

The Comptroller of Public Accounts adopts amendments to §9.1052, concerning forms, and §9.1059, concerning annual compliance review, without changes to the proposed text as published in the July 3, 2015, issue of the *Texas Register* (40 TexReg 4315). The comptroller adopts amendments to §§9.1051, concerning definitions; 9.1053, concerning entity requesting agreement to limit appraised value; 9.1054, concerning school district application review and agreement to limit appraised value; and new 9.1060, concerning agreement for limitation on appraised value, with changes to the proposed text as published in the July 3, 2015, issue of the *Texas Register* (40 TexReg 4315).

The amendment to §9.1051, concerning definitions, paragraph (1) changes the definition of agreement to include an explicit reference to the form adopt by reference in §9.1052 of this title for the purpose of clarity. Paragraph (14) changes the definition of "non-qualifying job" to include the requirement that it be a permanent job, corrects a statutory reference and includes a reference to the new qualifying job definition. This definition is also changed to delete the requirement that the job did not exist prior to the application review start date. The Form Agreement requires that non-qualifying jobs meet these requirements after the application approval date so that it conforms to the manner in which the qualifying jobs requirement is implemented. The amendment to the definition of "average weekly wage for manufacturing jobs" in paragraph (21) provides that in the event that the wage authorized by subparagraph (A) is not available, then the wage authorized by subparagraph (B) is the wage. A missing word ("available") is added to the definition of "average weekly wage for non-qualifying jobs" in paragraph (22). Additionally, new paragraph (30) is added to define "qualifying job" that consolidates the requirements of a qualifying job from Tax Code, Chapter 313 into a single definition.

The amendment to §9.1052, concerning forms, identifies forms by the updated form numbers. The form adopted by reference in subsection (a)(5) is being changed in order to correct a prior

numbering error. No changes are made to the form. The form adopted by reference in subsection (a)(6), the Texas Economic Development Act Agreement, is being changed to reflect the new form number, update certain statutory references, and provide greater flexibility to the parties to the agreement. The amendment in subsection (b) updates the form website address. The amendment to subsection (c) clarifies that this subsection applies to the Form Agreement adopted pursuant to this section as well as the application forms adopted pursuant to this section.

The amendments to §9.1053(f), concerning entity requesting agreement to limit appraised value, reduces the number of days for a draft agreement to be submitted to the school district and the comptroller prior to the school board meeting at which an application is considered. This amendment is intended to facilitate prompt application review. Subsection (f) is also amended to delete the provisions in the subsection that identify the terms of the agreement to reduce redundancy and avoid creating conflicts between the provisions of the rules and the Form Agreement.

Amendments are also adopted to §9.1054, concerning school district application review and agreement to limit appraised value. The amendments to subsection (g) delete the provisions that identify the required terms of a value limitation agreement to reduce redundancy and avoid creating conflicts between the provisions of the rules and the Form Agreement. The amendments to subsection (h) are to clarify the requirements for the school district review of a value limitation agreement prior to the start of a deferred qualifying time period in those instances when the school district has approved an agreement that permits the qualifying time period to start more than one year after the date that the application is approved.

The amendments to §9.1059(c), concerning annual compliance review for qualifying jobs and penalties, amend the wage determination for new qualifying jobs to be based on the site where

the job is located rather than the location of the school district's administrative office. This amendment is intended to provide more accurate data regarding the job creation requirement.

New §9.1060, concerning agreement for limitation on appraised value, requires the school district and the applicant to implement a limitation on appraised value when the application is approved by executing a Texas Economic Development Agreement, utilizing the Form Agreement.

Seven comments were received regarding adoption of the amendments and the new section.

Matt Larsen with BakerBotts, LLP; John Kennedy with the Texas Taxpayers and Research Association; and the Tax Section of the State Bar of Texas express concern that duplicating the requirements for the Agreement for Limitation on Appraised Value in both §9.1060 and the Form Agreement will create conflict between the terms of the rule and the Form Agreement. The comptroller agrees with this comment and adopts the changes recommended by Mr. Kennedy. Specifically, the list of minimum terms required to be included in an agreement are deleted in §9.1060 and therefore the references in §9.1053(f)(2) and §9.1054(g) to the minimum terms listed in §9.1060 are deleted and replaced by references to §9.1052(a)(6) (the Form Agreement).

The Tax Section of the State Bar of Texas suggests adding links and references to all forms listed in the rules on the comptroller's website to make it easier to find the current version of the forms. The comptroller agrees with this comment and plans to link the forms to the relevant rules on its website.

Mr. Larsen comments that §9.1054(h) does not contain a deadline for the submission of an amendment to the application and the Agreement for Limitation on Appraised Value, but the Form Agreement contains such a deadline. The comptroller responds that the rule includes a

deadline of 180 days, but moving the deadline to the beginning of subsection (h) will improve clarity. The comptroller adopts the addition of timeframe language to match the language used within §10.2.F of the Form Agreement.

Kevin O'Hanlon suggests changing "Exhibit 2" to "Exhibit 3" in the definition of "Applicant's Qualified Investment" in §1.1 of the Form Agreement because Exhibit 3 has been used in previous forms for qualified investments that do not involve land. The comptroller agrees with this comment and adopts this change. The comptroller also adopts a conforming change by renumbering the exhibits.

James W. Wester and Fred A. Stormer with Underwood, Attorneys at Law recommend adding definitions of "Applicable School Finance Law," "Maintenance and Operations Revenue," "Net Tax Savings," and "Revenue Protection Amount" to §1.1 of the Form Agreement. The comptroller responds that §1.1 does not include terms used in Articles IV, V and VI, as the definitions of the terms included in those articles are best addressed by the school district and the applicant in §1.2. The comptroller may provide additional guidance on typically used terms through program guidelines. No additional changes are being made as a result of this comment.

Mr. O'Hanlon suggests changing "Exhibit 3" to "Exhibit 2" in the definition of "Land" in §1.1 of the Form Agreement because Exhibit 2 has been used in previous forms for qualified investments that involve land. The comptroller agrees with this comment and adopts this change. The comptroller also adopts a conforming change by renumbering the exhibits. The comptroller also substitutes "are" for "is" in this definition to correct a grammatical error.

Mr. O'Hanlon recommends inserting language into the definition of "Maintain Viable Presence" in §1.1 of the Form Agreement that indicates that the applicant's retention of the required number of qualifying jobs is "subject to the provisions of §313.0276 of the TEXAS TAX CODE" to

clarify that there is a possibility of a statutory job cure. The comptroller responds that the provisions of Tax Code, §313.0276 are solely related to the verification of, and penalty for, failure to create and maintain new qualifying jobs as required by the Act and does not address new qualifying jobs committed on Schedule C or wage requirements for new non-qualifying jobs. Additionally, any potential breaches and remedies are set forth in Article 9 of the Form Agreement. But, the comptroller recognizes that the definition of this term may be too broad. So, instead of adding the reference proposed by Mr. O'Hanlon, the comptroller adopts the following alternative definition that narrows the definition of the term: 'Maintain Viable Presence' means (i) the operation during the term of this Agreement of the facility or facilities for which the tax limitation is granted; and (ii) the Applicant's maintenance of jobs and wages as required by the Act and as set forth in this Agreement.”

