

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 12. WEIGHTS AND MEASURES SUBCHAPTER B. DEVICES

4 TAC §12.11

The Texas Department of Agriculture (Department) adopts amendments to §12.11, concerning calibration requirements for commercial liquid measuring devices used in commercial motor fuel sales, without changes to the proposed text as published in the November 20, 2015, issue of the *Texas Register* (40 TexReg 8081). The amendment requires liquid measuring devices used by consumers to fuel motor vehicles to be calibrated by a service technician registered with the Department not later than the facility's weights and measures registration renewal date in 2019, and every two years thereafter.

One comment was received from the Texas Food and Fuel Association (TFFA) in opposition to the proposed amendment. In their comment, TFFA claims that the Department's compliance rate of 96% is actually higher than what is being reported because the National Institute of Standards and Technology (NIST) tolerances are not being recognized. The Department has determined that the compliance rate for retail fuel pumps is 94% (according to inspections performed over the last three fiscal years) and it should be noted that pumps that fall outside of the NIST tolerance in the consumer's favor are not used in the compliance rate calculation. The Department does not believe pumps that are set in the consumer's favor (i.e., giving away fuel) should be used in the compliance rate calculation because doing so would mischaracterize the compliance rate from a consumer protection perspective, as a reasonable consumer would likely not view a pump that was giving away fuel as non-compliant.

TFFA asserts that the Department has failed to comply with Texas Government Code §2006.002, regarding consideration of economic impact on small or micro-economic businesses. The Department disagrees with this comment and responds by stating that the costs associated with the adopted amendments are based on many factors that the Department does not regulate or cannot determine (i.e., meter calibration fees or travel and other service trip surcharges). Therefore, the Department cannot determine the anticipated costs to micro-businesses, small businesses, or individuals required to comply with the rule.

TFFA also asserts that the Department will not be able to effectively ensure compliance with the adopted rule because the annual weights and measures registration will not be tied to the calibration requirement. The Department points out that enforcement will be achieved through analysis of the electronic reporting

data submitted by licensed service companies and scheduling enforcement inspections accordingly, thus boosting compliance with the rule while expanding consumer protection.

TFFA states that the rule will exacerbate an already tight labor market for qualified licensed service technicians because a significant portion of these individuals are not conducting fuel pump calibrations, notwithstanding their licensure for performing these activities. The Department is unable to substantiate this statement, as the Department does not gather this type of information about individual businesses. However, the Department believes that supply and demand will stabilize a labor market imbalance should one occur. Furthermore, the Department has provided a two-year delay in implementation of the rule in order to allow licensed service companies to make appropriate increases in staffing levels to meet the increased demand for services.

While the Department acknowledges TFFA's concerns regarding the rule's impact, the Department believes the changes are necessary for the operation of the program to provide the best service possible at a reasonable cost to the regulated industries while ensuring that the public is afforded the protections the Department statutorily required to, and does provide.

The adoption is pursuant to the Texas Agriculture Code, §13.002 which designates the Department as the agency responsible for weights and measures regulations.

The code affected by the proposal is Chapter 13 of the Texas Agriculture Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 13. CULTURAL RESOURCES

PART 7. STATE PRESERVATION BOARD

CHAPTER 111. RULES AND REGULATIONS OF THE BOARD

13 TAC §§111.25, 111.27, 111.34 - 111.47

The State Preservation Board (board) adopts amendments to §111.25 and §111.27 and new §§111.34 - 111.47, concerning rules and regulations of the board. The amendments and new rules are adopted without changes to the text as proposed in the July 17, 2015, issue of the *Texas Register* (40 TexReg 4501).

The amendments clarify procedures of the board related to monuments and memorials on the Capitol Grounds and regulate animals on the Capitol Grounds. The new rules are necessary to comply with statutory requirements.

The amendment to §111.25 clarifies the type of legislative authorization required for a new monument or memorial to be constructed within the Capitol complex. The amendment to §111.27 prohibits visitors from bringing livestock on the Capitol grounds unless authorized by the board or needed for security purposes.

New §§111.34 - 111.44 regulate the safe movement and parking of vehicles in the Capitol complex. Texas Government Code §411.063 transferred authority over the safe movement and parking of vehicles in the Capitol complex from the Department of Public Safety to the board. The adopted rules are based on the rules that previously regulated the safe movement and parking of vehicles in the Capitol complex as rules of the Department of Public Safety. New §111.45 clarifies the board's sick leave pool procedures. New §111.46 clarifies the bid procedures of the board. New §111.47 clarifies the negotiation and mediation procedures of the board.

