of whether or not the water quality management plan continues to be certified or not. Failure to maintain cost-shared practices may result in the requirement for all or a prorated portion of the cost-share funding to be returned to the State Board. 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.

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

(14) 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 devised 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 the ownership of the lands being separated into a new operating unit has changed.

(E) Where mutual agreement regarding an operating unit's consistency with this section 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.

(15) 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.

(16) 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).

(17) 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.

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

(19) 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.

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

(c) Stakeholder Process. The State Board shall use a stakeholder process to develop cost-share incentive priorities, goals and performance measures for cost-share incentive priorities, and routinely share the results of program activities with stakeholders to gather input for program improvement actions.

(d) Responsibilities.

(1) The State Board shall:

(A) Establish a procedure to allocate funds to a specific SWCD or to cost-share incentive funding priorities for utilization by multiple soil and water conservation districts.

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

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

(D) Establish, prior to September 1 of each year, the minimum cost-share incentive funding amount that may be made under the program and the maximum cost-share incentive funding amount that an eligible person may be obligated from in any one program year.

(E) Provide verification to a SWCD that an application qualifies for cost-share incentive funding from a selected cost-share incentive priority prior to SWCD obligation of funds.

(F) Perform clerical, administrative and record-keeping responsibilities required for carrying out cost-share incentive funding activities.

(G) Receive and maintain monthly reports from SWCDs which have been directly allocated an amount of cost-share incentive funding showing the unobligated balance of allocated funds as shown on each ledger at the close of the last day of each month.

(H) Receive requests for reallocated funds and funds reverted from participating SWCDs that received a direct allocation.

(I) Act on appeals filed by applicants.

(J) 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 incentive funding in their SWCD.

(B) Administer cost-share incentive funding with funds allocated by the State Board if the SWCD received a direct allocation.

(C) Establish, under guidelines of the State Board, the priority system to be used for evaluation of applications for incentive funding through a direct allocation to the SWCD, and to be used for evaluation of applications for cost-share incentive priorities.

(D) Establish the period(s) of time, under the guidelines of the State Board, for accepting applications and announce the availability of cost-share incentive funding locally.

(E) Accept and process cost-share incentive funding applications.

(F) Determine eligibility of lands and persons for cost-share incentive funding 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 directly allocated funds and on accomplishments to the State Board.

(e) Administration of Funds.

(1) Allocation of Funds. The State Board may allocate funds appropriated from general revenue fund and other sources for cost-share incentive funding among particular soil and water conservation land improvement measures, specific SWCDs, among areas of the state through cost-share incentive priorities, or a combination thereof, 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 or to cost-share incentive priorities to reimburse SWCDs for obligations incurred in administering cost-share incentive activities.

(2) Approval of Cost-share Incentive Priority Allocations. The State Board may allocate cost-share incentive funding to priorities identified by the State Board, local SWCDs through the stakeholder process described at subsection (c) of this section, and other entities. Higher consideration will be given to priorities recommended through the stakeholder process. Priorities will be approved consistent with the purpose of cost-share incentives specified at subsection (a) of this section. A cost-share incentive priority shall exist for no more than two program years without re-approval by the State Board.

(3) Requests for Direct Allocations. SWCDs within areas designated for cost-share program may submit requests for a direct cost-share incentive fund allocation to the State Board . Such requests must be submitted by September 1st of each program year, and must include a description of how the allocation will control soil erosion, conserve water, and/or protect water quality. Allocations requested to address documented problems with water quality will be considered before other requests, and any request will be subject to the availability of funds after allocations are made to approved cost-share incentive priorities as described in paragraph (2) of this subsection.

(4) Approval of Direct Allocations to SWCDs. The State Board shall consider and approve, reject or adjust SWCD requests for direct allocations giving consideration to the amount of available funding not already allocated to cost-share incentive priorities, relative need for funding and 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 directly claim cost-share incentive funds.

