

INTEROFFICE MEMO

Gary Grief, Executive Director Tom Hanson, Charitable Bingo Operations Director

To: Robert G. Rivera, Chairman
Cindy Fields, Commissioner
Mark A. Franz, Commissioner
Erik C. Saenz, Commissioner
Jamey Steen, Commissioner

From: Kyle Wolfe, Assistant General Counsel *KW*

Date: February 11, 2021

Re: Consideration of and possible discussion and/or action, including adoption, on amendments to 16 TAC §§ 401.305 ("Lotto Texas" Draw Game Rule), 401.312 ("Texas Two Step" Draw Game Rule), and 401.317 ("Powerball" Draw Game Rule)

Attached is a draft rule proposal prepared for submission to the *Texas Register* to adopt amendments to the above-referenced rules without changes to the proposed text as published in the December 18, 2020 issue of the *Texas Register* (45 TexReg 8951) (also attached). The purpose of the amendments is to provide the Texas Lottery Commission (Commission) greater flexibility to coordinate the draw dates and times for its jackpot draw games to maximize potential revenue to the state.

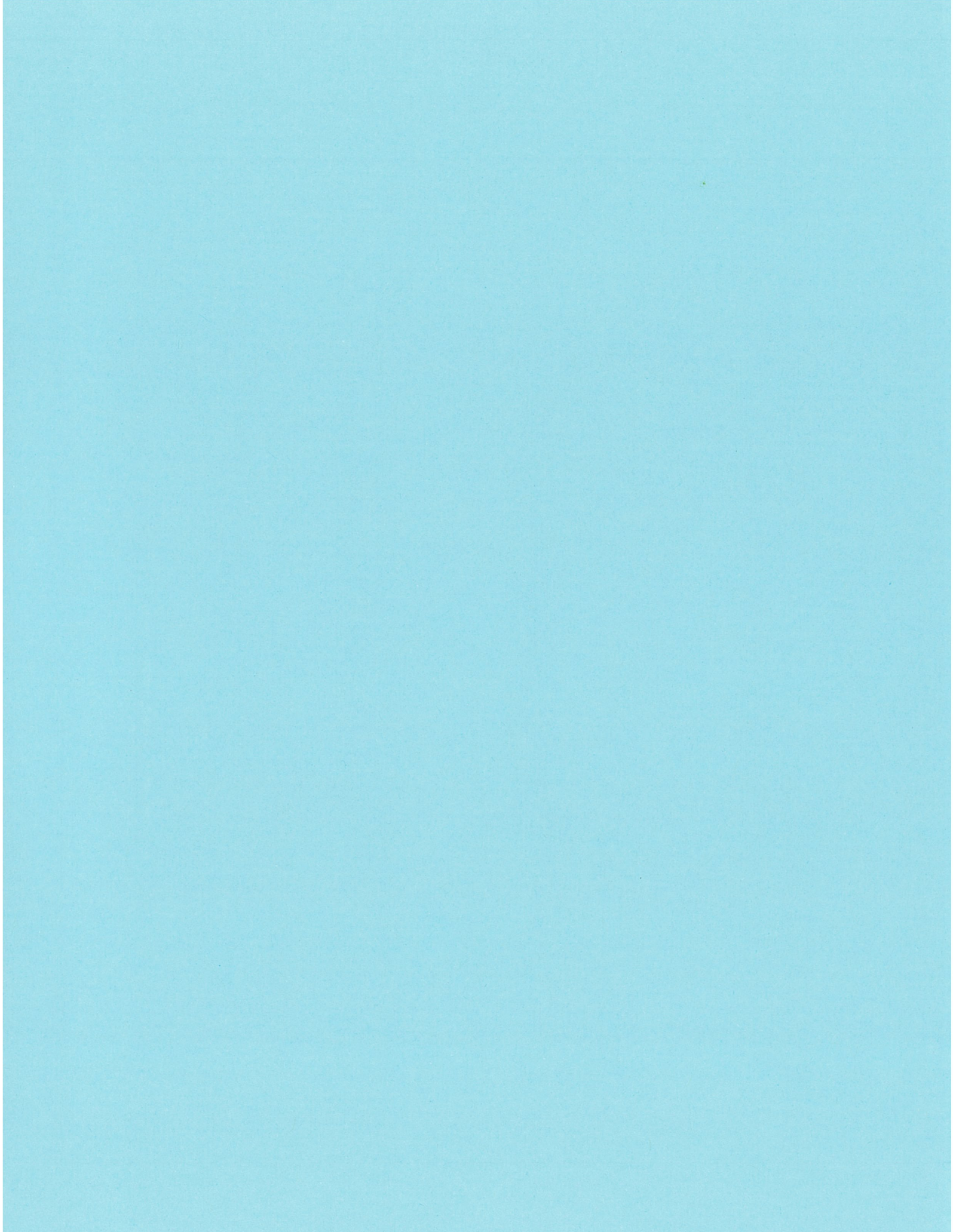
The amendment to Rule 401.305 provides that Lotto Texas drawings will occur on the days and at times specified by the Commission's executive director, which may be days or times other than Wednesday and Saturday at 10:12 p.m., as the rule currently provides.