The board received no comments concerning the amended and new rules.

The amendments and new rules are adopted under Texas Government Codes §§443.007(b), 411.063, 661.002, 2156.005, and 2260.0052. Texas Government Code §443.007(b) authorizes the board to adopt rules concerning the buildings, their contents, and their grounds. Texas Government Code §411.063 authorizes the board to adopt rules for the safe movement and parking of vehicles within the Capitol complex. Texas Government Code §661.002 directs the board to adopt rules and prescribe procedures relating to the operation of the agency sick leave pool. Texas Government Code §2156.005 authorizes state agencies making purchases to adopt the comptroller's rules related to bid opening and tabulation. Texas Government Code §2260.0052 authorizes state agencies to adopt rules related to negotiation and mediation of certain contract disputes.

No other statutes, articles or codes are affected by the amendments and new rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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John Sneed

Executive Director

State Preservation Board

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 130. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR CAREER AND TECHNICAL EDUCATION

The State Board of Education (SBOE) adopts new §§130.32, 130.68-130.72, 130.117-130.122, 130.144, 130.166, 130.211, 130.234, 130.262, 130.263, 130.285, 130.313, 130.314, 130.343, 130.367, 130.388, 130.389, 130.419, 130.465, and 130.466, concerning Texas essential knowledge and skills (TEKS) for career and technical education (CTE). The sections are adopted without changes to the proposed text as published in the August 7, 2015 issue of the *Texas Register* (40 TexReg 4999) and will not be republished. The adoption adds new second-level practicum courses in 19 TAC Chapter 130, Subchapters A-E and G-P, and a new Advanced Marketing course in 19 TAC Chapter 130, Subchapter N, for implementation in the 2017-2018 school year. The adopted effective date of these new sections is August 28, 2017.

REASONED JUSTIFICATION: In accordance with statutory requirements that the SBOE by rule identify the essential knowledge and skills of each subject in the required curriculum, the SBOE follows a board-approved cycle to review and revise the essential knowledge and skills for each subject. Accordingly, CTE TEKS review committees worked from June-October 2014 and provided the SBOE with recommendations for revisions to the CTE TEKS. Due to the number of CTE courses included in the CTE TEKS review, the SBOE divided the adoption of the CTE TEKS revisions into two portions for review and approval in 2015.

At its April 2015 meeting, as part of its review and approval of the revised CTE TEKS, the SBOE directed the Texas Education Agency (TEA) staff to prepare a new second-level practicum course for each proposed practicum in order to provide an option to districts to award up to three credits for a practicum. The SBOE also directed TEA staff to develop a new Marketing Dynamics course.

The SBOE approved the new second-level practicum courses in proposed new 19 TAC §§130.32, 130.68-130.72, 130.117-130.122, 130.144, 130.166, 130.211, 130.234, 130.262, 130.263, 130.285, 130.313, 130.314, 130.343, 130.367, 130.388, 130.419, 130.465, and 130.466 and a new Advanced Marketing course in proposed new 19 TAC §130.389 for first reading and filing authorization at its July 2015 meeting and for second reading and final adoption at its September 2015 meeting.

The adopted new second-level practicum courses provide districts with added flexibility to offer capstone courses in CTE that will best prepare students for postsecondary success. The adopted new Advanced Marketing course provides districts with an additional marketing course to offer more course options for students.

SUMMARY OF COMMENTS AND RESPONSES. No public comments were received on the Advanced Marketing Course. Following is a summary of the public comment received and

the corresponding response regarding the proposed new second-level practicum courses.

Comment. The Vocational Agriculture Teachers Association expressed concern that extended practicum courses had not been developed for the Career Preparation courses. The commenter stated that not allowing students in these courses to earn up to three credits could affect a significant number of schools in Texas and could possibly limit the effectiveness of the courses.

Response. The SBOE agreed that an extended Career Preparation course should be added to the CTE TEKS and requested that TEA staff prepare TEKS for an extended Career Preparation course for action at a future SBOE meeting.

