





# INTEROFFICE MEMO

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

**To:** J. Winston Krause, Chairman  
Cindy Fields, Commissioner  
Mark A. Franz, Commissioner  
Robert Rivera, Commissioner  
Erik C. Saenz, Commissioner

**From:** Bob Biard, General Counsel *RAB*

**Date:** June 11, 2020

**Re:** Rule Review and Readoption of the Commission's Rules at 16 TAC Chapter 401 (Administration of State Lottery Act), 16 TAC Chapter 402 (Charitable Bingo Operations Division), and 16 TAC Chapter 403 (General Administration)

---

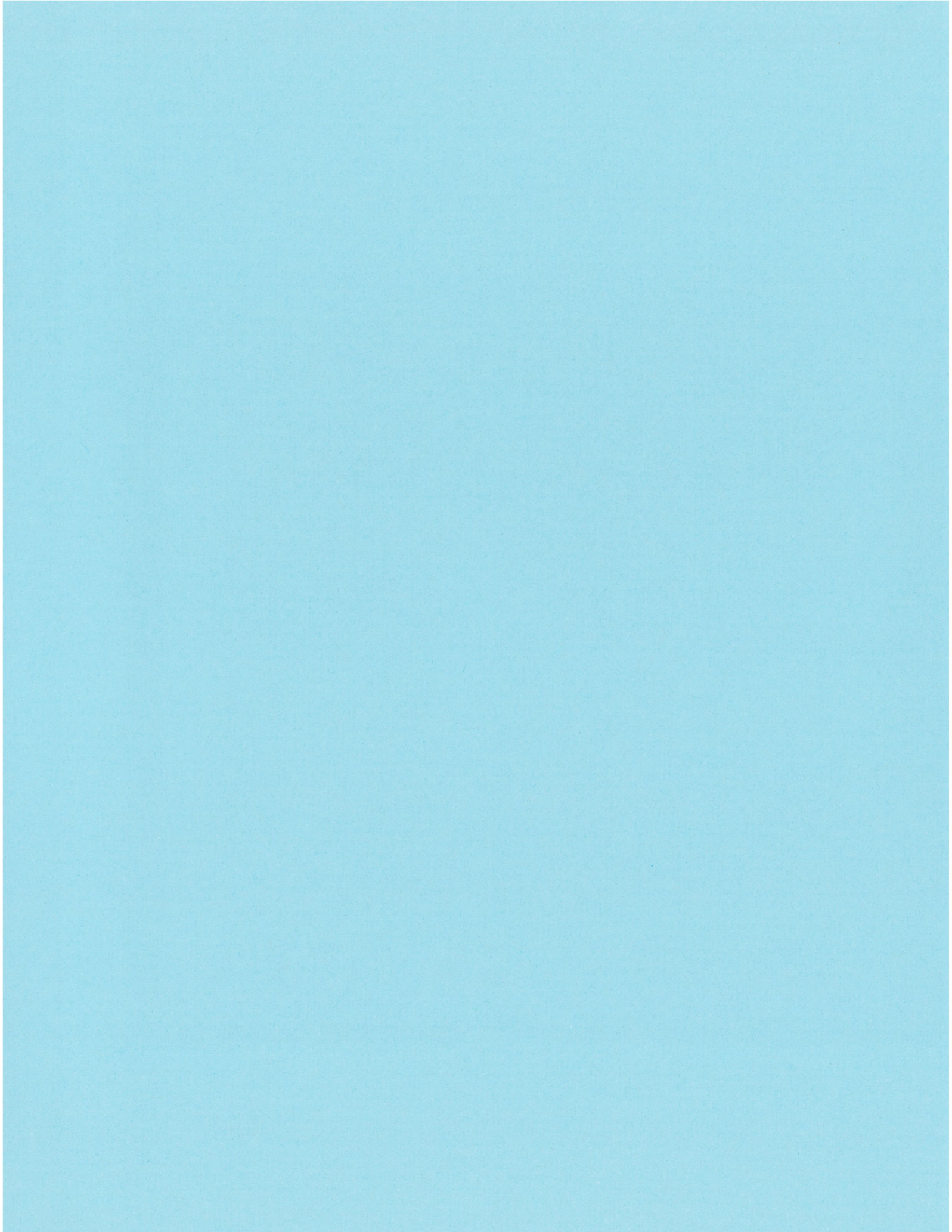
Attached are three (3) draft submissions to the *Texas Register* to readopt the Commission's rules at 16 Texas Administrative Code Chapters 401 (titled Administration of State Lottery Act), 402 (titled Charitable Bingo Operations Division), and 403 (titled General Administration), and to conclude the review of those rules.

On October 10, 2019, the Commission initiated this proceeding pursuant to Tex. Gov't Code §2001.039 (Agency Review of Existing Rules), which requires a state agency to review all of 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 names and numbers of the rules contained in Chapters 401, 402, and 403 are listed in the attached draft submissions. The Commission's notice of intent to review Chapters 401, 402, and 403 rules was published in the October 25, 2019, issue of the *Texas Register* (44 TexReg 6381). No comments were received regarding the review of Chapters 401 and 403. The Commission received comments regarding the review of Chapter 402. These comments are addressed in the draft submission.

As a result of the rule review, and as discussed in the draft readoption documents, Commission staff believes the reasons for adopting each of the rules in Chapters 401, 402, and 403 continue to exist, and that some of the rules in these Chapters need to be amended, actions which will be proposed 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; 16 TAC Chapter 402, relating to Charitable Bingo Operations Division; and 16 TAC Chapter 403, relating to General Administration.