Mr. Larsen and Wes Jackson with Cummings Westlake, LLC, comment that the definitions of "New Qualifying Jobs" and "New Non-Qualifying Jobs" in §1.1 of the Form Agreement should not indicate that they are created during the qualifying time period. Instead, the words "after the Application Approval Date" should be included in the definitions to comply with the applicable provisions of the Tax Code. The comptroller agrees with this comment and adopts this change.

Mr. Wester and Mr. Stormer recommend changing the definition of "Tax Limitation Amount" in §1.1 of the Form Agreement to indicate that it is a "minimum" amount, not a "maximum" amount. The comptroller responds that "Tax Limitation Amount" is the value limitation for which the qualified property will be valued during the limitation period. As such, this amount is the maximum amount for the appraised value. No additional changes are being made as a result of this comment.

Mr. Wester and Mr. Stormer recommend adding a Tax Year Chart as an exhibit to the Form Agreement and adding a definition of "Tax Year" to §1.1 to support the recommended addition

of the chart. The comptroller responds that all key dates related to the project are included in §2.3 and a separate Tax Year Chart is not required. However, if a school district and an applicant agree to include a Tax Year Chart, it may be included in new optional Exhibit 5 and the term "Tax Year" may then be defined in §1.2. The comptroller may choose to provide guidance on typically used terms through program guidelines. An optional Exhibit 5 is being added as a result of this comment.

Mr. O'Hanlon comments that if an applicant chooses the option described in §2.3.D.1.c (now §2.3.D.i.c) of the Form Agreement, a definition of "commencement of business operation" would need to be included in §1.2. In response to this comment, the comptroller changes "business operation" to "Commercial Operation" to mirror the statutory language found in Tax Code, §313.027. The comptroller notes that an applicant and a school district shall include a definition of "Commercial Operation" in §1.1 if the applicant chooses the option described in §2.3.D.i.c.

Mr. Wester and Mr. Stormer suggest revising §2.4.B of the Form Agreement to clarify the ability of a school district to select a limitation amount above the limitation listed in statute. The Comptroller agrees with this comment. As a result, the comptroller removes the reference to Tax Code, §313.027(b) in §2.4.B and instead references Tax Code, §313.027 and §313.054, both of which allow a school district to select a limitation amount greater than the limitation listed in statute.

Mr. O'Hanlon proposes adding a reference to Tax Code, §313.0276 in §§2.5.B, 2.5.C, and 2.5.D of the Form Agreement to address the ability to remedy a failure to create new qualifying jobs as required by statute. The language in Tax Code, §313.0276 relates only to the verification of, and penalty for, failure to create and maintain new qualifying jobs as required by the Act. To reduce redundancy, the comptroller deletes the language of §2.5.C because it is already included as an

obligation in the provisions of §2.6.D. Section §2.5.D is therefore renumbered as §2.5.C. The comptroller adds the recommended reference to §2.5.B because it relates to new qualifying jobs. This recommended reference is not being added to the newly renumbered §2.5.C because it does not relate to new qualifying jobs.

Mr. O'Hanlon comments that the exhibit numbers listed in §3.2 and §3.3 of the Form Agreement are inconsistent with the definitions of "Applicant's Qualified Investment" and "Land" in §1.1 of the Form Agreement. The comptroller corrected the exhibit numbers in §1.1, so the exhibit numbers listed in §3.2 and §3.3 are correct. No additional changes are being made as a result of this comment.

Mr. Wester and Mr. Stormer recommend adding template language in Articles IV and V of the Form Agreement. The comptroller responds that the Form Agreement does not include provisions for use in Articles IV, V and VI, as those articles are best addressed by the school district and the applicant. If a school district or an applicant needs sample language for Articles IV and V, the comptroller may choose to provide assistance through program guidelines. No additional changes are being made as a result of this comment.

Mr. Wester and Mr. Stormer suggest changing the word "amount" to "limit" in §6.2.D of the Form Agreement. The comptroller agrees with this comment and adopts this change.

Mr. O'Hanlon recommends adding an option to allow the Average Daily Attendance (ADA) to float during the length of the agreement instead of being locked in at the time of agreement in §6.2.D of the Form Agreement. The comptroller agrees that the decision regarding whether to lock in the ADA at the time of agreement or allow the ADA to float during the length of the agreement is a decision best made between the school district and the applicant. The comptroller

adopts optional language in §6.2.D that will allow the parties to choose between the school district's ADA at the time of agreement or the school district's ADA for the previous school year.

Mr. O'Hanlon comments that §8.6.C of the Form Agreement should not allow comptroller to amend an agreement to ensure the agreement complies with rules and procedures of the State Auditor. It would be better to make the agreement subject to future rules than to allow the comptroller, a non-signatory, to unilaterally amend the agreement. The comptroller agrees with this comment and adopts language that requires the parties to be "subject to all rules and procedures of the State Auditor acting under the direction of the legislative audit committee."

Mr. O'Hanlon suggests adding "during the Qualifying Time Period," to 9.1.B of the Form Agreement. The comptroller agrees with this comment and adopts this change.

Mr. O'Hanlon recommends making the provisions of §9.1.B of the Form Agreement subject to the cure provisions of Tax Code, §313.0275 by adding references in §9.1.B to Tax Code, §313.0275 and §9.6. The comptroller responds that references to Tax Code, §313.0275 are not necessary because the statute only provides for a penalty if the qualified investment is not made during the qualifying time period. This is not a cure. Failure to make the minimum qualified investment during the qualifying time period, as defined in Tax Code, §313.021 cannot be cured after the end of that period. As such, this material breach cannot be cured through the payment of a penalty as described in Tax Code, §313.0275. Likewise, the reference to §9.6 is not necessary because it relates to a penalty.

Mr. O'Hanlon recommends adding a reference to Tax Code, §313.0276 and §9.7 in §9.1.C of the Form Agreement. The comptroller responds that the provisions of Tax Code, §313.0276 are solely related to the verification of, and penalty for, failure to create and maintain new qualifying jobs as required by the Act and does not address new qualifying jobs committed on Schedule C

or wage requirements for new non-qualifying jobs. This failure to create and maintain the number of new qualifying jobs required by the Act is a material breach, regardless of Tax Code, §313.0276; therefore, the reference does not need to be added. Multiple commenters requested the addition of a new §9.7 to allow for a remedy of the material breach in §9.1.C and the comptroller agrees to include an optional provision that will allow the parties to provide for a remedy in the agreement. The new optional §9.7 does not need to be referenced in §9.1.C as this serves only as a listing of events constituting a material breach of agreement. Other provisions in Article 9 address the process to determine if a breach has occurred, notify the applicant of a potential breach, and cure a breach.

Mr. O'Hanlon suggests adding references to Tax Code §313.0276 and §9.7 in §9.1.D and §9.1.E of the Form Agreement. The comptroller responds that references to Tax Code, §313.0276 and new optional §9.7 are not necessary because they are not related to the number of new qualifying jobs committed to in the application nor the wage requirements for non-qualifying jobs. However, the comptroller adds a new optional §9.8 to address concerns raised about the ability to remedy non-compliance with failure to create and maintain new qualifying jobs committed to in Schedule C of the application.

Mr. Larsen suggests deleting §9.1.O because it is "superfluous" and violates Tax Code, §313.0276. The comptroller agrees the provision is superfluous in that the requirements in §9.1.O would not take effect until the applicant is already in material breach of the agreement under §9.1.C. The comptroller adopts this change.