SUBCHAPTER A. AGRICULTURE, FOOD, AND NATURAL RESOURCES

19 TAC §130.32

STATUTORY AUTHORITY. The new section is adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; §28.00222, which authorizes the SBOE to ensure that at least six advanced career and technical education or technology applications courses are approved to satisfy a fourth credit in mathematics required for high school graduation; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under §28.002.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §§7.102(c)(4), 28.002, 28.00222, and 28.025.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Education Agency

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SUBCHAPTER B. ARCHITECTURE AND CONSTRUCTION

19 TAC §§130.68 - 130.72

STATUTORY AUTHORITY. The new sections are adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the

essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; §28.00222, which authorizes the SBOE to ensure that at least six advanced career and technical education or technology applications courses are approved to satisfy a fourth credit in mathematics required for high school graduation; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under §28.002.

CROSS REFERENCE TO STATUTE. The new sections implement the Texas Education Code, §§7.102(c)(4), 28.002, 28.00222, and 28.025.

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SUBCHAPTER C. ARTS, AUDIO/VIDEO TECHNOLOGY, AND COMMUNICATIONS

19 TAC §§130.117 - 130.122

STATUTORY AUTHORITY. The new sections are adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; §28.00222, which authorizes the SBOE to ensure that at least six advanced career and technical education or technology applications courses are approved to satisfy a fourth credit in mathematics required for high school graduation; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under §28.002.

CROSS REFERENCE TO STATUTE. The new sections implement the Texas Education Code, §§7.102(c)(4), 28.002, 28.00222, and 28.025.

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SUBCHAPTER D. BUSINESS MANAGEMENT AND ADMINISTRATION

19 TAC §130.144

STATUTORY AUTHORITY. The new section is adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; §28.00222, which authorizes the SBOE to ensure that at least six advanced career and technical education or technology applications courses are approved to satisfy a fourth credit in mathematics required for high school graduation; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under §28.002.

CROSS REFERENCE TO STATUTORY. The new section implements the Texas Education Code, §§7.102(c)(4), 28.002, 28.00222, and 28.025.

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SUBCHAPTER E. EDUCATION AND TRAINING

19 TAC §130.166

STATUTORY AUTHORITY. The new section is adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; §28.00222, which authorizes the SBOE to ensure that at least six advanced career and technical education or technology applications courses are approved to satisfy a fourth credit in mathematics required for high school graduation; and §28.025,

which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under §28.002.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §§7.102(c)(4), 28.002, 28.00222, and 28.025.

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SUBCHAPTER G. GOVERNMENT AND PUBLIC ADMINISTRATION

19 TAC §130.211

STATUTORY AUTHORITY. The new section is adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; §28.00222, which authorizes the SBOE to ensure that at least six advanced career and technical education or technology applications courses are approved to satisfy a fourth credit in mathematics required for high school graduation; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under §28.002.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §§7.102(c)(4), 28.002, 28.00222, and 28.025.

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SUBCHAPTER H. HEALTH SCIENCE

19 TAC §130.234

STATUTORY AUTHORITY. The new section is adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; §28.00222, which authorizes the SBOE to ensure that at least six advanced career and technical education or technology applications courses are approved to satisfy a fourth credit in mathematics required for high school graduation; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under §28.002.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §§7.102(c)(4), 28.002, 28.00222, and 28.025.

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SUBCHAPTER I. HOSPITALITY AND TOURISM

19 TAC §130.262, §130.263

STATUTORY AUTHORITY. The new sections are adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; §28.00222, which authorizes the SBOE to ensure that at least six advanced career and technical education or technology applications courses are approved to satisfy a fourth credit in mathematics required for high school graduation; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under §28.002.

CROSS REFERENCE TO STATUTE. The new sections implement the Texas Education Code, §§7.102(c)(4), 28.002, 28.00222, and 28.025.

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SUBCHAPTER J. HUMAN SERVICES

19 TAC §130.285

STATUTORY AUTHORITY. The new section is adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; §28.00222, which authorizes the SBOE to ensure that at least six advanced career and technical education or technology applications courses are approved to satisfy a fourth credit in mathematics required for high school graduation; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under §28.002.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §§7.102(c)(4), 28.002, 28.00222, and 28.025.

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SUBCHAPTER K. INFORMATION TECHNOLOGY

19 TAC §130.313, §130.314

STATUTORY AUTHORITY. The new sections are adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; §28.00222, which authorizes the SBOE to ensure that at least

six advanced career and technical education or technology applications courses are approved to satisfy a fourth credit in mathematics required for high school graduation; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under §28.002.