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

7           The Chapter 401 rules consist of seven (7) subchapters with a total of sixty-eight (68) rules.

8   Subchapter A (Procurement) includes the following rules:

9   §401.101 – Lottery Procurement Procedures

10   §401.102 – Protests of the Terms of a Formal Competitive Solicitation

11   §401.103 – Protests of Contract Award

12   §401.104 – Contract Monitoring Roles and Responsibilities

13   §401.105 – Major Procurement Approval Authority, Responsibilities and Reporting

14           Because the Commission contracts for certain lottery-related goods and services, the  
15   Subchapter A procurement rules are necessary for the administration and operation of the lottery;  
16   thus, the reasons for these rules continue to exist. No substantive amendment or repeal of these  
17   rules is recommended at this time.

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

19   §401.152 – Application for License

20   §401.153 – Qualifications for License

21   §401.155 – Expiration of License

22   §401.156 – Renewal of License

23   §401.157 – Provisional License



1     §401.158 – Suspension or Revocation of License

2     §401.159 – Summary Suspension of License

3     §401.160 – Standard Penalty Chart

4             The Commission licenses approximately 20,000 lottery ticket sales agents in Texas. The  
5     Subchapter B rules set forth the license application and renewal process, qualification  
6     requirements, license terms, and disciplinary process applicable to lottery ticket sales agents. These  
7     rules are necessary for the administration of the Commission’s lottery licensing program; thus, the  
8     reasons for adopting them continue to exist. The Commission, however, has determined that  
9     amendments to §§ 401.158 and 401.160 are needed to make corrections to the text and to conform  
10    rule language to current agency and industry practices.

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

12    §401.201 – Intent and Scope of Rules

13    §401.202 – Construction of Rules

14    §401.203 – Contested Cases

15    §401.205 – Initiation of a Hearing

16    §401.207 – Written Answer; Default Proceedings

17    §401.211 – Law Governing Contested Cases

18    §401.216 – Subpoenas, Depositions, and Orders to Allow Entry

19    §401.220 – Motion for Rehearing

20    §401.227 – Definitions

21            Subchapter C includes rules applicable to enforcement matters and other contested  
22    proceedings involving a lottery or bingo licensee or applicant under the State Lottery Act or the  
23    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 – Scratch Ticket Game Rules

§401.303 – Grand Prize Drawing Rule

§401.304 – Draw Game Rules (General)

§401.305 – “Lotto Texas®” Draw Game Rule

§401.306 – Video Lottery Games

§401.307 – “Pick 3” Draw Game Rule

§401.308 – “Cash Five” Draw Game Rule

§401.309 – Assignability of Prizes

§401.310 – Payment of Prize Payments Upon Death of Prize Winner

§401.312 – “Texas Two Step” Draw Game Rule

§401.313 – Promotional Drawings

§401.314 – Retailer Bonus Programs

§401.315 – “Mega Millions” Draw Game Rule

§401.316 – “Daily 4” Draw Game Rule

§401.317 – “Powerball®” Draw 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



1 §401.320 – “All or Nothing” Draw Game Rule

2 §401.321 – Instant Game Tickets Containing Non-English Words

3 §401.322 – “Texas Triple Chance” Draw Game Rule

4 §401.324 – Prize Winner Election to Remain Anonymous

5 Subchapter D includes the Commission’s lottery game rules. These rules provide  
6 information regarding how Texas Lottery scratch ticket and draw games are played, the prizes that  
7 can be won, the methods by which lottery tickets may be claimed and validated, as well as  
8 information relating to debt set-off for child-support payments, retailer bonus programs, payment  
9 of prize money to the estate of a deceased prize winner, and statements to be included in court  
10 orders involving assignments of prize payments. Because the Commission generates revenue for  
11 the state through the sale of lottery game tickets, the reasons for adopting each of these rules  
12 continue to exist, except for §401.322 (“Texas Triple Chance” Draw Game Rule), which should  
13 be repealed because this draw game is no longer offered.

14 The Commission has also determined that amendments to §§ 401.301, 401.302, 401.304,  
15 401.305, 401.312, 401.315, and 401.321 are needed to make corrections to the text, including  
16 replacing the terms “instant ticket” with “scratch ticket,” and to conform rule language to current  
17 agency and industry practices. Amendments are needed to update the various game trademarks  
18 and definitions of “playboard.” Clarifying amendments are also needed to move the various draw  
19 game “playslip” and “entry of play” provisions requirements from individual draw game rules  
20 (§§ 401.305, 401.307, 401.308, 401.312, 401.315, 401.316, 401.317, and 401.320) to the general  
21 definitions rule (§401.301) and the general draw game rule (§401.304). Similarly, clarifying  
22 amendments are needed to move the various provisions regarding authorized promotions and retail  
23 bonus/incentives (§§ 401.305, 401.307, 401.308, 401.312, 401.316, and 401.320) from individual

draw game rules to the general draw game rule (§401.304). These clarifying amendments will simplify the rules and promote a more consistent application of these provisions among all the lottery draw games.

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 – Lottery 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 approximately 20,000 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



1 the administration and effective oversight of Texas Lottery ticket sales; thus, the reasons for  
2 adopting these rules continue to exist. The Commission has also determined that amendments to  
3 §§ 401.351, 401.353, 401.355, 401.363, 401.366, and 401.368 are needed to make corrections to  
4 the text and to conform rule language to current agency and industry practices.