The amendment to Rule 401.312 similarly provides that Texas Two Step drawings will occur on the days and at times specified by the executive director, which may be days or times other than Monday and Thursday at 10:12 p.m., as the rule currently provides.

The amendment to Rule 401.317 provides that Powerball drawings will occur on the days specified by the Multi-State Lottery Association (MUSL) Powerball Group and announced by the executive director, which may be days other than Wednesday and Saturday, as the rule currently provides.

The Commission received two (2) written comments on the proposed amendments during the public comment period. One commenter stated their opposition to conducting an additional Powerball drawing per week. In response, the Commission notes that any decisions regarding the frequency of Powerball drawings are made by the MUSL Powerball Group, not the Commission. *See* 16 Tex. Admin. Code §401.317(a). Another commenter stated their opposition to the proposed amendments without specifying a reason. Accordingly, the Commission declines to make changes to the proposed amendments in response to the comments.

Recommendation: Staff recommends that the Commission adopt amendments to the referenced rules.



1 The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §§ 401.305
2 (“Lotto Texas” Draw Game Rule), 401.312 (“Texas Two Step” Draw Game Rule), and 401.317
3 (“Powerball” Draw Game Rule) without changes to the proposed text as published in the
4 December 18, 2020 issue of the *Texas Register* (45 TexReg 8951).

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6 and at times specified by the Commission’s executive director, which may be days or times other
7 than Wednesday and Saturday at 10:12 p.m., as the rule currently provides.

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9 occur on the days and at times specified by the executive director, which may be days or times
10 other than Monday and Thursday at 10:12 p.m., as the rule currently provides.

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12 specified by the Multi-State Lottery Association (MUSL) Powerball Group and announced by the
13 executive director, which may be days other than Wednesday and Saturday, as the rule currently
14 provides.

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21 frequency of Powerball drawings are made by the MUSL Powerball Group, not the Commission.
22 *See* 16 Tex. Admin. Code §401.317(a). Another commenter stated their opposition to the proposed

1 amendments without specifying a reason. Accordingly, the Commission declines to make changes
2 to the proposed amendments in response to the comments.

3 These amendments are adopted under Texas Government Code §466.015(c)(4), which
4 authorizes the Commission to adopt rules governing the operation of the lottery, including the
5 frequency of drawings or selection of a winning ticket, and §467.102, which authorizes the
6 Commission to adopt rules for the enforcement and administration of the laws under the
7 Commission’s jurisdiction.

8 §401.305. “Lotto Texas” Draw Game Rule.

9 (a) – (c) (No change.)

10 (d) Drawings.

11 (1) Lotto Texas base game drawings shall be held each week on the days and at times
12 specified by the executive director. [~~Wednesday and Saturday at 10:12 p.m. Central Time. The~~
13 ~~executive director may change the drawing schedule, if it is deemed necessary.~~]

14 (2) – (5) (No change.)

15 (e) – (h) (No change.)

16 §401.312. “Texas Two Step” Draw Game Rule.

17 (a) – (c) (No change.)

18 (d) Drawings.

19 (1) Texas Two Step drawings shall be held each week on the days and at times specified
20 by the executive director. [~~Monday and Thursday at 10:12 p.m. Central Time. The executive~~
21 ~~director may change the drawing schedule, if necessary.~~]

22 (2) – (5) (No change.)

23 (e) – (f) (No change.)

1 §401.317. “Powerball” Draw Game Rule.

2 (a) – (b) (No change.)