CROSS REFERENCE TO STATUTE. The new sections implement the Texas Education Code, §§7.102(c)(4), 28.002, 28.00222, and 28.025.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER L. LAW, PUBLIC SAFETY, CORRECTIONS, AND SECURITY

19 TAC §130.343

STATUTORY AUTHORITY. The new section is adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; §28.00222, which authorizes the SBOE to ensure that at least six advanced career and technical education or technology applications courses are approved to satisfy a fourth credit in mathematics required for high school graduation; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under §28.002.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §§7.102(c)(4), 28.002, 28.00222, and 28.025.

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Cristina De La Fuente-Valadez

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Texas Education Agency

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SUBCHAPTER M. MANUFACTURING

19 TAC §130.367

STATUTORY AUTHORITY. The new section is adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; §28.00222, which authorizes the SBOE to ensure that at least six advanced career and technical education or technology applications courses are approved to satisfy a fourth credit in mathematics required for high school graduation; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under §28.002.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §§7.102(c)(4), 28.002, 28.00222, and 28.025.

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SUBCHAPTER N. MARKETING

19 TAC §130.388, §130.389

STATUTORY AUTHORITY. The new sections are adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; §28.00222, which authorizes the SBOE to ensure that at least six advanced career and technical education or technology applications courses are approved to satisfy a fourth credit in mathematics required for high school graduation; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under §28.002.

CROSS REFERENCE TO STATUTE. The new sections implement the Texas Education Code, §§7.102(c)(4), 28.002, 28.00222, and 28.025.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER O. SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS

19 TAC §130.419

STATUTORY AUTHORITY. The new section is adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; §28.00222, which authorizes the SBOE to ensure that at least six advanced career and technical education or technology applications courses are approved to satisfy a fourth credit in mathematics required for high school graduation; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under §28.002.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §§7.102(c)(4), 28.002, 28.00222, and 28.025.

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SUBCHAPTER P. TRANSPORTATION, DISTRIBUTION, AND LOGISTICS

19 TAC §130.465, §130.466

STATUTORY AUTHORITY. The new sections are adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials;

§28.00222, which authorizes the SBOE to ensure that at least six advanced career and technical education or technology applications courses are approved to satisfy a fourth credit in mathematics required for high school graduation; and §28.025, which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under §28.002.

CROSS REFERENCE TO STATUTE. The new sections implement the Texas Education Code, §§7.102(c)(4), 28.002, 28.00222, and 28.025.

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 163. LICENSURE

22 TAC §163.1, §163.2

The Texas Medical Board (Board) adopts amendments to §163.1, concerning Definitions, and §163.2, concerning Full Texas Medical License, without changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7357). The rules will not be republished.

The amendments to §163.1 add definitions for "Active Duty" and "Armed Forces of the United States" and revise definitions for "Military service member," "Military spouse" and "Military veteran." These amendments are in accordance with the passage of SB 1307 (84th Legislature, Regular Session) which amended Chapter 55 of the Texas Occupations Code.

The amendments to §163.2 add language to subsection (d), Alternative Licensing Procedure, expanding subsection (d) to include military service members and military veterans. The amendment also includes language allowing the executive director to waive any prerequisite to obtaining a license for an applicant described in subsection (d)(1) after reviewing the applicant's credentials. These amendments are in accordance with the passage of SB 1307 (84th Legislature, Regular Session) which amended Chapter 55 of the Texas Occupations Code.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice

of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 305-7016



CHAPTER 166. PHYSICIAN REGISTRATION

22 TAC §166.1, §166.2

The Texas Medical Board (Board) adopts amendments to §166.1, concerning Physician Registration, and §166.2, concerning Continuing Medical Education, without changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7359). The rules will not be republished.

The amendment to §166.1 adds new subsection (h) providing that military service members who hold a license to practice in Texas are entitled to two years of additional time to complete any other requirement related to the renewal of the military service member's license. This amendment is in accordance with the passage of SB 1307 (84th Legislature, Regular Session) which amended Chapter 55 of the Texas Occupations Code.