5 Subchapter F (ADA Requirements) includes the following rules:

6 §401.401 – Definitions

7 §401.402 – General Requirements

8 §401.403 – Readily Achievable Barrier Removal

9 §401.404 – Priority of ADA Compliance by Lottery Licensees

10 §401.405 – Alternatives to Barrier Removal

11 §401.406 – Future Alterations to a Lottery Licensed Facility

12 §401.407 – Complaints Relating to Non-accessibility

13 §401.408 – Requests for Hearings

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

21 Subchapter G (Lottery Security) includes the following rule:

22 §401.501 – Lottery Security

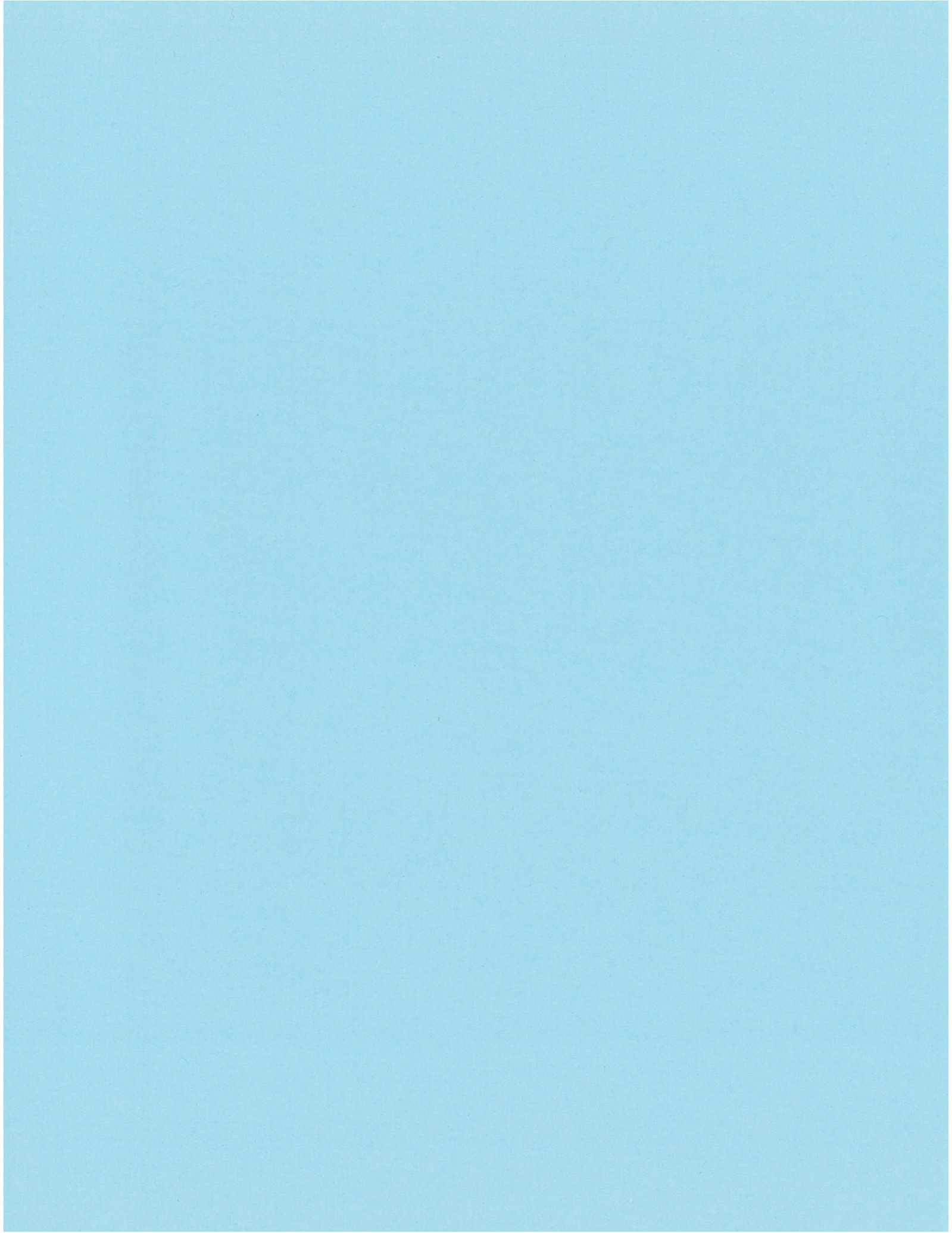
1       The reasons for adopting §401.501, regarding the Commission's statutory mandate to  
2   ensure the security and integrity of the Texas Lottery, and to maintain a security plan and other  
3   security procedures, continue to exist. No substantive amendment or repeal of this rule is  
4   recommended at this time.

5       The Commission will propose amendments to the rules requiring amendments, and the  
6   repeal of §401.322, in separate rulemaking actions.

7       This review and readoption has been conducted in accordance with Texas Government  
8   Code Section 2001.039. The Commission received no comments on the proposed review, which  
9   was published in the October 25, 2019 issue of the *Texas Register* (44 TexReg 6378).

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







1       The Texas Lottery Commission (Commission) has reviewed the Commission's rules at  
2   16 TAC Chapter 402 (Charitable Bingo Operations Division) in accordance with the  
3   requirements of Texas Government Code §2001.039 (Agency Review of Existing Rules), and  
4   hereby readopts the rules in Chapter 402. As a result of this review, and as discussed below, the  
5   Commission has determined that some of the rules in Chapter 402 need to be amended, actions  
6   which will be proposed in separate rulemaking proceedings. Further, the Commission notes that  
7   the Bingo Advisory Committee (BAC) met on March 4, 2020 to discuss this rule review and  
8   presented the staff with its recommendations, which are included in this adoption. The purpose  
9   of the BAC includes advising the Commission on the needs and problems of the state's bingo  
10   industry and to report their activities to the Commission. The Commission hereby takes the  
11   BAC's recommendations under advisement and will continue to work with the BAC on future  
12   rulemaking initiatives. The Commission also received written comments from the Department of  
13   Texas, Veterans of Foreign Wars (VFW).

