




INTEROFFICE MEMO

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To: J. Winston Krause, Chairman
Carmen Arrieta-Candelaria, Commissioner
Peggy A. Heeg, Commissioner
Doug Lowe, Commissioner
Robert Rivera, Commissioner

From: Bob Biard, General Counsel 

Date: February 4, 2016

Re: Readoption of the Commission's Rules at 16 Texas Administrative Code (TAC) Chapter 401, Administration of State Lottery Act

Attached is a draft order readopting the Commission's rules at 16 TAC Chapter 401 relating to Administration of State Lottery Act, and concluding the review of the Chapter 401 rules. If approved, the substance of the order will be submitted to the *Texas Register* for publication.

On August 27, 2015, the Commission initiated this proceeding pursuant to Texas Government Code Section 2001.039, which requires a state agency to review its rules every four years. The review must include an assessment of whether the reasons for adopting each of the rules continue to exist. The Commission's notice of intent to review Chapter 401 was published in the September 11, 2015 issue of the *Texas Register* (40 TexReg 6165). No comments were received regarding this review.

The draft order states that, as a result of the review, the Commission intends to repeal one lottery game rule (Section 401.323 - "MONOPOLY MILLIONAIRES' CLUB™" Game Rule) because this multi-jurisdiction draw game is no longer offered; and, to amend certain rules governing the duties and obligations of licensed lottery ticket sales agents and lottery security, primarily to conform rule language to current agency procedures, to correct an error in the text of one rule, and to update references to external documents and laws. The Commission also intends to make global amendments to applicable Chapter 401 rules to reflect current lottery game terminology, including replacing the terms "instant ticket" and "instant game" with "scratch ticket" and "scratch ticket game", respectively; and, replacing the terms "on-line ticket" and "on-line game" with "draw ticket" and "draw game", respectively.

The draft order states the Commission intends to propose the repeal of §401.323 and amendments to rules identified as requiring amendments in separate rulemaking proceedings.

Recommendation: Staff recommends that the Commission approve readoption of the Commission's rules at 16 TAC Chapter 401, relating to Administration of State Lottery Act.

TEXAS LOTTERY COMMISSION

ORDER READOPTING 16 TAC CHAPTER 401 RULES

The Texas Lottery Commission (Commission) has reviewed the Commission's rules at 16 TAC Chapter 401 (Administration of State Lottery Act) in accordance with the requirements of Texas Government Code §2001.039 (Agency Review of Existing Rules), and hereby readopts the rules in Chapter 401. As a result of this review, and as discussed below, the Commission has determined some of the rules in Chapter 401 need to be amended and one lottery game rule should be repealed, actions which will be proposed in separate rulemaking proceedings.

Subchapter A (Procurement) includes the following rules:

§401.101 – Lottery Procurement Procedures

§401.102 – Protests of the Terms of a Formal Competitive Solicitation

§401.103 – Protests of Contract Award

§401.104 – Contract Monitoring Roles and Responsibilities

§401.105 – Major Procurement Approval Authority, Responsibilities and Reporting

Because the Commission contracts for certain lottery-related goods and services, the Subchapter A procurement rules are necessary for the administration and operation of the lottery; thus, the reasons for these rules continue to exist. Following the 84th Texas legislative session, Commission staff reviewed the Subchapter A rules, and in December 2015 the Commission adopted amendments to each of these rules to reflect current law, agency policy and agency procedures. No substantive amendment or repeal of these rules is recommended at this time.

Subchapter B (Licensing of Sales Agents) includes the following rules:

§401.152 – Application for License

- §401.153 – Qualifications for License
- §401.155 – Expiration of License
- §401.156 – Renewal of License
- §401.157 – Provisional License
- §401.158 – Suspension or Revocation of License
- §401.159 – Summary Suspension of License
- §401.160 – Standard Penalty Chart

The Commission licenses over 17,000 lottery ticket sales agents in Texas. The Subchapter B rules set forth the license application and renewal process, qualification requirements, license terms, and disciplinary process applicable to lottery ticket sales agents. These rules are necessary for the administration of the Commission's lottery licensing program; thus, the reasons for adopting them continue to exist. No substantive amendment or repeal of these rules is recommended at this time.

Subchapter C (Practice and Procedure) includes the following rules:

- §401.201 – Intent and Scope of Rules
- §401.202 – Construction of Rules
- §401.203 – Contested Cases
- §401.205 – Initiation of a Hearing
- §401.211 – Law Governing Contested Cases
- §401.216 – Subpoenas, Depositions, and Orders to Allow Entry
- §401.220 – Motion for Rehearing
- §401.227 – Definitions

Subchapter C includes rules applicable to enforcement matters and other contested proceedings involving a lottery or bingo licensee or applicant under the State Lottery Act or the Bingo Enabling Act, respectively. In addition, the Texas Administrative Procedure Act, at §2001.004, requires state agencies to adopt such rules of practice. Thus, the reasons for adopting the Subchapter C rules continue to exist. No substantive amendment or repeal of these rules is recommended at this time.