(5) 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. In cases where the funding for cost-share incentives originates from sources other than appropriations made directly to this program by the Texas Legislature, the maximum allowable amount of cost-share incentive funding per operating unit will be established by the terms of the contractual agreement providing the funds until otherwise specified by the State Board.

(f) Eligibility for Cost-Share Incentive Funding.

(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 a SWCD shall be eligible for cost-share incentive funding.

(2) In accordance with the terms of this chapter 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 and 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 or the amount of animal waste production is significantly increased requiring

additional conservation practices, not previously cost-shared, 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; or

(E) 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 and may not be applied more than one time to a single practice.

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

(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 incentive funding shall be available only for those eligible practice measures included in a certified 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 incentive funding. 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 incentive funding 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 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 availability of cost-share incentive funding locally for the program year. Conservation practices may be included in a SWCD's list of eligible practices offered for cost-share incentive funding only as approved by the State Board.

(7) Requirement to file an application. In order to qualify for cost-share incentive funding, 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.

(g) Cost-Share Incentive Funding Processing Procedures.

(1) Responsibility of applicants. Applicants for cost-share incentive funding 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 , under the guidelines of the State Board, and announce the availability of cost-share incentive funding locally.

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

(C) Determine eligibility of lands and persons for cost-share incentive funding under either the SWCD's local program for a direct allocation or under a cost-share incentive priority. 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 either the SWCD's priority system for a direct allocation or under a cost-share incentive priority and give final approval to the high priority applications that can be funded.

(F) For applications that may qualify for a cost-share incentive priority, submit the applications to the appropriate State Board office for confirmation of qualification and availability of funds.

(G) 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 incentive funding and to proceed with installation. Allocated funds must be obligated by the last day of April of the fiscal year allocated. All unobligated allocations, regardless of whether they exist in a direct SWCD allocation or a cost-share incentive priority, shall become unallocated on May 1st of each year and may be reallocated to other priorities at the discretion of the State Board to ensure the most efficient use of cost-share incentive funds.

(H) 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. If the obligated funds originate from a cost-

share incentive priority, the SWCD will confer with the State Board to determine if additional funds are available.

(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. If the obligated funds originate from a cost-share incentive priority, the SWCD will confer with the State Board to determine if additional funds are available.

(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 incentive funding for conservation practices, the eligible person receiving the benefit of such incentive funding 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. A written maintenance agreement must be signed between the eligible person and the soil and water conservation district wherein the eligible person(s) agrees to implement and maintain all conservation practices included in the water quality management plan in accordance with the implementation schedule, all technical requirements of the applicable practice standards, and specified life expectancies of practices until such time that the certification of the State Board is withdrawn. The maintenance agreement shall specify that any practices installed through the financing of cost-share incentive funding, to any extent, must be maintained in accordance with the applicable practice standards and specified life expectancies regardless of whether or not the water quality management plan continues to be certified or not. Failure to maintain cost-shared practices may result in the requirement for all or a prorated portion of the cost-share funding to be returned to the State Board. 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 incentive funding, 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 incentive funding.

(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 incentive funding 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.

(h) Maintenance of Practices.

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

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

(3) The SWCD will request refund of all or a prorated portion of the cost-share incentive funding 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 incentive funds to restore them to their original design standards and specifications. These funds must come from either a current direct allocation to the SWCD or from a current cost-share incentive priority with confirmation from the State Board from the current program year.

(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 USDA Natural Resources Conservation Service staff while assisting the SWCD, and not the fault of the applicant, the State Board may approve additional cost-share incentive 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 must come from either a current direct allocation to the SWCD or from a current cost-share incentive priority with confirmation from the State Board from the current program year.

(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 incentive funding 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 prorated portion of the cost-share incentive 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.

(i) 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.