The amendments to §166.2 add the abbreviation "AOA" for the American Osteopathic Association to subsection (c). Language is also added to subsection (d) providing that a licensee will be presumed to have complied with the Medical Board continuing medical education requirements under subsection (a)(1) and (3) if meeting the AOA's Osteopathic Continuous Certification (OCC) program requirements. New subsection (p) is added, which provides that a physician who is a military service member may request an extension of time, not to exceed two years, to complete any continuing medical education requirements. This amendment is in accordance with the passage of SB 1307 (84th Legislature, Regular Session) which amended Chapter 55 of the Texas Occupations Code.

No comments were received regarding adoption of the amendment to §166.1. The Board received one written comment from the American Osteopathic Association in support of the amendment to §166.2.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 171. POSTGRADUATE TRAINING PERMITS

22 TAC §171.5

The Texas Medical Board (Board) adopts amendments to §171.5, concerning Duties of PIT Holders to Report, without changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7361). The rule will not be republished.

The amendments to §171.5 revise subsection (b)(3) by eliminating the word "could" as it relates to a question of the permit holder's impairment.

No comments were received regarding adoption of the amendment.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provide authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 172. TEMPORARY AND LIMITED LICENSES

SUBCHAPTER B. TEMPORARY LICENSES

22 TAC §172.5

The Texas Medical Board (Board) adopts amendments to §172.5, concerning Visiting Physician Temporary Permit, with nonsubstantive changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7362). The text of the rule will be republished.

The Board sought stakeholder input through an email to the Licensure Stakeholder Group on September 25, 2015. No comments were made on the suggested changes to the rule. No comments were incorporated into the proposed rule.

The amendments to §172.5 add language to subsection (a)(2) by requiring an applicant for such permit to have an active medical license in another state, territory, Canadian province, or country and mandates that such license may not be under investigation. Subsections (a)(2) and (b)(1) are further amended to provide that a supervising physician for any Visiting Physician Permit holder may not have an investigation or proceeding pending for the restriction, cancellation, suspension, revocation, or other discipline of the supervising physician's medical license, permit, or authority to practice medicine.

No one appeared to testify at the public hearing held on December 4, 2015 regarding amendments to §172.5. However, the Board received public written comments regarding amendments to §172.5 from the Texas Medical Association (TMA). TMA's comments and the Board's responses are as follows:

Comment: TMA believes that this new proposal relating to the requirement that the supervising physician not have a pending investigation would prevent many competent physicians from acting in a supervisory capacity throughout the duration of an investigation, which could be indeterminate time period for a "pending investigation." In essence, the supervising physician would be restricted from supervising a visiting physician during such time period, even though the supervising physician's license is unrestricted.

Response: While the Board understands TMA's concerns regarding the net effect of disqualifying a physician who is under "investigation" from supervising a visiting physician and the indeterminate time period a physician may be under such "pending investigation," the Board declines to eliminate this requirement and will err on the side of caution and disqualify a physician from supervising a visiting physician if the physician is under an investigation, regardless of the indeterminate time period such investigation may be pending.

Comment: TMA opposes adding the word "investigation" to the list of items that would make a physician ineligible for a visiting temporary physician permit because there is ambiguity as to the meaning of the proposed term "investigation" and how it is defined or interpreted from state to state, territory, province or country.

Response: While the Board understands TMA's concerns regarding the varied definition of the term "investigation" across jurisdictions, the Board declines to eliminate the word "investigation" as requested by TMA and will err on the side of caution and disqualify a physician from supervising a visiting physician if the physician is under investigation, regardless of the jurisdiction's interpretation or definition of such term.

Comment: TMA comments on an apparent drafting error in the proposed rule in reference to the use of the term "applicant." Proposed §172.5(a)(2)(C)(ii) and §172.5(b)(1)(B)(ii), as published, require that the supervising physician "not have an investigation or proceeding pending against the applicant for the restriction, cancellation, suspension, revocation, or other discipline of the applicant's medical license, permit, or authority to practice medicine" and the term "supervising physician" should be used instead of the word "applicant."

Response: The Board agrees with this comment, as it was the intent that the requirements in §172.5(a)(2)(C)(ii) and §172.5(b)(1)(B)(ii) apply to the "supervising physician" not the "applicant." The rule presented to stakeholders and the Board for publication reflected the Board's intent; however, the rule that was published for comment did not reflect the Board's intent.

The Board deleted the reference to "applicant" in subsections (a)(2)(C)(ii) and (b)(1)(B)(ii) as published and replaced it with the word "supervising physician" in order to satisfy the Board's actual intent. The Board determined that such change is nonsubstantive.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

§172.5. Visiting Physician Temporary Permit.