Subchapter D (Lottery Game Rules) includes the following rules:

- §401.301 – General Definitions
- §401.302 – Instant Game Rules
- §401.303 – Grand Prize Drawing Rule
- §401.304 – On-Line Game Rules (General)
- §401.305 – “Lotto Texas” On-Line Game Rule
- §401.306 – Video Lottery Games
- §401.307 – “Pick 3” On-Line Game Rule
- §401.308 – “Cash Five” On-Line Game
- §401.309 – Assignability of Prizes
- §401.310 – Payment of Prize Payments Upon Death of Prize Winner
- §401.312 – “Texas Two Step” On-Line Game
- §401.313 – Promotional Drawings
- §401.314 – Retailer Bonus Programs
- §401.315 – “Mega Millions” On-Line Game Rule
- §401.316 – “Daily 4” On-Line Game Rule
- §401.317 – “Powerball®” On-Line Game Rule

§401.318 – Withholding of Delinquent Child-Support Payments from Lump-sum and Periodic Installment Payments of Lottery Winnings in Excess of Six Hundred Dollars

§401.319 – Withholding of Child-Support Payments from Periodic Installment Payments of Lottery Winnings

§401.320 – “All or Nothing” On-Line Game Rule

§401.321 – Instant Game Tickets Containing Non-English Words

§401.322 – “Texas Triple Chance” Lottery Game

§401.323 – “MONOPOLY MILLIONAIRES’ CLUB™” Game Rule

Subchapter D includes the Commission’s lottery game rules. These rules provide information regarding how Texas Lottery® scratch ticket and draw games are played, the prizes that can be won, the methods by which lottery tickets may be claimed and validated, as well as information relating to debt set-off for child-support payments, retailer bonus programs, payment of prize money to the estate of a deceased prize winner, and statements to be included in court orders involving assignments of prize payments. Because the Commission generates revenue for the state through the sale of lottery game tickets, the reasons for adopting each of these rules continue to exist, with one exception. Section 401.323 (“MONOPOLY MILLIONAIRES’ CLUB™” Game Rule) should be repealed because this multi-jurisdiction draw game is no longer offered. Otherwise, no substantive amendment or repeal of these rules is recommended at this time.

Subchapter E (Retailer Rules) includes the following rules:

§401.351 – Proceeds from Ticket Sales

§401.352 – Settlement Procedures

§401.353 – Retailer Settlements, Financial Obligations, and Commissions

§401.355 – Restricted Sales

§401.357 – Texas Lottery as Retailer

§401.360 – Payment of Prizes

§401.361 – Required Purchases of Lottery Tickets

§401.362 – Retailer’s Financial Responsibility for Lottery Tickets Received and Subsequently Damaged or Rendered Unsaleable, for Winning Lottery Tickets Paid and for Lottery-Related Property

§401.363 – Retailer Record

§401.364 – Training

§401.366 – Compliance with All Applicable Laws

§401.368 – Instant Ticket Vending Machines

§401.370 – Retailer’s Financial Responsibility for Lottery Tickets Received and Subsequently Stolen or Lost

§401.371 – Collection of Delinquent Obligations for Lottery Retailer Related Accounts

§401.372 – Display of License

As noted above, the Commission licenses over 17,000 lottery ticket sales agents. The Subchapter E rules set forth the operational requirements, duties, and obligations of sales agents, including their financial responsibility to the state of Texas. These rules are necessary for the effective administration and oversight of Texas Lottery ticket sales; thus, the reasons for adopting these rules continue to exist. However, the Commission has determined amendments to §§401.361, 401.363, 401.370, and 401.372 are needed to conform rule language to current agency procedures; an amendment to §401.364 is needed to make a correction to the text; and an amendment to §401.371 is needed to update a reference to the Texas Comptroller’s Accounting Policy Statement 28.

Subchapter F (ADA Requirements) includes the following rules:

§401.401 – Definitions

§401.402 – General Requirements

§401.403 – Readily Achievable Barrier Removal

§401.404 – Priority of ADA Compliance by Lottery Licensees

§401.405 – Alternatives to Barrier Removal

§401.406 – Future Alterations to a Lottery Licensed Facility

§401.407 – Complaints Relating to Non-accessibility

§401.408 – Requests for Hearings

The Subchapter F rules address the prohibition against discrimination imposed by the federal Americans with Disability Act (ADA), compliance by licensed lottery ticket sales agents with ADA accessibility requirements, and the procedure for the Commission to receive and to address complaints regarding discrimination or accessibility under the ADA. Because the designated location of a Texas Lottery ticket sales agent license is subject to the ADA's requirements, the reasons for adopting each of these rules continue to exist. No substantive amendment or repeal of these rules is recommended at this time.

Subchapter G – Lottery Security includes the following rule:

§401.501 – Lottery Security

The reasons for adopting §401.501, regarding the Commission's statutory mandate to ensure the security and integrity of the Texas Lottery, and to maintain a security plan and other security procedures, continue to exist. However, this rule should be amended to update the reference to the "Texas Open Records law" to reflect the name of the "Texas Public Information Act". Otherwise, no substantive amendment or repeal of this rule is recommended at this time.

Finally, the Commission intends to make global amendments to applicable Chapter 401 rules to reflect current lottery game terminology, including replacing the terms "instant ticket"

and “instant game” with “scratch ticket” and “scratch ticket game”, respectively; and, replacing the terms “on-line ticket” and “on-line game” with “draw ticket” and “draw game”, respectively.

The Commission intends to propose amendments to the rules requiring amendments, and the repeal of §401.323, in separate rulemaking actions.

This review and readoption has been conducted in accordance with Texas Government Code §2001.039. The Commission received no comments on the proposed review, which was published in the September 11, 2015 issue of the *Texas Register* (40 TexReg 6165).

This action concludes the Commission’s review of 16 TAC Chapter 401.

This agency hereby certifies that the readoption of these rules has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.

J. WINSTON KRAUSE, CHAIRMAN

CARMEN ARRIETA-CANDELARIA, COMMISSIONER

PEGGY A. HEEG, COMMISSIONER

DOUG LOWE, COMMISSIONER

ROBERT RIVERA, COMMISSIONER