



INTEROFFICE MEMO

Gary Grief, Executive Director

Alfonso D. Royal III, Charitable Bingo Operations Director

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

From: Tyler Vance, Assistant General Counsel ^{TW}

Date: October 3, 2018

Re: Consideration of and possible discussion and/or action, including adoption, on amendments to 16 TAC §403.301 (Historically Underutilized Businesses)

Attached is a draft rule prepared for submission to the *Texas Register* to adopt amendments to 16 TAC §403.301 (Historically Underutilized Businesses) without changes to the proposed text as published in the August 24, 2018, issue of the *Texas Register* (43 TexReg 5466) (also attached). The purpose of the amendments is to correct citations to Office of the Comptroller rules that have been moved.

The Commission received no written comments on the proposal during the public comment period.

Recommendation: Staff recommends the Commission adopt the attached amendments to 16 TAC §403.301 (Historically Underutilized Businesses).

1 The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §403.301
2 (Historically Underutilized Businesses) without changes to the proposed text as published in the
3 August 24, 2018, issue of the *Texas Register* (43 TexReg 5466). The purpose of the amendments
4 is to correct citations to Office of the Comptroller rules that have been moved.

5 The Commission received no written comments on the proposal during the public comment
6 period.

7 This adoption is intended to implement Texas Government Code, Chapter 466.
8 §403.301. Historically Underutilized Businesses.

9 The Texas Lottery Commission adopts by reference the rules administered by the Office of the
10 Comptroller of Public Accounts regarding historically underutilized businesses, which are set forth
11 in the Texas Administrative Code, Title 34, Part 1, Chapter 20, §§20.281 - 20.298.

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\$6, the Daily 4 plus FIREBALL play option will cost an additional \$6. The Daily 4 FIREBALL number will be randomly drawn from a set of ten (10) numbers from zero to nine (0 to 9). The Daily 4 FIREBALL number drawn will apply exclusively to the Daily 4 base game drawing and prizes. The Daily 4 plus FIREBALL option cannot be purchased independently of a Daily 4 play.

(2) The Daily 4 FIREBALL number is used to replace any one (1) of the four (4) drawn Daily 4 winning numbers to create FIREBALL prize winning combinations.

(3) If the player's selected numbers match any of the FIREBALL prize winning combinations, the Daily 4 plus FIREBALL play wins in accordance with the charts in Figures 401.316(g)(4) through 401.316(g)(14).

(4) All FIREBALL prizes are in addition to any Daily 4 base game wins. Specifically, if a player purchases the Daily 4 plus FIREBALL option, then if the Daily 4 FIREBALL number is the same as one of the four numbers drawn in the Daily 4 base game drawing, and the player's numbers already match the numbers drawn for the player's play type, the player will be awarded the FIREBALL prize, in addition to the Daily 4 prize as identified in subsection (g) of this section (relating to the Daily 4 prize charts). For instance, assume a player selects 1, 2, 3, and 4 in exact order for the base game at \$1.00 and purchases a Daily 4 plus FIREBALL play for an additional \$1.00 (total \$2.00 wager). If the numbers drawn are 1, 2, 3, and 4 and the Daily 4 FIREBALL number is 4, the play will win the base game prize of \$5000 and the FIREBALL prize of \$1350, for a total of \$6350.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 13, 2018.

TRD-201803483

Bob Biard

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: September 23, 2018

For further information, please call: (512) 344-5392



CHAPTER 403. GENERAL ADMINISTRATION

16 TAC §403.301

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §403.301 (Historically Underutilized Businesses). The purpose of the amendments is to correct citations to Office of the Comptroller rules that have been moved.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses or rural communities, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mike Fernandez, Division Director of Administration Division, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit expected is to provide accurate rule citations for the public.

Pursuant to Texas Government Code §2001.0221, the Commission provides the following Government Growth Impact Statement for the proposed amendments to 16 TAC §403.301 (Historically Underutilized Businesses). For each year of the first five years the proposed amendments will be in effect, Kathy Pyka, Controller, has determined the following:

(1) The proposed amendments do not create or eliminate a government program.

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed amendments does not require an increase or decrease in future legislative appropriations to the Commission.

(4) The proposed amendments do not require an increase or decrease in fees paid to the Commission.

(5) The proposed amendments do not create a new regulation.

(6) The proposal amends, but does not expand or limit, an existing Commission rule for an administrative process.

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability.

(8) The proposed amendments do not positively or adversely affect this state's economy.

The Commission requests comments on the proposed amendments from any interested person. Comments on the proposed amendments may be submitted to Tyler Vance, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. Comments must be received within 30 days after publication of this proposal in the *Texas Register* in order to be considered.