(a) Visiting Physician Temporary Permit - General.

(1) The executive director of the board may issue a permit to practice medicine to an applicant who intends to practice under the supervision of a licensed Texas physician, excluding training in post-graduate training programs:

- (A) for educational purposes;
- (B) to practice charity care to underserved populations in Texas;
- (C) in cases of declared emergency disasters;
- (D) for the provision of forensic psychiatric examinations related to criminal matters; or
- (E) for the provision of specialized medical care for which the applying physician has demonstrated good cause for the issuance of the permit.

(2) In order to be determined eligible for a visiting physician temporary permit the applicant must:

- (A) have an active medical license in another state, territory, Canadian province, or country;
- (B) not have any medical license that is under restriction, disciplinary order, probation, or investigation in another state, territory, Canadian province, or country;
- (C) be supervised by a physician who:
 - (i) has an unrestricted license in Texas;
 - (ii) does not have an investigation or proceeding pending for the restriction, cancellation, suspension, revocation, or other discipline of the supervising physician's medical license, permit, or authority to practice medicine; and
 - (iii) has not been the subject of a disciplinary order, unless the order was administrative in nature;

(D) present written verification from the physician who will be supervising the applicant that the physician will provide continuous supervision of the applicant. Constant physical presence of the physician is not required but the physician must remain readily available; and

(E) present written verification from the supervising physician as to the purpose for the requested permit.

(3) Visiting physician temporary permits shall be valid for no more than ten working days and for a specified locale and purpose. The executive director of the board, in his/her discretion, may extend the length of the temporary permit if the applicant shows good cause for why the extended time is needed.

(b) Visiting Physician Temporary Permit - KSTAR.

(1) The executive director of the board may issue a permit to practice medicine to an applicant who intends to participate in the Texas A&M KSTAR program. In order to be determined eligible for a visiting physician temporary permit, the applicant must:

(A) present written verification from the KSTAR program of acceptance into the program;

(B) be supervised by a physician who:

(i) has an unrestricted license in Texas;

(ii) does not have an investigation or proceeding pending for the restriction, cancellation, suspension, revocation, or other discipline of the supervising physician's medical license, permit, or authority to practice medicine; and

(iii) has not been the subject of a disciplinary order, unless the order was administrative in nature;

(C) present written verification from the physician who will be supervising the applicant that the physician will provide continuous supervision of the applicant. Constant physical presence of the physician is not required but the physician must remain readily available; and

(D) not have been convicted of a felony or have any medical license that is or has been under restriction, disciplinary order, or probation in another state, territory, or Canadian province based on a professional boundary violation, unless otherwise determined eligible by the Board.

(2) Visiting physician temporary permits for participation in the KSTAR program shall be valid for the length of the program. The executive director of the board, in his/her discretion, may extend the length of the temporary permit if the applicant shows good cause for why the extended time is needed.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 175. FEES AND PENALTIES

22 TAC §175.3, §175.4

The Texas Medical Board (Board) adopts an amendment to §175.3, concerning Penalties, and new §175.4, concerning Fee Exemption for Military Service Member, Military Veteran, or Military Spouse, without changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7363). The rules will not be republished.

The amendment to §175.3 adds new paragraph (7), providing that a Military Service Member is exempt from any penalty for failing to renew the license in a timely manner if the individual establishes that such failure to timely renew was because the individual was serving as a military service member. This amendment is in accordance with the passage of SB 1307 (84th

Legislature, Regular Session) which amended Chapter 55 of the Texas Occupations Code.

New §175.4 is added to Chapter 175, thereby exempting Military Service Members, Military Veterans and Military Spouses from license application fees. This new rule is in accordance with the passage of SB 807 (84th Legislature, Regular Session) which amended Chapter 55 of the Texas Occupations Code.

No comments were received regarding adoption of the rules.

The amendment and new rule are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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CHAPTER 178. COMPLAINTS

22 TAC §178.3

The Texas Medical Board (Board) adopts an amendment to §178.3, concerning Complaint Procedure Notification, without changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7364). The rule will not be republished.

The amendment to §178.3 corrects a reference to the Health and Safety Code in subsection (a)(2).

No comments were received regarding adoption of the rule.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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CHAPTER 183. ACUPUNCTURE

22 TAC §183.14

The Texas Medical Board (Board) adopts amendments to §183.14, concerning Acudetox Specialist, without changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7364). The rule will not be republished.