14       The Chapter 402 rules consist of seven (7) subchapters with a total of seventy-one (71)  
15   rules. Subchapter A (Administration) consists of the following rules:

16   §402.100 – Definitions

17   §402.101 – Advisory Opinions

18   §402.102 – Bingo Advisory Committee

19   §402.103 – Training Program

20   §402.104 – Delinquent Obligations

21       Subchapter A consists of rules addressing the Commission's administration of charitable  
22   bingo and the process for handling delinquent obligations owed to the Commission. Section  
23   402.100 remains necessary, and the reasons for initially adopting the rule continue to exist,



1 because this rule defines key terms used throughout the Chapter 402 rules. Section 402.101  
2 remains necessary, and the reasons for initially adopting the rule continue to exist, because this  
3 rule provides details regarding the process for requesting and issuing bingo advisory opinions,  
4 which is a duty imposed upon the Commission under Tex. Occ. Code §2001.059. Section  
5 402.102 governs the operations of the BAC and the reasons for initially adopting the rule  
6 continue to exist. Section 402.103 remains necessary, and the reasons for initially adopting the  
7 rule continue to exist, because the rule implements Tex. Occ. Code §2001.107, which requires  
8 the Commission to establish by rule a training program for certain individuals associated with  
9 bingo conductors. Finally, §402.104 remains necessary, and the reasons for initially adopting the  
10 rule continue to exist, because this rule implements Texas Government Code §2107.002, which  
11 requires all state agencies to establish procedures by rule for collecting delinquent obligations.  
12 No substantive amendment or repeal of these rules is recommended at this time.

13 The BAC does not recommend any amendments to this Subchapter.

14 Subchapter B (Conduct of Bingo) consists of the following rules:

15 §402.200 – General Restrictions on the Conduct of Bingo

16 §402.201 – Prohibited Bingo Occasion

17 §402.202 – Transfer of Funds

18 §402.203 – Unit Accounting

19 §402.204 – Prohibited Price Fixing

20 §402.205 – Unit Agreements

21 §402.210 – House Rules

22 §402.211 – Other Games of Chance

23 §402.212 – Promotional Bingo

1 Subchapter B consists of rules governing the conduct and operation of charitable bingo,  
2 the creation and operation of bingo units, the transfer of funds into an organization's bingo  
3 account, the prohibition on price fixing for bingo equipment, and the restrictions on other games  
4 of chance conducted during a bingo occasion. These rules remain necessary, and the reasons for  
5 initially adopting the rules continue to exist, because they help ensure that charitable bingo in  
6 Texas is conducted fairly and in accordance with article III, section 47 of the Texas Constitution  
7 and the Bingo Enabling Act. No substantive amendment or repeal of these rules is recommended  
8 at this time.

9 The BAC recommends amendments to: (1) §402.200(h), to allow annual license holders  
10 to accept and award donated prizes; (2) §402.200(i)(4), to eliminate the requirement of  
11 maintaining records relating to the final game schedule; and (3) §402.203(h)(4)(c), to eliminate  
12 the requirement of maintaining records relating to the operator on duty.

13 The VFW recommends amendments to: (1) §402.200(h), to allow annual license holders  
14 to accept and award donated prizes; (2) §402.200(i)(4), to eliminate the requirement of  
15 maintaining records relating to the final game schedule; and (3) §402.203(h)(4)(c), to eliminate  
16 the requirement of maintaining records relating to the operator on duty.

17 Subchapter C (Bingo Games and Equipment) consists of the following rules:

18 §402.300 – Pull-Tab Bingo

19 §402.301 – Bingo Card/Paper

20 §402.303 – Pull-tab or Instant Bingo Dispensers

21 §402.321 – Card-Minding Systems--Definitions

22 §402.322 – Card-Minding Systems--Site System Standards

23 §402.323 – Card-Minding Systems--Device Standards

1 §402.324 – Card-Minding Systems--Approval of Card-Minding Systems

2 §402.325 – Card-Minding Systems--Licensed Authorized Organizations Requirements

3 §402.326 – Card-Minding Systems--Distributor Requirements

4 §402.327 – Card-Minding Systems--Security Standards

5 §402.328 – Card-Minding Systems--Inspections and Restrictions

6 Subchapter C consists of rules governing bingo equipment, including pull-tab tickets,  
7 bingo cards and paper, ticket dispensers, and card-minding systems. The rules remain necessary,  
8 and the reasons for initially adopting the rules continue to exist, because they help ensure that  
9 charitable bingo games are conducted in accordance with, and bingo equipment is created in  
10 compliance with, the Bingo Enabling Act. No substantive amendment or repeal of these rules is  
11 recommended at this time.

12 The BAC recommends amendments to: (1) §402.300(b)(4), to eliminate the requirement  
13 of submission of paper pull-tab tickets prior to final approval; and (2) §402.301(a)(3) and (11), to  
14 provide clarification on the use of bonus numbers on bingo cards.

15 The VFW recommends amendments to: (1) §402.300(b)(4), to eliminate the requirement  
16 of submission of paper pull-tab tickets prior to final approval; and (2) §402.301(a)(3) and (11), to  
17 provide clarification on the use of bonus numbers on bingo cards.