Mr. Larsen comments that the length of time to complete mediation listed in §9.3.A of the Formal Agreement should be increased from 90 days to 180 day after a decision is made to initiate mediation because "90 days is insufficient and such an unreasonable deadline would likely undermine the parties' good-faith attempts to avoid judicial proceedings." The comptroller

responds that the time frame for either tendering payment, providing evidence of efforts to cure, or initiating mediation is adequately set forth in the Form Agreement. However, additional time to resolve mediation is necessary if mediation is the selected course. The comptroller revises the language of §9.3 to allow up to 90 days "after the Applicant initiates mediation," rather than 90 days "after receipt of notice of the Board of Trustee's determination of breach."

Mr. Larsen suggests that the time to resolve a dispute in §9.3.B of the Form Agreement should be extended from 90 days to 180 days. In response to this comment, the comptroller adds a reference to the 90 day time period provided in §9.3.A.

Mr. Wester and Mr. Stormer suggest that, in §§9.3.A, 9.3.B, and 10.5, the parties should not be allowed to insert the name of the county: (1) of the senior state district court judge who will appoint a mediator under the Form Agreement; (2) where a legal proceeding may be filed under the Form Agreement; and (3) where venue is proper for any legal proceeding under the Form Agreement. Instead, he suggests that, in each provision, the Form Agreement should specify the county as "the county where the District's central administration office is located." The comptroller responds that current agreement language does not preclude a school district and an applicant from agreeing that the county should be the county where the school district's central administration office is located. This request can be accomplished using the current form. No additional changes are being made as a result of this comment.

Mr. Larsen recommends adding language in §9.3.C, requiring the school district to be responsible for attorney's fees if it loses a dispute, since the applicant is responsible for attorney's fees if it loses a dispute. The comptroller responds that the school district should not be required to pay attorney's fees if it loses a dispute due to limited budgets of districts. No additional changes are being made as a result of this comment.

Mr. Larsen comments that §9.4 should better address the various scenarios that could cause an applicant to be required to pay liquidated damages. The comptroller agrees that it is necessary to conform the time frames and scenarios outlined in §9.3 with those of §9.4. The comptroller makes changes to §9.4 to achieve this result. Additionally, the comptroller agrees to add a timeframe of 30 days for the applicant to pay the school district liquidated damages in §9.3.A.

Mr. Larsen also recommends putting termination by the school district in the same sentence as the liquidated damages in §9.4.A, so the timing provisions in §9.4.B (now §9.4.D) do not need to be repeated. The comptroller accepts this change. To keep the events detailed in §9.3.A distinct, the comptroller separates them into two subsections and renumbers the subsequent subsections accordingly. Also, the last sentence of §9.4.B (now §9.4.C) is deleted because it is too broad and does not account for the fact that multiple breaches may occur at one time.

Mr. O'Hanlon recommends adding "and Cure," to the title of §9.6. The comptroller responds that §9.6 relates to the penalty imposed if the qualified investment is not made during the qualifying time period detailed in Tax Code, §313.0275. This is not a cure. Failure to make the minimum qualified investment during the qualifying time period, as defined in Tax Code, §313.021 cannot be cured after the end of that period. As such, this material breach cannot be cured through the payment of a penalty as described in Tax Code, §313.0275 and §9.6. No additional changes are being made as a result of this comment.

Mr. O'Hanlon and Mr. Larsen suggest adding new §9.7 relating to a statutory penalty in Tax Code, §313.0276 for inadequate new qualifying jobs as required by the Act. Additionally, Mr. Larsen comments that the school district should have "discretion to treat an agreement as valid until it is rescinded by the Comptroller" under Tax Code, §313.0276(i). The comptroller acknowledges that Tax Code, §313.0276 outlines a process for verification of the minimum qualifying jobs required by the Act and a statutory penalty if the requirement is not met. The

comptroller agrees with the comment and adopts changes to give the parties discretion to allow the determination made by the comptroller's office through the penalty process in Tax Code, §313.0276 to also serve as an indicator of breach. However, new optional §9.7 only relates to the breach event in §9.1.C and not to §9.1.D because Tax Code, §313.0276 does not apply to new qualifying jobs committed on Schedule C, just new qualifying jobs required by the Act.

In their comments on a new §9.7, Mr. O'Hanlon and Mr. Larsen recommend adding a new section providing a remedy for other breaches related to failure to create the committed number of new qualifying jobs or failure to pay required wages for non-qualifying jobs. The comptroller responds that Tax Code, §313.0276 only applies to the material breach in §9.1.C, and does not apply to other material breaches listed in §9.1. Tax Code, §313.0276 creates a penalty for failure to comply with statutory job-creation requirements. It does not apply to other Act or agreement requirements. However, the comptroller recognizes that the parties may include a remedy for the material breach event in §9.1.D. The comptroller adopts an optional §9.8, a remedy patterned after the remedy provisions frequently included in agreements for limitation of appraised value executed prior to the adoption of the Form Agreement.

Mr. O'Hanlon and Mr. Larsen suggest changing the amount of time a school district's board of trustees has in which to amend the application and agreement, in §10.2.B.iii of the Form Agreement, from 120 days to 150 days after the request is filed. The comptroller agrees with this comment and adopts this change.

Mr. Larsen recommends amending §10.2 to "make it clear that the certificate of limitation decision will be based on the original 'determining factor' analysis," one that will not be conducted at the time of the amendment or expiration of the deferral period. In response to this comment, the comptroller adds new subsection E, which clarifies when an additional determination must be made.

Mr. O'Hanlon suggests deleting §10.2.C.iii, which requires any amendment of the application or agreement to "define minimum eligibility requirements for the recipient of limited value" because "any amendment would be subject to the terms of the original agreement." The comptroller agrees with this comment and adopts this change.

Mr. Larsen and Mr. O'Hanlon comment that language needs to be added to address collateral assignments or assignments for the benefit of creditors. The comptroller responds that, although assignments due to loan default or other condition of a lending agreement may occur, the State Auditor's Office (SAO), in their 2014 audit report, expressed concern over allowing value limitation agreements to be assigned to any entity that does not meet the statutory requirements. Specifically, the SAO found that "the agreements did not specify that the new business must be eligible to receive an agreement" or that the "school board approve the transfer of the agreements. As a result, there is a risk that the agreements could be transferred to a business that does not meet the eligibility requirements in Texas Tax Code, Chapter 313." The comptroller included all assignments in the Form Agreement to address the SAO's stated concerns. At the same time, Mr. Larsen expresses concerns that "many financing entities require the ability to succeed to a borrower's rights in the event of a default." Additionally, Mr. O'Hanlon comments that "a deed of Trust or a UCC1 [Uniform Commercial Code Financial Statement] or security interest" are not assignments and the Form Agreement should not require these agreements to go through the amendment process detailed in §10.2. The comptroller notes that other sections of the Form Agreement allow the school district to determine if an applicant meets eligibility requirements under the Act. For example, §8.4 of the Form Agreement requires the applicant to provide information reasonably necessary to determine whether the applicant is in compliance with its rights, obligations or responsibilities under the agreement. The comptroller suggests that, at a minimum, the school district must be notified if the applicant is going to assign its interests so the school district can request data under §8.4 to determine compliance. The

comptroller substantially adopts the language proposed by Mr. O'Hanlon and also adds §10.3.C, which requires that the school district and the comptroller are appropriately notified of any assignment to a creditor and requires the creditor to comply with the other provisions of the agreement.