The amendments to §183.14 add language in subsection (b)(4) to clarify that an Acudetox Specialist shall work under the supervision of a current and active licensed Texas physician or licensed Texas acupuncturist and such supervision shall be registered with the board and updated within 30 days of any change in such supervision. The amendment further adds clarifying language to provide that the Acudetox Specialist shall work pursuant to protocols developed by the Acudetox Specialist and supervising physician or acupuncturist and such protocols shall be agreed upon and signed by the supervising licensee and the acudetox specialist, reviewed and signed at least annually and maintained on site. Subsection (j)(3) is also amended to eliminate an incorrect stated amount related to fees for such certification.

No comments were received regarding adoption of the amendment.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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22 TAC §183.25

The Texas Medical Board (Board) adopts new §183.25, concerning Inactive Status License, without changes to the proposed text as published in the July 3, 2015, issue of the *Texas Register* (40 TexReg 4306). The rule will not be republished.

The new section governs the creation of an inactive status license for acupuncture license holders with a current registration permit and license in good standing.

No comments were received regarding adoption of the rule.

The new section is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of

medicine in this state; enforce this subtitle; and establish rules related to licensure. The new section is also authorized by Texas Occupations Code Annotated, §205.101.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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22 TAC §183.26

The Texas Medical Board (Board) adopts new §183.26, concerning Retired License, without changes to the proposed text as published in the July 3, 2015, issue of the *Texas Register* (40 TexReg 4307). The rule will not be republished.

The new section governs the creation of a retired license status for acupuncture license holders who meet certain requirements.

No comments were received regarding adoption of the rule.

The new section is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The new section is also authorized by Texas Occupations Code Annotated, §205.101.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 184. SURGICAL ASSISTANTS

22 TAC §§184.2, 184.4, 184.6, 184.8, 184.21, 184.25

The Texas Medical Board (Board) adopts amendments to §184.2, concerning Definitions; §184.4, concerning Qualifications for Licensure; §184.6, concerning Licensure Documentation; §184.8, concerning License Renewal; §184.21, concerning Impaired Surgical Assistants; and §184.25, concerning Continuing Education, without changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7365). The rules will not be republished.

The amendments to §184.2 add definitions for "Active Duty" and "Armed Forces of the United States" and revise definitions for "Military service member," "Military spouse " and "Military veteran." These amendments are in accordance with the passage of SB 1307 (84th Legislature, Regular Session) which amended Chapter 55 of the Texas Occupations Code.

The amendments to §184.4 add language to expand subsection (c), Alternative Licensing Procedure, to include military service members and military veterans. The amendment also includes language allowing the executive director to waive any prerequisite to obtaining a license for an applicant described in subsection (c)(1) after reviewing the applicant's credentials. These amendments are in accordance with the passage of SB 1307 (84th Legislature, Regular Session) which amended Chapter 55 of the Texas Occupations Code.

The amendment to §184.6 revises language in subsection (b)(3) by arranging existing language to be more clear about the process by which applicants must submit examination verification to the board.

The amendment to §184.8 adds new subsection (h) providing that military service members who hold a license to practice in Texas are entitled to two years of additional time to complete any other requirement related to the renewal of the military service member's license. This amendment is in accordance with the passage of SB 1307 (84th Legislature, Regular Session) which amended Chapter 55 of the Texas Occupations Code.

The amendment to §184.21 revises language in subsection (b) so that it eliminates language referencing rehabilitation orders and adds new language in subsection (b) allowing the board to refer impaired surgical assistants to the Texas Physician Health and Program.

The amendment to §184.25 adds language to subsection (c) clarifying that exemptions sought must be based on the licensee personally meeting the qualifying criteria. The amendment also adds new subsection (m) providing that a surgical assistant who is a military service member may request an extension of time, not to exceed two years, to complete any continuing education requirements. This amendment is in accordance with the passage of SB 1307 (84th Legislature, Regular Session) which amended Chapter 55 of the Texas Occupations Code.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER F. LIMITATION ON APPRAISED VALUE ON CERTAIN QUALIFIED PROPERTIES

34 TAC §§9.1051 - 9.1054, 9.1059, 9.1060

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 in-

dicating 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 days 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.

§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.

§9.1053. *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.

§9.1060. *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).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Lita Gonzalez

General Counsel

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387