18 Subchapter D (Licensing Requirements) consists of the following rules:

19 §402.400 – General Licensing Provisions

20 §402.401 – Temporary License

21 §402.402 – Registry of Bingo Workers

22 §402.403 – Licenses for Conduct of Bingo Occasions and to Lease Bingo Premises

23 §402.404 – License Classes and Fees



- 1    §402.405 – Temporary Authorization
- 2    §402.406 – Bingo Chairperson
- 3    §402.407 – Unit Manager
- 4    §402.408 – Designation of Members
- 5    §402.409 – Amendment for Change of Premises or Occasions Due to Lease Termination or
- 6    Abandonment
- 7    §402.410 – Amendment of a License – General Provisions
- 8    §402.411 – License Renewal
- 9    §402.412 – Signature Requirements
- 10   §402.413 – Military Service Members, Military Veterans, and Military Spouses
- 11   §402.420 – Qualifications and Requirements for Conductor’s License
- 12   §402.422 – Amendment to a Regular License to Conduct Charitable Bingo
- 13   §402.424 – Amendment of a License Electronic Mail, Telephone or Facsimile
- 14   §402.442 – Amendment to a Commercial Lessor License
- 15   §402.443 – Transfer of a Grandfathered Lessor’s Commercial Lessor License
- 16   §402.450 – Request for Waiver
- 17   §402.451 – Operating Capital
- 18   §402.452 – Net Proceeds
- 19   §402.453 – Request for Operating Capital Increase

20            The Commission currently licenses nearly fourteen-hundred (1400) charitable bingo  
21   conductors, commercial lessors, and manufacturers and distributors, and has approved over  
22   eleven thousand (11,000) individuals to be listed on the bingo worker registry in Texas.  
23   Subchapter D includes rules governing the application, renewal, and amendment process for  
24   Commission-issued licenses and listings on the bingo worker registry. These rules are necessary

1 for the proper administration of the Commission's charitable bingo licensing and worker registry  
2 program. Therefore, the Commission believes that the reasons for initially adopting these rules  
3 continue to exist. Subchapter D also includes rules that implement Bingo Enabling Act  
4 provisions that govern the amount of operating capital a bingo conductor may maintain, the net  
5 proceeds a bingo conductor must produce, and the process by which licensees may request a  
6 waiver of these requirements. These rules are necessary to help ensure that bingo proceeds are  
7 directed to statutorily-authorized purposes. Therefore, the Commission believes that the reasons  
8 for initially adopting these rules continue to exist. However, the Commission intends to propose  
9 amendments to: (1) §402.400(e), to provide that an incomplete original application will be  
10 returned, rather than denied, 21 days after the Commission requests more information if the  
11 applicant fails to respond; (2) §402.401(b)(3) and §402.401(d)(3)(D), to remove the requirement  
12 that a conductor display verification from the Commission during a temporary bingo occasion;  
13 (3) §402.404, to reduce and eliminate license fees; and (4) §402.420, to correct the requirements  
14 for licensure of authorized organizations. No other substantive amendment or repeal of these  
15 rules is recommended at this time.

16 The BAC recommends amendments to: (1) §402.400(e), to provide for the return of  
17 incomplete original applications, and to require staff to provide the 21 day letter requesting more  
18 information to the conductor's bingo hall; (2) §402.400(1), to allow for a license to go on  
19 administrative hold at any time; (3) §402.401(b)(3) and §402.401(d)(3)(D), to allow for the use  
20 of temporary licenses without display of verification from the Commission; (4) §402.408, to  
21 allow designated members to access BOSS (the Commission's Bingo Operations System  
22 Service) in order to renew and print licenses; (5) §402.450(b)(3), to clarify that a credible

1 business plan may, but is not required to, include the listed items; and (6) §402.451(b)(2), to  
2 clarify that operating capital limits should not include prize fees to be paid to local governments.

3 The VFW recommends amendments to: (1) §402.400(e), to require staff to provide the 21  
4 day letter requesting more information to the conductor's bingo hall; (2) §402.400(l), to allow for  
5 a license to go on administrative hold at any time; (3) §402.401(b)(3) and §402.401(d)(3)(D), to  
6 allow for the use of temporary licenses without display of verification from the Commission; (4)  
7 §402.408, to allow designated members to access BOSS in order to renew and print licenses; (5)  
8 §402.450(b)(3), to clarify that a credible business plan may, but is not required to, include the  
9 listed items; and (6) §402.451(b)(2), to clarify that operating capital limits should not include  
10 prize fees to be paid to local governments.

11 Subchapter E (Books and Records) consists of the following rules:

12 §402.500 – General Records Requirements

13 §402.501 – Charitable Use of Net Proceeds

14 §402.502 – Charitable Use of Net Proceeds Recordkeeping

15 §402.503 – Bingo Gift Certificates

16 §402.504 – Debit Card Transactions

17 §402.505 – Permissible Expense

18 §402.506 – Disbursement Records Requirements

19 §402.511 – Required Inventory Records

20 §402.514 – Electronic Fund Transfers

21 Subchapter E consists of rules governing the record-keeping and reporting requirements  
22 related to the conduct of charitable bingo and the standards for determining the propriety of  
23 certain expenses. These rules remain necessary, and the reasons for initially adopting the rules



1 continue to exist, because the rules help ensure that bingo proceeds are only used for statutorily-  
2 authorized purposes. No substantive amendments are recommended at this time.

3 The BAC recommends amendments to: (1) §402.502(c)(5) and (6), to clarify that the  
4 listed items are sufficient but not necessary; (2) §402.503, to allow for digital gift cards; and (3)  
5 §402.511, to provide a form for maintaining a perpetual inventory of bingo cards.