Mr. O'Hanlon suggests deleting language in §10.9.C, indicating that the agreement is the joint product of the parties, because this statement is not wholly accurate since the agreement is a form agreement. The comptroller agrees with this comment and adopts this change.

Mr. Kennedy and Mr. Larsen comment that the language of §10.9.D (now §10.9.C) improperly causes the Form Agreement and the comptroller's rules to prevail over the executed agreement. They also recommend that the Act should be applied as it existed at the time the agreement was executed and changes to the Act should not apply to the agreement. The comptroller agrees that the Form Agreement should not prevail over the executed agreement and therefore has deleted the provision in §10.9 relating to the Form Agreement. However, since the comptroller's rules prevail over the executed agreement, language requiring the comptroller's rules to prevail are being retained in the Form Agreement. But the provision is changed so that only the rules that exist at the time the Agreement is executed (except as allowed in the definition of qualified property in §1) will prevail over the executed agreement. The agreement should not limit the legislature's authority to make changes that affect the parties to this agreement, such as changes to compliance and verification requirements under the Act. As such, the comptroller does not accept changes that would prevent future changes to the Act from prevailing over the executed agreement.

Mr. O'Hanlon suggests deleting the language in §10.14.A and §10.14.B indicating that the school district and its officials do not intend to give any economic benefit because that is what the agreement does. The comptroller adopts these changes.

The comptroller corrects typographical errors in the rules by substituting a colon for a semicolon in §9.1051(14)(A), and adding "and" to the end of §9.1054(h)(1)(A).

The comptroller makes the following non-substantive changes to the Form Agreement:

1. To correct typographical errors, deletes "and" from the third "WHEREAS" clause; changes "§313.021(2)" to "§313.021(3)" in the eleventh "WHEREAS" clause; removes the underline from the last "WHEREAS" clause; changes "obligation" to "obligations" in §2.3.F; substitutes "maintained" for "maintain" in §2.5.B; adds "\$" in §2.5.C (formerly §2.5.D); deletes "the" from between "protect" and "future" in §2.6.A and §9.1.F; adds a colon between "STATEMENT" and the quotation mark in §2.6.E; between the words "describe" and "Exhibit 2," changes "on" to "in" in §3.2; changes "operations begin" to "operation begins" in §3.4; deletes "subsection" in §3.5; changes "Sections" to "Section" in §9.5; deletes "the" from between "of" and "any" in §10.3.A; changes "§10.8" to "§10.7" in §10.7; and renumbers "§10.15" as "§10.16";
2. to ensure consistency throughout the Form Agreement, changes "Insert Name of County" to "Insert County Name" in the definition of "County" in §1.1; changes "by the end of the Qualifying Time Period" to "during the Qualifying Time Period" in §2.5.A; deletes "above" and "below" after certain section numbers; changes "form agreement" to "Agreement" in Articles IV, V, and VI; standardizes the numbering of paragraphs and the capitalization of terms; adds "the" before the words "District," "Applicant," "Application," and "Comptroller," where appropriate; and lists all statutory references and references to portions of the Form Agreement using the same format;
3. changes references to specific sections in the Form Agreement, when needed, to account for renumbered sections;

4. changes the article number in Articles IV, V, and VI to "§1.2 of this Agreement" to correctly instruct the parties as to where to add any additional definitions and adds brackets around the text of these articles to indicate that they include instructions or optional language;
5. clarifies that certain language in §6.1 must be used if no Supplemental Payments will be made;
6. deletes the web address listed in §8.2 because it is subject to change;
7. deletes the reference to §9.1060(19) in §9.1.Q (now §9.1.P) because that provision is no longer included in the adopted rules;
8. inserts "of" between "behalf" and "the District" in §6.1 and "receipt of" between "Within seven (7) days of" and "such document" in §10.11.A to supply words that were missing from the original agreement;
9. corrects punctuation errors;
10. substitutes "RFP" for "Agreement" in §10.15 to correct a reference; and
11. removes "on the dates indicated on the form," in §9.1.J relating to failure to submit reports to remove a possible breach that was inadvertently created in the agreement (removing this requirement gives a school district the discretion to accept a report that is a few days late without it constituting a breach).

The amendments and new section are adopted under Tax Code, §313.027, which authorizes the comptroller to prescribe the form of an agreement for limitation on appraised value, and §313.031, which authorizes the comptroller to adopt rules necessary for the implementation and administration of Tax Code, Chapter 313.

The amendments and new section implement Tax Code, Chapter 313.

<rule>

§9.1051. Definitions.

The following phrases, words and terms, when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise. Words defined in Tax Code, Chapter 313 and not defined in this subchapter shall have the meanings provided by Tax Code, Chapter 313.

(1) Agreement--The written agreement between the governing body of a school district and the approved applicant on the form adopted by reference in §9.1052 of this title (relating to Forms) to implement a limitation on the appraised value for school district maintenance and operations ad valorem property tax purposes on an entity's qualified property, required by Tax Code, §313.027(d).

(2) Applicant--An entity that has applied for a limitation on appraised value for school district maintenance and operations ad valorem property tax purposes on the entity's property as provided by Tax Code, Chapter 313.

(3) Application--An application for limitation of appraised value limitation for school district maintenance and operations ad valorem property tax purposes on an entity's qualified property on the form adopted by reference in §9.1052 of this title, the schedules attached thereto, and the documentation submitted by an entity for the purpose of obtaining an agreement for a limitation on appraised value from a school district.

(4) Application amendment--Information submitted by an applicant intended to be considered as part of or in support of the application that amends by replacing information that was previously submitted by applicant.

(5) Application supplement--Information submitted by an applicant intended to be considered as part of or in support of the application that has not been previously submitted.

(6) Approved applicant--An applicant whose application has been approved by a school district for a limitation on appraised value agreement according to the provisions of Tax Code, Chapter 313, including any assignees of that applicant.

(7) Application review start date--The later date of either the date on which the school district issues its written notice that an applicant has submitted a completed application or the date on which the comptroller issues its written notice that an applicant has submitted a completed application.

(8) Appraisal district--The county appraisal district that would appraise the property which is the subject of an application.

(9) Appraised value--The value of property as defined by Tax Code, §1.04(8).

(10) Completed application--An application in the form and number and containing all the information required pursuant to §9.1053 of this title (relating to Entity Requesting Agreement to Limit Appraised Value) that has been determined by the school district and the comptroller to include all minimum requirements for consideration.

(11) Comptroller--The Texas Comptroller of Public Accounts or the designated representative of the Texas Comptroller of Public Accounts acting on behalf of the comptroller.

(12) Entity--Any entity upon which a tax is imposed by Tax Code, §171.001 including a combined group as defined by Tax Code, §171.0001(7) or members of a combined group,

provided however, an entity as defined herein does not include a sole proprietorship, partnership or limited liability partnership.

(13) Economic Development and Analysis Division or ED&A--The Economic Development Division and Analysis Division of the comptroller's office, or the division of the comptroller's office responsible for the administration of Tax Code, Chapter 313, acting through the designated division director or a representative thereof.

