



INTEROFFICE MEMO

Ryan Mindell, Executive Director

LaDonna Castañuela, Charitable Bingo Operations Director

To: Robert G. Rivera, Chairman
Cindy Fields, Commissioner
Mark A. Franz, Commissioner
Clark E. Smith, Commissioner
Jamey Steen, Commissioner

From: Kyle Wolfe, Assistant General Counsel *KW*

Date: February 6, 2025

Re: Consideration of and possible discussion and/or action, including adoption, on amendments to 16 TAC §§ 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), 401.153 (Qualifications for License), 401.158 (Suspension or Revocation of License), 401.160 (Standard Penalty Chart), 401.301 (General Definitions), 401.302 (Scratch Ticket Game Rules), 401.304 (Draw Game Rules (General)), 401.355 (Restricted Sales), and 401.501 (Lottery Security).

Attached is a draft rule submission to the *Texas Register* to adopt the above-referenced rules without changes to the proposed text as published in the December 6, 2024 issue of the *Texas Register* (49 TexReg 9855) (also attached).

The rule amendments are the result of the Commission's recent rule review conducted in accordance with Texas Government Code §2001.039, as well as the agency's recent review by the Texas Sunset Advisory Commission. Among the more significant changes, this proposal addresses issues identified as rulemaking gaps in the September 2024 Sunset Advisory Commission Staff Report With Commission Decisions (Sunset Report). Specifically, the Sunset Report noted that there was "[n]o clarification as to whether internet sales of lottery products are prohibited" (addressed in Rules 401.153(b)(12), 401.158(b)(27), 401.160(h), and 401.355(a)), and "[n]o explanation of what it means for a person to 'engage in a business exclusively as a (lottery) sales agent' for purposes of licensure" (addressed in Rule 401.153(b)(13)).

The rule amendments also clarify procurement procedures and the time period a bidder or proposer has to respond to an appeal of certain protest decisions issued by the agency in procurements; update several definitions; update a provision in the scratch ticket game rule to make it more consistent with the draw game rule; update the scratch and draw ticket prize claim processes; and update the language regarding lottery security to state that several divisions of the Commission are responsible for developing and maintaining security plans and procedures, and confirming that these plans and procedures are protected from required public disclosure as allowed under the Texas Public Information Act.

The amendments to Rule 401.101 clarify the rules governing the Invitation for Bid (IFB) procurement method by reorganizing the section and by adding language that describes the process used for IFBs. The amendments also clarify certain differences between the Request for Proposals (RFP) and IFB procurement methods.

The amendments to Rule 401.102 add language stating that the email address designated by the vendor for correspondence in the procurement will also serve as the email address for notice of proceedings and decisions under this section.

The amendments to Rule 401.103(g) clarify the time period a successful bidder or proposer has to respond to an appeal of an agency determination of a vendor's protest to a contract award resulting from a competitive solicitation. Also, the proposal adds language stating that the email address designated by the vendor for correspondence in the procurement will also serve as the email address for notice of proceedings and decisions under this section.

The amendments to Rule 401.104 clarify that the agency may assign designated personnel to monitor contract compliance and facilitate historically underutilized business participation, in addition to the existing divisions within the agency that handle these matters.

The amendments to Rule 401.153(b)(12) clarify that an application for a sales agent license will be denied if the applicant intends to sell lottery tickets via the internet, and the amendments to Rule 401.153(b)(13) reiterate the prohibition in the State Lottery Act that an application for a sales agent license will be denied if the applicant intends to engage in business exclusively as a Texas Lottery ticket sales agent (as defined in the proposed amendments). These changes address gaps that were identified by the Sunset Report.

The amendments to Rule 401.153 also add a provision that, based upon consideration of the factors in Rule 401.160(g), the director may determine a person or organization whose license has been revoked, surrendered or denied is not eligible to apply for another license for one year.