6 The VFW recommends amendments to: (1) §402.502(c)(5) and (6), to clarify that the  
7 listed items are sufficient but not necessary; (2) §402.503, to allow for digital gift cards; and (3)  
8 §402.511, to provide a form for maintaining a perpetual inventory of bingo cards.

9 Subchapter F (Payment of Taxes, Prize Fees and Bonds) consists of the following:

10 §402.600 – Bingo Reports and Payments

11 §402.601 – Interest on Delinquent Tax

12 §402.602 – Waiver of Penalty, Settlement of Prize Fees, Rental Tax, Penalty and/or Interest

13 §402.603 – Bond or Other Security

14 §402.604 – Delinquent Purchaser

15 Subchapter F consists of rules governing the payment of requisite fees, the submission of  
16 bonds or other security, and the delinquent payment of the costs for bingo equipment. Section  
17 402.600 governs the payment of bingo-related fees and the filing of quarterly reports, which are  
18 required by statute and used by the Commission to track its licensees' bingo-related finances.  
19 This rule remains necessary, and the reasons for initially adopting the rule continue to exist,  
20 because the rule helps ensure that licensees are remitting fees in the proper amount and that  
21 bingo proceeds are only used for statutorily-authorized purposes. Furthermore, the Commission  
22 is required by Tex. Occ. Code §2001.504 to adopt rules governing the payment of fees. Section  
23 402.601 governs the payment of interest on delinquent fees, refunds and credit, while §402.602

1 governs the Commission's settlement of penalties and fees due. These rules remain necessary,  
2 and the reasons for initially adopting the rules continue to exist, because they implement Texas  
3 Tax Code §§111.060 (Interest on Delinquent Tax), 111.064 (Interest on Refund or Credit),  
4 111.101 (Settlement) and 111.103 (Settlement of Penalty and Interest Only), which are made  
5 applicable to the Commission through Tex. Occ. Code §§ 2001.508 and 2001.512. Section  
6 402.603 governs the submission of a bond or other security by a licensee, which is required  
7 under Tex. Occ. Code §2001.514. The rule remains necessary, and the reasons for initially  
8 adopting the rule continue to exist, because the rule helps secure the payment of statutorily-  
9 authorized fees by licensees. Finally, §402.604 imposes requirements when a purchaser of bingo  
10 equipment is delinquent in its payment of the amount due for the equipment. The rule  
11 implements Tex. Occ. Code §2001.218, and it remains necessary to help ensure that transactions  
12 for bingo equipment comply with that statute. Therefore, the Commission believes that the  
13 reasons for initially adopting the rule continue to exist. However, the Commission intends to  
14 propose amendments to §402.601 and §402.602, to remove all references to rental taxes because  
15 they are no longer collected. No other substantive amendments are recommended at this time.

16 The BAC recommends amendments to §402.601 and §402.602 to remove all references  
17 to rental taxes because they are no longer collected.

18 The VFW recommends amendments to §402.601 and §402.602 to remove all references  
19 to rental taxes because they are no longer collected.

20 Subchapter G (Compliance and Enforcement) consists of the following rules:

21 §402.700 – Denials; Suspensions; Revocations; Hearings

22 §402.701 – Investigation of Applicants for Licenses

23 §402.702 – Disqualifying Convictions

1 §402.703 – Audit Policy

2 §402.705 – Inspection of Premises

3 §402.706 – Schedule of Sanctions

4 §402.707 – Expedited Administrative Penalty Guideline

5 §402.708 – Dispute Resolution

6 §402.709 – Corrective Action

7 Subchapter G includes rules governing the Commission’s disciplinary, inspection, and  
8 audit processes. These rules are necessary, and the reasons for initially adopting the rules  
9 continue to exist, because they help ensure that licensees and other persons abide by all  
10 applicable statutes and rules. Subchapter G also includes rules governing the conduct of criminal  
11 background checks on applicants and criminal convictions which may disqualify a license or  
12 bingo worker registry applicant. These rules are necessary, and the reasons for initially adopting  
13 the rules continue to exist, because they help implement Tex. Occ. Code §2001.541, which  
14 requires the Commission to adopt rules regarding the use of criminal history record information  
15 in the licensing process. However, the Commission intends to propose amendments to (1)  
16 §402.700(b), to provide for a temporary suspension process and guidelines; (2) §402.702(c)(2),  
17 to correct a citation to the Texas Code of Criminal Procedure; and (3) §402.702(e), to add assault  
18 to the list of directly related offenses in accordance with the Commission’s published criminal  
19 background guidelines. No other substantive amendments are recommended at this time.

20 The BAC recommends amendments to: (1) §402.700(b) to require the Commission to  
21 provide all the evidence it will rely on at a temporary suspension hearing to the licensee prior to  
22 the hearing; (2) §402.700(d), to provide that the Commission “may” treat certain deferred  
23 adjudications as convictions, rather than “generally will”; and (3) §402.703(d), to provide for