(14) Non-qualifying job--A permanent position of employment to perform work:

(A) that includes at a minimum the following requirements:

(i) that is based on the qualified property;

(ii) that is in direct support of activity identified in Tax Code, §313.024(b);

(iii) for at least 1,600 hours a year;

(iv) over which the applicant has significant degree of control of:

(I) the creation of the job;

(II) the job description;

(III) the job characteristics or performance of the job through either a business, contractual or vendor relationship; and

(B) is not a qualifying job as that term is defined in Tax Code, §313.021(3) and these rules.

(15) Qualified investment--Property that meets the requirements of Tax Code, §313.021(1).

(16) Qualified property--Land, new building, or new improvement erected or affixed to the land after the application review start date, or eligible tangible personal property first placed in service after the application review start date that:

(A) meets the requirements of Tax Code, §313.021(2), and that is used either as an integral part, or as a necessary auxiliary part, in manufacturing, research and development, a clean coal project, an advanced clean energy project, renewable energy electric generation, electric power generation using integrated gasification combined cycle technology, nuclear electric power generation, a Texas Priority Project, or a computer center;

(B) is clearly distinguished from any existing property and clearly distinguished from any proposed property that is not a new improvement;

(C) is separate from, and not a component of, any existing property;

(D) if buildings or improvements, did not exist before the application review start date or if tangible personal property, was first placed in service after the application review start date;

(E) is not used to renovate, refurbish, upgrade, maintain, modify, improve, or functionally replace existing buildings or existing improvements;

(F) does not replace or modify existing buildings other than expansion of an existing building;
and

(G) is not used solely for the transportation of product prior to the commencement, or subsequent to the completion, of an applicable qualifying activity described in subparagraph (A) of this paragraph.

(17) School district--A school district that has received an application for a limitation on appraised value pursuant to Tax Code, Chapter 313 or the designated representative of the school district acting on behalf of the school district.

(18) SOAH--State Office of Administrative Hearings.

(19) Substantive document--A document or other information or data in electronic media determined by the comptroller to substantially involve or include information or data significant to an application, the evaluation or consideration of an application, or the agreement or implementation of an agreement for limitation of appraised value pursuant to Tax Code, Chapter 313. The term includes, but is not limited to, any application requesting a limitation on appraised value and any amendments or supplements, any economic impact evaluation made in connection with an application, any agreement between applicant and the school district and any subsequent amendments or assignments, any school district written finding or report filed with the comptroller as required under this subchapter, and any completed Annual Eligibility Report (Form 50-772A) submitted to the comptroller.

(20) Agreement holder--An entity that has executed an agreement with a school district.

(21) Average weekly wage for manufacturing jobs--Either the average weekly wage:

(A) for all jobs primarily engaged in activities described in Sectors 31 - 33 of the 2007 North American Industry Classification System in a county as identified by the Texas Workforce Commission's Quarterly Employment and Wages (QCEW) webpage at <http://www.tracer2.com/cgi/dataanalysis/AreaSelection.asp?tableName=Industry>; or

(B) for all manufacturing jobs or if the information for subparagraph (A) of this paragraph is not available, as determined by data published annually by the Texas Workforce Commission for the purposes of Tax Code, Chapter 313 for each Council of Government Region, based on Bureau of Labor Statistics, Texas Occupational Employment and Wages (OES) data, as it is posted at <http://www.tracer2.com/admin/uploadedPublications/COGWages.pdf>.

(22) Average weekly wage for non-qualifying jobs--The average weekly wage as identified by the Texas Workforce Commission Quarterly Employment and Wages (QCEW) average weekly wages for all private industries for the most recent four quarterly periods for which data is available at the time that an application is deemed complete, as it is posted at <http://www.tracer2.com/cgi/dataanalysis/AreaSelection.asp?tableName=Industry>.

(23) First placed in service--The first use of the property by the agreement holder.

(24) New improvement--A building, structure, or fixture that, after the application review start date:

(A) is a discrete unit of property erected on or affixed to land eligible to be qualified property; and

(B) is not erected or affixed as part of maintenance, renovation, refurbishment, improvement, modification, or upgrade of existing property, nor is newly added or proposed to be added

property functionally replacing existing property, provided however that a proposed improvement may be considered a new improvement if it is an addition to an existing building that will contain new tangible personal property that did not exist before the application review start date.

(25) Per capita income--Per capita money income in the past 12 months as determined by the United States Census Bureau and reported at its website <http://quickfacts.census.gov/qfd/states/48000.html>.

(26) Strategic investment area--An area that is:

(A) a county within this state with unemployment above the state average and per capita income below the state average;

(B) an area within this state that is a federally designated urban enterprise community or an urban enhanced enterprise community; or

(C) a defense economic readjustment zone designated under Government Code, Chapter 2310.

(27) Texas Economic Development Act Agreement--The form, adopted by reference in §9.1052 of this title, which provides a template for the terms of an agreement to implement a limitation on appraised value on property within a school district and that has the title Agreement For Limitation On Appraised Value Of Property For School District Maintenance And Operations Taxes.

(28) Texas Priority Project--A project on which the applicant commits to place in service qualified investment of more than \$1 billion during the qualifying time period, based on the comptroller review of the application submitted by the school district.

(29) Unemployment--The most recent calendar year unemployment rate, not seasonally adjusted, as determined by the Labor Market & Career Information Department (LMCI) of the Texas Workforce Commission and reported at its website <http://www.tracer2.com/cgi/dataanalysis/AreaSelection.asp?tableName=Labforce>.

(30) Qualifying job--A permanent position of employment that includes at a minimum the following requirements:

(A) provides work for at least 1600 hours a year;

(B) is in direct support of activity identified in Tax Code, §313.024(b);

(C) is based on the qualified property;

(D) is a job over which the applicant has significant degree of control of:

(i) the creation of the job;

(ii) the job description;

(iii) the job characteristics or performance of the job through either a business, contractual or vendor relationship;

(E) is covered by a group health benefit plan for which the applicant offers to pay at least 80% of the premiums or other charges assessed for employee-only coverage under the plan, regardless of whether an employee may voluntarily waive the coverage;

(F) pays at least 110% of the county average weekly wage for manufacturing jobs in the county where the job is located;

(G) that has not been transferred from another part of the state; and

(H) that has not been created to replace a previous employee.

§9.1052. Forms.

(a) The comptroller adopts by reference the following forms:

(1) Application for Appraised Value Limitation on Qualified Property (Form 50-296A);

(2) Annual Eligibility Report (Form 50-772A);

(3) Biennial Progress Report for Texas Economic Development Act (Form 50-773A);

(4) Job Creation Compliance Report (Form 50-825);

(5) Biennial School District Cost Data Request (CDR) (Form 50-827); and

(6) Texas Economic Development Act Agreement (Form 50-826).

(b) Copies of the forms are available for inspection at the office of the Texas Register or may be obtained from the Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711-3528. The forms may be viewed or downloaded from the comptroller's web site, at http://www.texasahead.org/tax_programs/chapter313/legal.php. Copies may also be requested by calling our toll-free number, (800) 252-9121.

(c) In special circumstances, a school district may obtain prior approval in writing from the comptroller to use an application or agreement form that requires additional information, or sets out the required information in different language or sequence than that which this section requires.

§9.1053. Entity Requesting Agreement to Limit Appraised Value.