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

(k) 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 July 7, 2013

**§523.7.COMPREHENSIVE NUTRIENT MANAGEMENT PLANNING
IN THE NORTH BOSQUE RIVER WATERSHED**

(a) Policy Statement. In accordance with §519.1 of this title (relating to Policy Statement) and 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, this section is adopted.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(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) Comprehensive nutrient management plan, herein referred to as CNMP--A resource management plan containing a grouping of conservation practices and management activities which, when combined into a conservation system, will help ensure that both agricultural production goals and natural resource concerns dealing with nutrient and organic by-products and their adverse impacts on water quality are achieved. A CNMP incorporates practices to utilize animal manure and organic by-products as a beneficial resource. To be certified, a CNMP must cover all lands that constitute the conservation management unit.

(3) Conservation management unit--For the purposes of this section and regarding comprehensive nutrient management planning, a conservation management unit includes the production area and land application activities which are onsite or are contiguous to the site.

(4) Environmental stewardship programs for owners and/or operators of animal feeding operations--Any program, administered by a governmental or non-governmental entity, which provides the owner or operator of an animal feeding operation with a mechanism for improving the overall efficiency of the operation, operating in accordance with all applicable state or federal laws pertaining to water quality, and furthers the effective conservation of the state's soil and water resources.

(5) North Bosque River watershed--The geographic area consisting of all the drainage area for the two designated water quality segments as defined in the two adopted Total Maximum Daily Loads for Phosphorus in the North Bosque River. The two designated water quality segments are segment 1226, the North Bosque River, extending from a point 100 meters upstream of FM Road 185 in McLennan County to a point immediately upstream of the confluence of Indian Creek in Erath County, and segment 1255, the Upper North Bosque River, extending from a point immediately upstream of the confluence of Indian Creek in Erath County to the confluence of the North Fork and South Fork of the North Bosque River in Erath County.

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

(7) NRCS - Field Office Technical Guide, herein referred to as NRCS - FOTG--The official NRCS guidelines, criteria, and standards for planning and applying conservation treatments.

(8) NRCS Technical Service Provider Process--The process by which a technical service provider obtains certification by NRCS to provide technical services including conservation planning, and/or the design, layout, and installation of approved conservation practices.

(9) Resource management plan--A site specific blueprint for implementation of 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 SWCD.

(10) 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 Natural Resource Conservation Service's Field Office Technical Guide for resource sustainability.

(11) 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 Chapter 201 of the Agriculture Code.

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

(13) Technical service provider--An individual, entity, or public agency certified by the NRCS State Conservationist and placed on an approved list to provide technical services.

(14) Texas Commission on Environmental Quality--The state agency created under Title 2, Subtitle A, Chapter 5 of the Texas Water Code (formerly the Texas Natural Resource Conservation Commission).

(c) Applicability. Any owner or operator of an animal feeding operation that meets the following criteria may submit a CNMP to the State Board for certification in accordance with subsection (f) of this section. Owners or operators of an animal feeding operation within the North Bosque River watershed, or owners or operators of an animal feeding operation that has enrolled in any agricultural environmental stewardship program whose administrators have a current memorandum of agreement with the State Board regarding a State Board certification of a CNMP as programmatic requirement.

(d) Process for Obtaining a CNMP. It is the intent of the State Board that all CNMPs be developed by technical service providers certified by NRCS to develop CNMPs or component parts of CNMPs. Owners and operators whose CNMP is developed by persons not certified to develop CNMPs through NRCS' Technical Service Provider process must submit their CNMP to the local NRCS Field Office for approval. Owners and operators of animal feeding operations who meet the applicability criteria set forth in subsection (c) of this section and intend to submit a completely developed CNMP to the State Board for certification shall:

(1) Be a SWCD cooperator.

(2) Declare to the SWCD their intent to submit a CNMP for State Board certification.

(3) Request to view a list of certified technical service providers who have been certified by the NRCS to develop CNMPs from their local SWCD and/or NRCS Field Office. Owners and operators whose CNMP is developed by persons not certified to develop CNMPs through NRCS' Technical Service Provider process must submit their CNMP to the local NRCS Field Office for approval.

(4) Inform the SWCD that they intend to apply for cost-share incentive funding, if applicable. All cost-share incentive funding toward the development of a resource management plan and toward the implementation of land treatment measures contained within the resource management plan, shall be in accordance with §523.6 of this title (relating to Cost-Share Incentive Funding for Soil and Water Conservation Land Improvement Measures).