These amendments are proposed under Texas Government Code §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code, Chapter 466.

§403.301. *Historically Underutilized Businesses.*

The Texas Lottery Commission adopts by reference the rules administered by the Office of the Comptroller of Public Accounts regarding historically underutilized businesses, which are set forth in the Texas Administrative Code, Title 34, Part 1, Chapter 20, §§20.281 - 20.298. [§§20.10 - 20.28.]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 10, 2018.

TRD-201803464

Bob Biard
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: September 23, 2018
For further information, please call: (512) 344-5392



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 101. ASSESSMENT

SUBCHAPTER CC. COMMISSIONER'S

RULES CONCERNING IMPLEMENTATION OF THE ACADEMIC CONTENT AREAS TESTING PROGRAM

DIVISION 1. IMPLEMENTATION OF ASSESSMENT INSTRUMENTS

19 TAC §101.3011

The Texas Education Agency (TEA) proposes an amendment to §101.3011, concerning implementation and administration of academic content area assessment instruments. The proposed amendment would require Texas public school districts and open-enrollment charter schools to administer to students assessments in any subject and grade required by federal law but not administered by the TEA under Texas Education Code (TEC), §39.023, and would specify the assessments to be given to certain students.

Section 101.3011 establishes provisions for the administration of assessment instruments adopted or developed under TEC, §39.023. TEC, §39.023(a-2)(2), identifies exceptions to state assessment requirements for any student in Grades 3-8 enrolled in a course for which the student will receive high school credit and will be administered an end-of-course (EOC) assessment instrument. Prior to high school, such students may take the only state assessment in mathematics required for graduation. Similarly, some students may be administered the English I and English II EOC assessments prior to high school. However, federal law (ESEA, as amended by the ESSA, §1111(b)(2)(B)(v)(I)(bb)) requires students to be administered mathematics and reading or language arts assessments at least once in high school.

The proposed amendment to §101.3011 would ensure that students are assessed in mathematics and reading or language arts in high school as required by federal law. Specifically, the proposed amendment would modify subsection (e) to require school districts to use the SAT or ACT to fulfill federal high school assessment requirements for students who took the State of Texas Assessments of Academic Readiness (STAAR®) Algebra I EOC assessment or both the STAAR® English I and English II EOC assessments prior to high school.

The proposed amendment would have no reporting implications, but school districts may need to implement new or revised procedures to ensure students who took STAAR® Algebra I or STAAR® English I and English II prior to high school are administered the SAT or ACT in high school.

The proposed amendment would have no locally maintained paperwork requirements.

FISCAL NOTE. Penny Schwinn, chief deputy commissioner for academics, has determined that for the first five-year period the proposed amendment is in effect, there will be no fiscal implications for state government as a result of enforcing or administering the amendment. The proposed amendment would have fiscal implications for local government. School districts with students who took STAAR® Algebra I or STAAR® English I and English II prior to high school will incur an estimated cost of \$50 per student to assess those students in mathematics and reading or language arts while in high school with either the SAT or ACT. Although the number of such students within each district is variable, the number of students statewide is estimated to be about 109,000 for a total statewide cost of approximately \$5,450,000 each year for the first five fiscal years the proposed amendment is in effect.

There is no effect on local economy for the first five years that the proposed amendment is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

The proposed amendment would impose a cost on local government under Texas Government Code, §2001.0045. School districts will be required to bear the cost of administering the SAT or ACT to students in their district who took the STAAR® Algebra I or STAAR® English I and English II prior to high school. The cost is estimated to be approximately \$5,450,000 statewide at a cost of \$50 per student for about 109,000 students. However, the proposed amendment is exempt from the Texas Government Code, §2001.0045, as provided under this statute, because the amendment is necessary to comply with federal law.

GOVERNMENT GROWTH IMPACT. TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation. The proposed amendment would require Texas public school districts and open-enrollment charter schools to administer assessments to students in any subject and grade required by federal law but not covered by TEC, §39.023. The proposed amendment would also require students who took the STAAR® Algebra I or STAAR® English I and English II assessments prior to high school to be assessed in mathematics and reading or language arts while in high school with either the SAT or ACT.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT/COST NOTE. Ms. Schwinn has determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment would be ensuring that students who take STAAR® Algebra I or STAAR® English I and English II prior to high school will be administered a mathematics and reading or language arts assessment while in high school as required by federal law. The proposed amendment may have an economic benefit for persons who are required to comply with the proposed amendment. The TEA has determined that each student who planned to take the SAT or ACT in high school and took STAAR® Algebra I or STAAR® English I and English II prior to high school