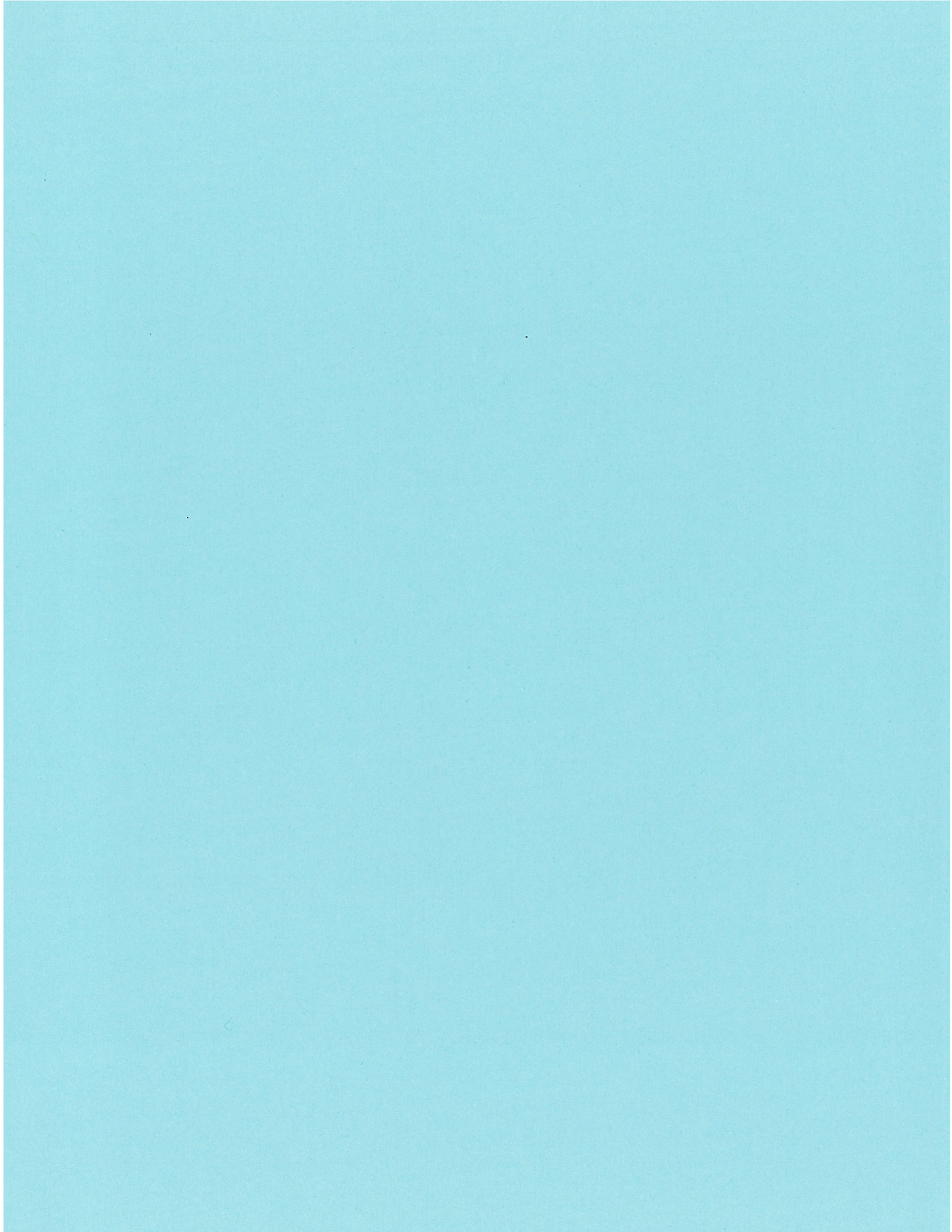
3 (c) Game Description.

4 (1) Powerball Game. Powerball is a five (5) out of sixty-nine (69) plus one (1) out of
5 twenty-six (26) numbers lottery game drawn on the days specified by the MUSL Powerball Group
6 and announced by the executive director [~~every Wednesday and Saturday~~], as part of the Powerball
7 Drawing, which pays the Grand Prize, at the election of the player made in accordance with this
8 section, or by a default election made in accordance with this section, either on an annuitized pari-
9 mutuel basis or as a single lump sum payment of the total funding held in the Grand Prize Pool for
10 the winning Drawing on a pari-mutuel basis. Except as provided in this section, all other prizes are
11 paid on a single payment basis.

12 (A) – (C) (No change.)

13 (2) – (6) (No change.)

14 (d) – (k) (No change.)



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 November 30, 2020.

TRD-202005026

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: January 17, 2021

For further information, please call: (512) 475-4879



PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §§401.305, 401.312, 401.317

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §§401.305 ("Lotto Texas" Draw Game Rule), 401.312 ("Texas Two Step" Draw Game Rule), and 401.317 ("Powerball" Draw Game Rule).

The proposed amendment to §401.305 provides that Lotto Texas drawings will occur on the days and at times specified by the Commission's executive director, which may be days or times other than Wednesday and Saturday at 10:12 p.m., as the rule currently provides.

The proposed amendment to §401.312 similarly provides that Texas Two Step drawings will occur on the days and at times specified by the executive director, which may be days or times other than Monday and Thursday at 10:12 p.m., as the rule currently provides.