(e) Cost-share Incentive Funding. In accordance with §523.6 of this title, the State Board may allocate funds to a SWCD for cost-share incentive funding to landowners toward the implementation of land improvement measures consistent with the purpose of controlling erosion, conserving water, and/or protecting water quality. All cost-share incentive funding toward the development of a resource management plan and toward the implementation of land treatment measures contained within the resource management plan, shall be in accordance with §523.6 of this title.

(f) Certification.

(1) When the following conditions are met the State Board may certify that a CNMP satisfies the State Board's technical criteria and programmatic guidance for comprehensive nutrient management planning with the State's requirements for water quality:

(A) The owner or operator of the animal feeding operation concurs and understands that the conservation practices and implementation schedules contained within the CNMP, when applied and maintained to form a resource management system will meet the State's requirements for water quality; the owner or operator of the animal feeding operation agrees to notify the local SWCD in the event of deviation from the implementation schedule; and the owner or operator of the animal feeding operation agrees that any substitution or changes to

the conservation practices or schedules must be in accordance with the NRCS - FOTG, the State Board's Technical Criteria and Programmatic Guidance for Comprehensive Nutrient Management Planning, and the rules and regulations of the State.

(B) The CNMP is in accordance with the Technical Criteria and Programmatic Guidance for Comprehensive Nutrient Management Planning adopted by the State Board and contains an implementation schedule pursuant to subsection (i) of this section.

(C) The owner or operator of the animal feeding operation meets the requirements of subsection (c) of this section.

(D) The SWCD has approved the CNMP as including the entire conservation management unit.

(E) The CNMP was developed by a technical service provider certified by the NRCS to develop CNMPs or the NRCS Field Office has approved the CNMP as meeting the requirements of the NRCS - FOTG for a Resource Management System.

(2) Withdrawal of Certification. The State Board may withdraw certification of any CNMP which, in consultation with the SWCD, has been demonstrated to be deficient in one or more of the conditions established under paragraph (1) of this subsection or if the holder of the CNMP fails to implement the CNMP in accordance with subsection (i) of this section.

(g) Technical Criteria and Programmatic Guidance for Comprehensive Nutrient Management Planning. The technical criteria and specific practice standards considered as components of comprehensive nutrient management planning are based on the criteria in the NRCS - FOTG; however, modification of those practice standards to ensure consistency with state water quality standards, state water quality laws regarding animal feeding operations, and the state agricultural and silvicultural nonpoint source management program will be made by the State Board as necessary. The State Board will adopt and maintain Technical Criteria and Programmatic Guidance for Comprehensive Nutrient Management Planning to ensure consistency with state water quality standards, state water quality laws regarding animal feeding operations, and the state agricultural and silvicultural nonpoint source management program.

(h) Environmental Stewardship Programs for Owners and/or Operators of Animal Feeding Operations. The State Board may enter into agreements with entities administering programs who request that participants of such programs receive certification in accordance with subsection (f) of this section as a programmatic requirement if the State Board determines that the program is consistent with the state agricultural and silvicultural nonpoint source management program and all other State Board policies.

(i) Implementation Schedule. A CNMP must contain an implementation schedule.

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

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

(3) The State Board in consultation with the local SWCDs will conduct an annual status review of plan implementation.

(4) The State Board in consultation with the local SWCDs may withdraw certification of a CNMP that is not being implemented in accordance with its schedule. Prior to certification being withdrawn, a landowner will be notified and be given a reasonable period of time to implement the CNMP according to the schedule or a modified schedule approved by the SWCD.

(5) The holder of a certified CNMP shall notify the local SWCD in the event he or she deviates from the implementation schedule.

(j) Applicability of State Water Quality Standards. To the extent allowed by available technology, CNMP development, approval and certification will be based on state water quality standards as established by the Texas Commission on Environmental Quality.

Effective July 7, 2013