(a) Initial application contents. To request a limitation on appraised value for school district maintenance and operations ad valorem tax purposes pursuant to Tax Code, Chapter 313, an applicant shall file a completed application with the school district in which the qualified property will be located.

(1) A completed application shall consist of, at a minimum, the following items:

(A) the comptroller's current application form and Schedules A1, A2, B, C and D attached to the application form with all information boxes filled in with the information on which applicant intends to rely including but not limited to:

(i) a specific and detailed description of the proposed qualified property to which the appraised value limitation will apply sufficient to clearly distinguish the subject property from property to

which the limitation does not apply and to establish that the property meets the criteria of qualified property pursuant to these rules and Tax Code, §313.021(2);

(ii) a specific and detailed description of the investment described in Tax Code, §313.021(1) that is proposed to be made in the property subject to the appraised value limitation and sound, good faith estimates of the dollar value of intended investment sufficient to establish that the investment meets minimum criteria for qualified investment pursuant to Tax Code, §313.023 or §313.053 if applicable, during the proposed qualifying time period;

(iii) if the land upon which the qualified property will be located contains existing improvements or tangible personal property, a specific and detailed description of the tangible personal property, buildings, or permanent, non-removable building components (including any affixed to or incorporated into real property) on the land that is sufficient to distinguish existing property from the proposed new improvements and any proposed property that is not new improvements which may include maps, surveys, appraisal district values and parcel numbers, inventory lists, property lists, model and serial numbers of existing property, or other information of sufficient detail and description to locate all existing property within the boundaries of the real property which is subject to the agreement; provided however, that the date of appraisal shall be within 15 days of the date the application is received by the school district;

(iv) the total number of any jobs related to construction or operation of the facility that the applicant chooses to disclose for the purpose of calculating the economic impact of the project;

(v) the total number of qualifying jobs the applicant commits to create and maintain during the full term of the agreement and a schedule which identifies the number of qualifying jobs created and maintained in each year of the agreement;

(vi) the wages, salaries, and benefits applicant commits to provide for each qualifying job;

(vii) the total number of non-qualifying jobs the applicant estimates it will create and maintain during the full term of the agreement and a schedule which identifies the number of non-qualifying jobs created and maintained in each year of the agreement;

(viii) the average wages the applicant estimates it will provide for non-qualifying jobs;

(ix) a statement:

(I) that for the purposes of this statement, "payments to the school district" include any and all payments or transfers of things of value made to the school district or to any person or persons in any form if such payment or transfer of thing of value being provided is in recognition of, anticipation of, or consideration for the agreement for limitation on appraised value; and

(II) as to whether:

(-a-) the amount of any and all payments or transfers made to the school district may result in payments that are or are not in compliance with Tax Code, §313.027(i); or

(-b-) as to whether the method for determining the amount may result in payments to the school district that are or are not in compliance with Tax Code, §313.027(i); and

(x) a description of the real property on which the intended investment will be made, identified additionally by the county appraisal district parcel number;

(B) such other written documents containing information on which applicant relies to qualify for and obtain a limitation on appraised value pursuant to Tax Code, Chapter 313;

(C) such other written documents containing information reasonably requested by either the school district or the comptroller which shall be provided within 20 days of the date of the request, provided however the applicant may request up to 10 additional days to provide the requested information;

(D) information identifying the applicant, and if applicant is a combined group, identifying each such combined group's members that intend to own a direct interest in the property subject to the proposed agreement, by:

(i) official name, street address, city, county, state and mailing address, if different from the street address, of the official place of business of the applicant and, if the applicant is a combined group, of each such combined group's members that intend to own a direct interest in the property subject to the proposed agreement;

(ii) designation of an authorized representative for the applicant and, if the applicant is a combined group, for each such combined group's members that intend to own a direct interest in the property subject to the proposed agreement; and

(iii) for each authorized representative, and if the applicant is a combined group for each such combined group's members that intend to own a direct interest in the property subject to the proposed agreement, provide telephone number, email address, street address, city, county, state, and mailing address if different from the street address;

(E) the signature of applicant's authorized representative(s) by which applicant confirms and attests to the truth and accuracy of the information submitted in the application to the best knowledge and belief of applicant and its representative(s);

(F) the total application fee required by the school district with which the application will be filed;

(G) a statement as to whether or not the project is an expansion of an existing operation on the land which will become qualified property, and if so, a description of the nature of the existing operation, and the nature of the expansion, including an explanation of how the expansion affects or interacts with current operations;

(H) a statement specifying the beginning date of the limitation period, which must be January 1 of the first tax year that begins after one of the following:

(i) the date of the completed application;

(ii) the date of the end of the qualifying time period, provided however that such date will begin no later than the beginning of the limitation period; or

(iii) the date commercial operations are to begin at the site of the project;

(I) a statement regarding the location and nature of other facilities that the applicant operates in the state, and a detailed description of any such facilities that will provide inputs to or use outputs from the project that is the subject of the application;

(J) a detailed description of any state and local incentives for which the applicant intends to apply; and

(K) any information that the applicant requests the comptroller to consider in making the determination under Tax Code, §313.026(c)(2) that the limitation on appraised value is a determining factor in the applicant's decision to invest capital and construct the project in the state, which may include:

(i) other locations not in Texas that the applicant considered or is considering for the project;

(ii) capital investment and return on investment information in comparison with other alternative investment opportunities; or

(iii) information related to the applicant's inputs, transportation and markets.

(2) The completed application contents shall be provided in the following formats:

(A) one original hard copy of the completed application in a three ring binder with tabs separating each section of the documents submitted; and

(B) an electronically digitized copy, formatted in searchable pdf format or other format acceptable to the comptroller, certified by the applicant as containing the identical information, maps, and schedules as the original hard copy. The digitized copy shall include:

(i) schedules A1, A2, B, C, and D in Microsoft Excel format; and

(ii) high-resolution maps and graphics (300 dpi or higher).

(3) The application shall be submitted in any manner acceptable to the comptroller.

(b) Optional application requests. An applicant may include in an application:

(1) a request that the school district waive the requirement of Tax Code, §313.021(2)(A)(iv)(b) or §313.051(b), whichever is applicable, to create new jobs. In order for a completed application to include a job waiver request, applicant shall submit:

(A) a specific request to waive the job requirement of the applicable Tax Code section included with the application that includes all the minimum requirements set forth in subsection (a) of this section; and

(B) separated and clearly marked within the application materials, documentation on which applicant intends to rely that demonstrates that the applicable jobs creation requirement of the applicable Tax Code section exceeds the industry standard for the number of employees reasonably necessary for the operation of the facility of applicant that is described in the application; or

(2) a request to begin the qualifying time period on a date that is after the date that the application is approved. In order for a completed application to include a qualifying time period deferral request, applicant shall submit:

(A) specific information identifying the requested qualifying time period within an application that includes all the minimum requirements set forth in subsection (a) of this section; and

(B) all relevant economic information that is related to the impact of the investment during the proposed qualifying time period, the proposed limitation period, and a period of time after the limitation period considered appropriate by the comptroller.