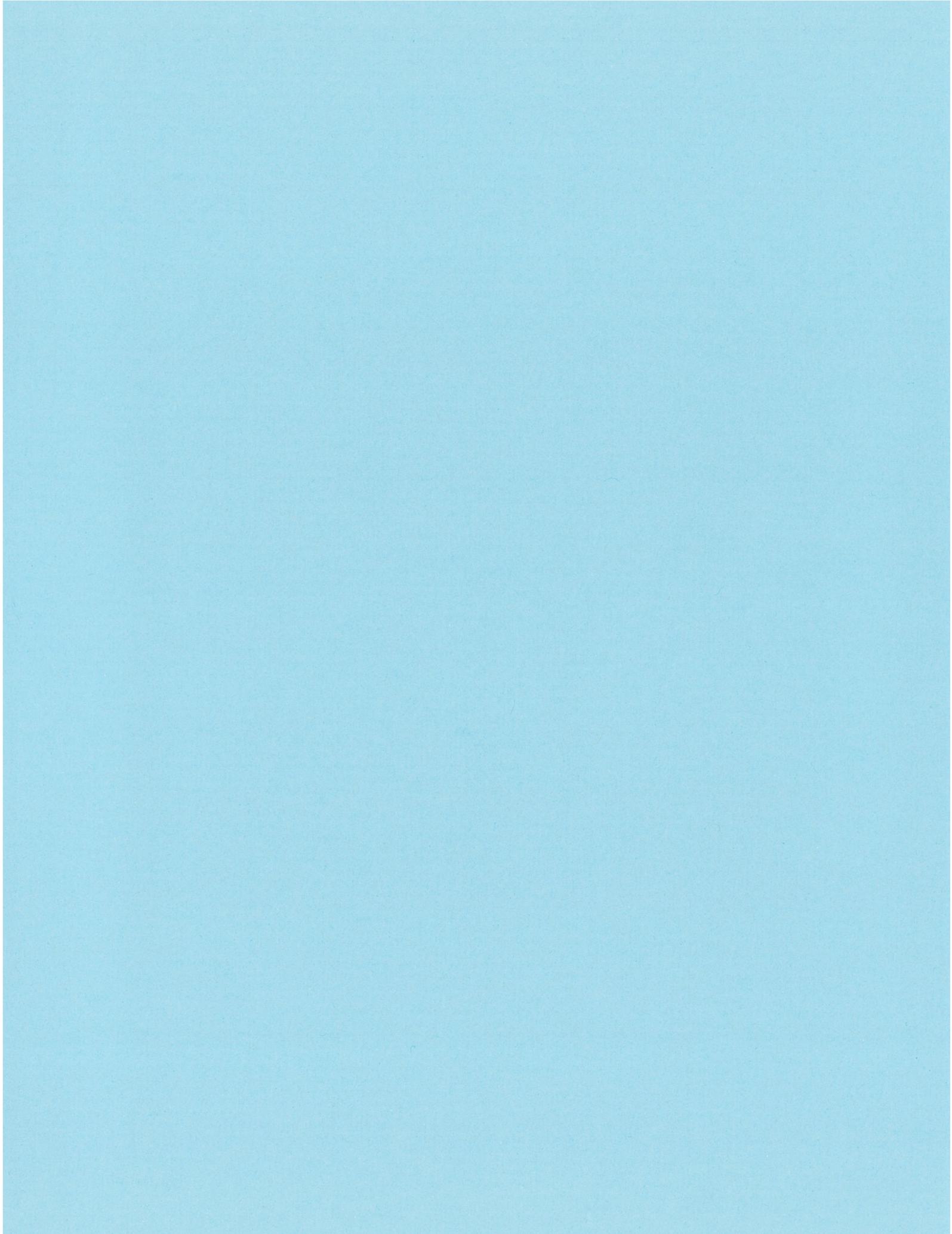
1 audit entrance conferences via telephone and to require that an audit be completed within one  
2 year, rather than two.

3 The VFW recommends amendments to: (1) §402.700(b) to require the Commission to  
4 provide all the evidence it will rely on at a temporary suspension hearing to the licensee prior to  
5 the hearing; (2) §402.700(d), to provide that the Commission “may” treat certain deferred  
6 adjudications as convictions, rather than “generally will”; and (3) §402.703(d), to provide for  
7 audit entrance conferences via telephone and to require that an audit be completed within one  
8 year, rather than two.

9 The Commission will propose amendments to the rules requiring amendments in separate  
10 rulemaking actions. The Commission will take the recommendations of the BAC and the VFW  
11 under advisement and will continue to work with the BAC on any future rulemaking actions.

12 This review and readoption has been conducted in accordance with Texas Government  
13 Code Section 2001.039. The proposed review was published in the October 25, 2019 issue of the  
14 *Texas Register* (44 TexReg 6379).

15 This action concludes the Commission’s review of 16 TAC Chapter 402.





1           The Texas Lottery Commission (Commission) has reviewed the Commission's rules at  
2   16 TAC Chapter 403, titled General Administration, in accordance with the requirements of Tex.  
3   Gov't Code §2001.039 (Agency Review of Existing Rules), and hereby readopts the rules in  
4   Chapter 403. The Commission has determined that the reasons for adopting each of the rules in  
5   Chapter 403 continue to exist, as discussed below. As a result of this review, and as discussed  
6   below, the Commission has determined that some of the rules in Chapter 403 need to be  
7   amended, actions which will be proposed in separate rulemaking proceedings.

8           Section 403.101 (Open Records) sets forth agency procedures under which public  
9   information may be inspected and copied, as authorized by Tex. Gov't Code §552.230, relating  
10   to Rules of Procedure for Inspection and Copying of Public Information (from the Texas Public  
11   Information Act). This rule also explains the implementation of Texas Government Code  
12   §552.275 (Requests that Require Large Amounts of Employee or Personnel Time) by  
13   establishing a reasonable limit of 36 hours per fiscal year as the maximum amount of time  
14   Commission personnel are required to spend producing public information for inspection or  
15   duplication by a requestor, or providing copies of public information to a requestor, without the  
16   Commission recovering costs attributable to that personnel time. This rule will require minor,  
17   non-substantive changes to change terminology from "open records" to "public information".