The proposed amendment to §401.317 provides that Powerball drawings will occur on the days specified by the Multi-State Lottery Association (MUSL) Powerball Group and announced by the executive director, which may be days other than Wednesday and Saturday, as the rule currently provides.

The purpose of the proposed amendments is to provide the Commission greater flexibility to coordinate the draw dates and times for its jackpot draw games to maximize potential revenue to the state.

Kathy Pyka, Controller, has determined that for each year of the first five years the 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).

Ryan Mindell, Lottery Operations Director, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit expected is quicker and more direct communication to the public of potential draw date changes as well as greater flexibility to coordinate the Lotto Texas, Texas Two Step, and Powerball game schedules as needed.

Pursuant to Texas Government Code §2001.0221, the Commission provides the following Government Growth Impact Statement for the proposed amendments. 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 proposed amendments do not expand or limit an existing regulation.
- (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 Kyle Wolfe, 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 to be considered.

Statutory Authority

These amendments are proposed under Texas Government Code §466.015(c)(4), which authorizes the Commission to adopt rules governing the operation of the lottery, including the frequency of drawings or selection of a winning ticket, 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.

§401.305. "Lotto Texas" Draw Game Rule.

(a) - (c) (No change.)

(d) Drawings.

(1) Lotto Texas base game drawings shall be held each week on the days and at times specified by the executive director. [Wednesday and Saturday at 10:12 p.m. Central Time. The executive director may change the drawing schedule, if it is deemed necessary.]

(2) - (5) (No change.)

(e) - (h) (No change.)

§401.312. "Texas Two Step" Draw Game Rule.

- (a) - (c) (No change.)
- (d) Drawings.

(1) Texas Two Step drawings shall be held each week on the days and at times specified by the executive director. [~~Monday and Thursday at 10:12 p.m. Central Time. The executive director may change the drawing schedule, if necessary.~~]

- (2) - (5) (No change.)
- (e) - (f) (No change.)

§401.317. "Powerball" Draw Game Rule.

- (a) - (b) (No change.)
- (c) Game Description.

(1) Powerball Game. Powerball is a five (5) out of sixty-nine (69) plus one (1) out of twenty-six (26) numbers lottery game drawn on the days specified by the MUSL Powerball Group and announced by the executive director [every Wednesday and Saturday], as part of the Powerball Drawing, which pays the Grand Prize, at the election of the player made in accordance with this section, or by a default election made in accordance with this section, either on an annuitized pari-mutuel basis or as a single lump sum payment of the total funding held in the Grand Prize Pool for the winning Drawing on a pari-mutuel basis. Except as provided in this section, all other prizes are paid on a single payment basis.

- (A) - (C) (No change.)
- (2) - (6) (No change.)
- (d) - (k) (No change.)

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 December 4, 2020.

TRD-202005232

Bob Biard

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: January 17, 2021

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



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 33. STATEMENT OF INVESTMENT OBJECTIVES, POLICIES, AND GUIDELINES OF THE TEXAS PERMANENT SCHOOL FUND

SUBCHAPTER A. STATE BOARD OF EDUCATION RULES

19 TAC §§33.5, 33.15, 33.25, 33.35, 33.60

The State Board of Education (SBOE) proposes amendments to §§33.5, 33.15, 33.25, 33.35, and 33.60, concerning statement of investment objectives, policies, and guidelines of the Texas Per-

manent School Fund (PSF). The proposed amendments would amend the asset allocation of the PSF, update transactions and restrictions that apply to the PSF, and update cross references and a section title.

BACKGROUND INFORMATION AND JUSTIFICATION: In accordance with statute, the rules in Chapter 33 establish investment objectives, policies, and guidelines for the PSF.

The proposed amendment to §33.5, Code of Ethics, would update a reference to 19 TAC §33.20, Responsible Parties and Their Duties.

The proposed amendment to §33.15, Objectives, would amend the asset allocation of the PSF.

The proposed amendment to §33.25, Permissible and Restricted Investments and General Guidelines for Investment Managers, would update transactions and restrictions that apply to the PSF.

The proposed amendment to §33.35, Guidelines for the Custodian and the Securities Lending Agent, would update the section title to include the PSF Liquid Account.

The proposed amendment to §33.60, Performance and Review Procedures, would update a reference from the Texas Natural Resources Code to the Texas Education Code.

The SBOE approved the proposed amendment for first reading and filing authorization at its November 20, 2020 meeting.

FISCAL IMPACT: Holland Timmins, executive administrator and chief investment officer of the Texas Permanent School Fund, has determined that for the first five years the proposal is in effect, it would have no fiscal impact to state or local government required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

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 expand an existing regulation by adding to the list of prohibited transactions and restrictions in §33.25.

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 create a new regulation; would not limit or repeal an existing regulation; would not