(c) Application changes. At the request of the school district or the comptroller, or with the prior approval of the school district and the comptroller, applicant may submit an application amendment or application supplement at any time after the submission of the initial application. In order to be considered as part of the application, the application amendment or supplement shall:

(1) be submitted in the same form or schedule and manner as the information was initially submitted or should have been initially submitted;

(2) include a date for the submission and a sequential number identifying the number of submissions made by applicant;

(3) have the signature of the authorized representative(s) by which applicant confirms and attests to the truth and accuracy of the information submitted in the application amendment or supplement, as applicable, to the best knowledge and belief of applicant and its representative(s);
and

(4) be submitted before the 120th day after the application was accepted by the school district or within another time period as provided in writing by the comptroller.

(d) Authorized representative(s). The person(s) identified in the application as applicant's authorized representative(s) shall serve as the person(s) to whom all correspondence and notifications from the school district and comptroller shall be sent. Notwithstanding subsection

(c) of this section, applicant may change its authorized representative(s) if applicant submits to the school district and the comptroller a letter that provides the name of the new authorized representative(s), street and mailing address, telephone number, and official title, if any.

(e) Information confidentiality. At the time that applicant submits its application, application amendment, or application supplement, applicant may request that all or parts of such document not be posted on the internet and not otherwise be publicly released. In order to make such request, applicant shall:

(1) submit a written request that:

(A) specifically lists each document or portion of document and each entry in any form prescribed by the comptroller that applicant contends is confidential; and

(B) identifies specific detailed reasons stating why applicant believes each item listed should be considered confidential and identifies any relevant legal authority in support of the request;

(2) segregate the documents which are subject to the request from the other documents submitted with the application, application amendment, or application supplement that are not subject to the request; and

(3) adequately designate the documents subject to the request as "confidential."

(f) Continued eligibility for value limitation. In order to obtain and continue to receive a limitation on appraised value pursuant to Tax Code, Chapter 313, an applicant shall:

(1) have a completed application approved by the governing body of the school district in compliance with §9.1054(f) of this title (relating to School District Application Review and Agreement to Limit Appraised Value);

(2) at least 20 days prior to the meeting at which the governing body of the school district is scheduled to consider the application, provide to the school district and the comptroller a Texas Economic Development Act Agreement, as specified in §9.1052(a)(6) of this title, with terms acceptable to the applicant;

(3) if the applicant includes a combined group or members of the combined group, have the agreement executed by the authorized representative of each member of the combined group that owns a direct interest in property subject to the proposed agreement by which such members are jointly and severally liable for the performance of the stipulations, provisions, terms, and conditions of the agreement;

(4) comply with all stipulations, provisions, terms, and conditions of the agreement for a limitation on appraised value executed with the school district, this subchapter, and Tax Code, Chapter 313;

(5) be and remain in good standing under the laws of this state and maintain legal status as an entity, as defined in this subchapter;

(6) owe no delinquent taxes to the state;

(7) maintain eligibility for limitation on appraised value pursuant to Tax Code, Chapter 313; and

(8) provide to the school district, the comptroller, and the appraisal district any change to information provided in the application, including but not limited to:

(A) changes of the authorized representative(s);

(B) changes to the location and contact information for the approved applicant including all members of the combined group participating in the limitation agreement;

(C) copies of any valid assignments of the agreement and contact information for authorized representative(s) of any assignees.

§9.1054. School District Application Review and Agreement to Limit Appraised Value.

(a) Application fee. Prior to accepting an application for an agreement for limitation on appraised value pursuant to Tax Code, Chapter 313, Subchapter B, the governing body of a school district by official action shall establish a reasonable nonrefundable application fee to be paid by an applicant who applies to the school district for a limitation on the appraised value of applicant's property under such subchapter. The amount of the fee shall not exceed the estimated cost to the district of processing and acting on an application. The total fee shall be paid at time the application is submitted to the school district. Any fees not accompanying the original application shall be considered supplemental payments.

(b) Initial review. If a school district receives a completed application, amended application, or supplemental application for property tax limitation within its boundaries, the school district shall submit to the comptroller, not later than 7 days after receiving it, a copy of the following documents:

(1) the application;

(2) an economic analysis, if any;

(3) application amendment;

(4) application supplement; and

(5) proof of payment of the total filing fee required by the school district.

(c) Acting on a completed application. If the governing body of the school district by official action elects to consider an application and determines that the application received is a completed application, the school district shall:

(1) provide written notice to the applicant and to the comptroller, with a copy to the appraisal district, that the school district has received and will be considering a completed application. The notice shall include:

(A) the date on which the application was received;

(B) the date on which the governing body elected to consider the application; and

(C) the date on which the school district determined that applicant has submitted a completed application;

(2) at the time the school district provides notice of a completed application, deliver to the comptroller:

(A) a copy of the completed application including all material required by §9.1053(a) and, if applicable (b), of this title (relating to Entity Requesting Agreement to Limit Appraised Value); and

(B) a request to the comptroller to provide an economic impact evaluation;

(3) if the school district maintains a generally accessible Internet web site, provide a clear and conspicuous link on its web site to the Internet web site maintained by the comptroller where substantive documents for the value limitation application for such school district are posted;

(4) on request of the comptroller, provide such written documents containing information requested by the comptroller as necessary for the consideration of a limitation on appraised value pursuant to Tax Code, Chapter 313 within 20 days of the date of the request; and

(5) not later than 151 days after the application review start date, present to the governing body of the school district for its consideration:

(A) the completed application that has been submitted by applicant;

(B) the economic impact analysis submitted by the comptroller;

(C) the comptroller certificate for a limitation or written explanation for not issuing a certificate; and

(D) a limitation agreement that includes all stipulations, provisions, terms, and conditions required by subsection (g) of this section that is acceptable to the applicant.

(d) Extending time period for action. The governing body of the school district may extend the time period to approve a completed application required by subsection (c)(5) of this section only if:

(1) either:

(A) an economic impact analysis has not been submitted to the school district by the comptroller;
or

(B) by agreement with applicant; and

(2) notice of the extension is provided to the comptroller within 7 days of the decision to provide the extension.

(e) Application changes after the notice of completed application. If a school district receives an amended application or a supplemental application from an applicant after the school district has prepared or sent written notice that the applicant has submitted a completed application, the school district shall either:

(1) reject the amended application, supplemental application, or application, in whole or in part, and discontinue consideration of any submission by applicant;

(2) with the written concurrence of the comptroller, consider the completed application, as amended or supplemented, before the 151st day from the application review start date; or

(3) review the documents submitted by applicant, issue an amended written notice of a completed application, and present the amended application to the governing body of the school district in the manner and time period authorized by subsection (c)(5) of this section.

(f) Application with comptroller certificate for a limitation. When presented a completed application pursuant to subsection (c)(5) of this section for which the comptroller has submitted a comptroller certificate for a limitation, the governing body of the school district shall either:

(1) by majority vote adopt a written resolution approving the application which shall include:

(A) written findings:

(i) as to each criterion listed in §9.1055(d)(3)(B) - (D) of this title (relating to Comptroller Application Review and Agreement to Limit Appraised Value);

(ii) as to the criteria required by Tax Code, §313.025(f-1) if applicable;

(iii) that the information in the application is true and correct; and

(iv) that applicant is eligible for the limitation on the appraised value of the entity's qualified property;

(B) a determination that granting the application is in the best interest of the school district and this state; and

(C) designate and direct a representative of the governing body of the school district to execute the agreement for property tax limitation presented by the approved applicant that complies with this subchapter and Tax Code, Chapter 313;

(2) by majority vote disapprove the application; or

(3) take no official action and the application shall be considered disapproved on the 151st day after the application review start date.