18          Section 403.102 (Items Mailed to the Commission) is necessary to establish a standard  
19   approach to determine when items are mailed to the Commission, consistent with the  
20   requirements of Tex. Gov't Code §2001.004(1), relating to state agency Rules of Practice. No  
21   amendments to this rule are necessary at this time.

22          Section 403.110 (Petition for Adoption of Rule Changes) is necessary to comply with the  
23   requirement set forth in Tex. Gov't Code §2001.021(b) for a state agency to adopt rules



1     prescribing the form for a Petition for Adoption of Rules. This rule will require amendments to  
2     add language regarding the residency requirement for the petitioner as amended by the 84<sup>th</sup>  
3     Legislature, R.S., Ch. 343 (H.B. 763), Sec. 1, effective June 9, 2015.

4             Section 403.115 (Negotiated Rulemaking and Alternative Dispute Resolution) sets forth  
5     agency procedures and policy to comply with the requirements of Tex. Gov't Code §467.109,  
6     relating to Negotiated Rulemaking and Alternative Dispute Resolution Policy. No amendments  
7     to this rule are necessary at this time.

8             Sections 403.201 (Definitions), 403.202 (Prerequisites to Suit), 403.203 (Sovereign  
9     Immunity), 403.204 (Notice of Claim of Breach of Contract), 403.205 (Agency Counterclaim),  
10    403.206 (Request for Voluntary Disclosure of Additional Information), 403.207 (Duty to  
11    Negotiate), 403.208 (Timetable), 403.209 (Conduct of Negotiation), 403.210 (Settlement  
12    Approval Procedures), 403.211 (Settlement Agreement), 403.212 (Costs of Negotiation),  
13    403.213 (Request for Contested Case Hearing), 403.214 (Mediation Timetable), 403.215  
14    (Conduct of Mediation), 403.216 (Qualifications and Immunity of the Mediator), 403.217  
15    (Confidentiality of Mediation and Final Settlement Agreement), 403.218 (Costs of Mediation),  
16    403.219 (Settlement Approval Procedures), 403.220 (Initial Settlement Agreement), 403.221  
17    (Final Settlement Agreement), 403.222 (Referral to the State Office of Administrative Hearings),  
18    and 403.223 (Use of Assisted Negotiation Processes) are necessary to comply with the  
19    requirement that a state agency develop rules to govern the negotiation and mediation of claims,  
20    set forth in Tex. Gov't Code §2260.052, relating to Negotiation. No amendments to these rules  
21    are necessary at this time.

22             Section 403.301 (Historically Underutilized Businesses) is necessary to comply with the  
23     requirement that a state agency adopt the Comptroller of Public Accounts' rules on Historically

1 Underutilized Businesses, set forth in Government Code §2161.003, relating to Agency Rules.  
2 Minor, non-substantive amendments to this rule are needed to update a citation to the Texas  
3 Comptroller's administrative rules.

4 Section 403.401 (Use of Commission Motor Vehicles) is necessary to comply with the  
5 requirement that a state agency adopt rules relating to the assignment and use of agency vehicles,  
6 set forth in Government Code §2171.1045, relating to Restrictions on Assignment of Vehicles.  
7 No amendments to this rule are necessary at this time.

8 Section 403.501 (Custody and Use of Criminal History Record Information) is necessary  
9 to implement provisions governing the Commission's access to criminal history record  
10 information obtained from the Texas Department of Public Safety, set forth in Tex. Gov't Code  
11 §411.108, relating to Access to Criminal History Record Information: Texas Lottery  
12 Commission. No amendments to this rule are necessary at this time.

13 Section 403.600 (Complaint Review Process) sets forth agency procedures to comply  
14 with Tex. Gov't Code §467.111, which requires the Commission to maintain a system to  
15 promptly and efficiently act on each complaint filed with the Commission; and, specifically, the  
16 requirement in §467.111(d) that the agency adopt rules governing the entire complaint process  
17 from submission to disposition. Amendments to this rule are needed to address the availability of  
18 a dedicated voicemail system for the reporting and investigation of complaints without the  
19 requisite complaint information when the facts involve a significant risk to the public or to the  
20 integrity of lottery or bingo games.

21 Section 403.700 (Employee Tuition Reimbursement) sets forth necessary internal  
22 procedures under which the Commission provides financial assistance to employees who wish to  
23 improve or supplement their knowledge and skills by attending classes at accredited colleges,

1 junior colleges, or universities while pursuing a degree plan. No amendments to this rule are  
2 necessary at this time.

3 Section 403.800 (Savings Incentive Program) implements Chapter 2108 of the Texas  
4 Government Code, which requires state agencies to provide notice to the Comptroller of savings  
5 realized from appropriated undedicated general revenue and to retain a portion of the amounts  
6 verified by the Comptroller. Amendments to this rule are needed to address the statement that the  
7 Commission has no appropriated undedicated general revenue. The Charitable Bingo Operations  
8 Division currently is funded by general revenue. The Charitable Bingo program is supported by  
9 bingo prize fees and the Commission does not foresee retaining any general revenue savings.

10 The Commission intends to initiate separate rulemaking proceedings for the necessary  
11 Chapter 403 amendments noted herein. This review and readoption has been conducted in  
12 accordance with Tex. Gov't Code §2001.039. The Commission received no comments on the  
13 proposed review, which was published in the October 25, 2019, issue of the *Texas Register* (44  
14 TexReg 6381).

15 This action concludes the Commission's review of 16 TAC Chapter 403.