(g) Agreement for limitation on appraised value. Pursuant to the provisions of Tax Code, Chapter 313 and this subchapter, in order to implement a limitation on the appraised value for school district maintenance and operation tax purposes on the approved applicant's qualified property that has been approved by the governing body of the school district, at the time of the approval of the application, the authorized representative of the school district and the approved applicant shall execute a Texas Economic Development Act Agreement, as specified in §9.1052(a)(6) of this title.

(h) Limitation agreement with deferred qualifying time period. If an agreement for limitation on appraised value includes a provision in which the qualifying time period starts more than one year after the date that the application is approved, no earlier than 180 days and no later than 90 days prior to the start of the deferred qualifying time period, the school district shall:

(1) provide the comptroller:

(A) copies of any documents or other information received from the applicant; and

(B) after reviewing documents and information provided by the applicant, either:

(i) a written acknowledgment of receiving the application amendment or supplement; or

(ii) a statement that no such amendment or supplement has been submitted; and

(2) if the comptroller provides:

(A) a comptroller certificate for a limitation with conditions different from the existing agreement, the governing body shall hold a meeting and determine whether to amend the agreement to include the conditions required by the comptroller or terminate the agreement; or

(B) a written explanation of the comptroller's decision not to re-issue a certificate, the school district shall terminate the agreement.

(i) Compliance and enforcement.

(1) The school district shall provide to the comptroller:

(A) any documents that reasonably appear to be substantive documents as defined in this subchapter; and

(B) within seven days of executing the agreement, a copy of the executed agreement and any attachments thereto.

(2) The school district shall provide a copy of the executed agreement to the appraisal district.

(3) The school district shall comply with and enforce the stipulations, provisions, terms, and conditions of the agreement for limitation of the appraised value, this subchapter, and Tax Code, Chapter 313.

(4) To determine and obtain compliance with each agreement, for each calendar year during the term of the agreement the school district shall require the approved applicant to submit:

(A) either:

(i) the information necessary to complete the Annual Eligibility Report, adopted by reference in §9.1052 of this title (relating to Forms); or

(ii) a completed Annual Eligibility Report, adopted by reference in §9.1052 of this title;

(B) a completed Job Creation Compliance Report (Form 50-825), adopted by reference in §9.1052 of this title; and

(C) any information required by the State Auditor Office or its designee.

§9.1059. Annual Compliance Review for Qualifying Jobs and Penalties.

(a) The comptroller shall conduct an annual review of new qualifying jobs for each agreement holder to determine whether the agreement holder has created the number of new qualifying jobs required in the agreement and Tax Code, Chapter 313.

(b) To make the determination, the comptroller may:

(1) review any Job Creation Compliance Report (Form 50-825) submitted by the agreement holder;

(2) request additional information from the agreement holder and inspect the facilities of the agreement holder at which the jobs were to be created, subject to 3 day advance notice to the agreement holder and a mutually agreeable time during regular business hours; or

(3) consider any other information that is available to the comptroller.

(c) The comptroller may issue a determination that a job created by the agreement holder is not a new qualifying job if the job is identified as a qualifying job by the agreement holder:

(1) does not provide 1,440 hours of work or more for that year;

(2) was transferred from a facility of the agreement holder from one area of the state to the property covered by the agreement;

(3) was created to replace a previous employee of the agreement holder;

(4) is not covered by a group health benefit plan for which the business offers to pay at least 72% of the premiums or other charges assessed for employee-only coverage under the plan, regardless of whether an employee may voluntarily waive the coverage; or

(5) does not pay an amount equal to at least 99% of the average weekly wage for manufacturing jobs in the county where the jobs are located and calculated pursuant to the method prescribed by Tax Code, §313.021(5) that is elected by the agreement holder in the application.

(d) If the comptroller makes a determination that the agreement holder did not create the required number of qualifying jobs pursuant to subsection (c) of this section, the comptroller shall provide notice to the agreement holder which shall include:

(1) the cause of the adverse determination; and

(2) corrective measures necessary to remedy the non-compliance.

(e) If the comptroller finds that an agreement holder who received an adverse determination in the previous year has failed to remedy the non-compliance following notification of the determination and the comptroller makes an adverse determination with respect to the agreement holder's compliance in the succeeding year:

(1) the comptroller shall provide notice to the agreement holder as required by subsection (d) of this section; and

(2) the agreement holder shall submit to the comptroller a plan to remedy the non-compliance and certify the agreement holder's intent to fully implement the plan not later than December 31 of the year in which the determination is made.

(f) If the comptroller finds that an agreement holder who received an initial adverse determination under subsection (d) of this section and a second adverse determination under subsection (e) of this section, and has failed to remedy the non-compliance following notification of both determinations and the comptroller makes a third adverse determination with respect to the agreement holder's compliance in the year following the second adverse determination under subsection (e) of this section, the comptroller shall impose a penalty on the agreement holder in an amount equal to the amount computed by:

(1) subtracting from the number of qualifying jobs required to be created the number of qualifying jobs actually created as determined in the third adverse determination under this subsection; and

(2) multiplying the amount computed under paragraph (1) of this subsection, by the average annual wage for all jobs in the county during the most recent four quarters for which data is available.

(g) Notwithstanding subsection (f) of this section, if the comptroller finds that an agreement holder has received an adverse determination and the comptroller has previously imposed a penalty on the agreement holder under this section one or more times for the same agreement, the comptroller shall impose a penalty on the agreement holder in an amount equal to the amount computed by multiplying the amount computed under subsection (f) of this section, by an amount equal to twice the average annual wage for all jobs in the county during the most recent four quarters for which data is available.

(h) In no event shall a penalty assessed under this section exceed an amount equal to the difference between the amount of the ad valorem tax benefit received by the agreement holder under the agreement in the preceding year and the amount of any supplemental payments made to the school district in that year.

(i) If the comptroller imposes a penalty on an agreement holder under this section three times, the comptroller may rescind the agreement between the agreement holder and the school district under this chapter.

(j) An adverse determination made under this subsection is subject to the provisions applicable to a deficiency determination under, and subject to the provisions to, Tax Code, §§111.008, 111.0081, and 111.009. A penalty imposed under this subsection is an amount the comptroller is required to collect, receive, administer, or enforce, and the determination is subject to the payment and redetermination requirements of Tax Code, §111.0081 and §111.009. A redetermination under Tax Code, §111.009 of an adverse determination under this section is a contested case as defined by Government Code, §2001.003.

(k) The comptroller shall deposit a penalty collected under this section, including any interest and penalty applicable to the penalty, to the credit of the foundation school fund.

(l) The penalties and procedures set out in this section do not affect the enforcement of any provisions in an agreement for value limitation between the school district and an agreement holder.

§9.1060. Agreement for Limitation on Appraised Value.

Pursuant to the provisions of Tax Code, Chapter 313 and this subchapter, in order to implement a limitation on the appraised value for school district maintenance and operation tax purposes on the approved applicant's qualified property that has been approved by the governing body of the school district, at the time of the approval of the application, the authorized representative of the school district and the approved applicant shall execute a Texas Economic Development Act Agreement, as specified in §9.1052(a)(6) of this title (relating to Forms).

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 4, 2016.

LITA GONZALEZ
General Counsel
Comptroller of Public Accounts
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