The amendments to Rule 401.158(b)(23) make it an express violation to require a purchaser to buy additional items when paying for lottery tickets with a debit card and the amendments to Rule 401.158(b)(27) make it an express violation to sell lottery tickets over the internet.

The amendments to Rule 401.160 update the penalty chart and correspond with the proposed amendments to Rules 401.158(b)(23) and (27) referenced above.

The amendments to Rule 401.301(1), (4), (51), and (55) make minor updates to multiple definitions to increase the clarity of those definitions. The amendments also add a definition of "Present at the terminal" that was deleted in a non-substantive rule amendment in August 2020. The purpose of re-inserting the definition, in combination with the related amendment to Rule 401.304(b)(3), is to dispel any misconception that the deletion was substantive and make clear that all aspects of a sales transaction under Rule 401.304 must take place at the retail location.

The amendments to Rule 401.302(a)(1) add language from Rule 401.304(b)(3) (Draw Game Rules (General)) regarding the requirement that all aspects of a ticket purchase must take place at a licensed retail location, to make Rule 401.302 more consistent with Rule 401.304. The amendments to Rule 401.302(e)(6) and (f)(2) update the rule by requiring all scratch ticket prize claim processes to be made in accordance with Commission procedures and deleting requirements that are inapplicable to mobile prize claims.

The amendments to Rule 401.304(b)(3) add language that was deleted in a non-substantive rule amendment in 2020 to reiterate and clarify that no part of a draw game ticket sale may take place away from the terminal. The amendments to Rule 401.304(d)(3) update the rule by requiring all draw ticket prize claim processes to be made in accordance with Commission procedures and deleting requirements that are inapplicable to mobile prize claims.

The amendments to Rule 401.355(a) clarify that retailers shall not sell lottery tickets via the internet, a gap that was identified by the Sunset Report, and the amendments to Rule 401.355(b) update a cross-reference.

The amendments to Rule 401.501 update the language regarding lottery security to state that several divisions of the Commission are responsible for developing and maintaining security plans and procedures, including information security, gaming security, and facility security as required by the State Lottery Act to ensure the integrity and security of the lottery games, and confirming that these plans and procedures are protected from required public disclosure as allowed under the Texas Public Information Act.

The Commission received no comments on the proposed amendments during public comment period.

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

1 The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §§ 401.101
2 (Lottery Procurement Procedures), 401.102 (Protests of the Terms of a Formal Competitive
3 Solicitation), 401.103 (Protests of Contract Award), 401.104 (Contract Monitoring Roles and
4 Responsibilities), 401.153 (Qualifications for License), 401.158 (Suspension or Revocation of
5 License), 401.160 (Standard Penalty Chart), 401.301 (General Definitions), 401.302 (Scratch
6 Ticket Game Rules), 401.304 (Draw Game Rules (General)), 401.355 (Restricted Sales), and
7 401.501 (Lottery Security) without changes to the proposed text as published in the December 6,
8 2024 issue of the *Texas Register* (49 TexReg 9855).

9 The rule amendments are the result of the Commission’s recent rule review conducted in
10 accordance with Texas Government Code §2001.039, as well as the agency’s recent review by the
11 Texas Sunset Advisory Commission. Among the more significant changes, this proposal addresses
12 issues identified as rulemaking gaps in the September 2024 Sunset Advisory Commission Staff
13 Report With Commission Decisions (Sunset Report). Specifically, the Sunset Report noted that
14 there was “[n]o clarification as to whether internet sales of lottery products are prohibited”
15 (addressed in Rules 401.153(b)(12), 401.158(b)(27), 401.160(h), and 401.355(a)), and “[n]o
16 explanation of what it means for a person to ‘engage in a business exclusively as a (lottery) sales
17 agent’ for purposes of licensure” (addressed in Rule 401.153(b)(13)).

18 The rule amendments also clarify procurement procedures and the time period a bidder or
19 proposer has to respond to an appeal of certain protest decisions issued by the agency in
20 procurements; update several definitions; update a provision in the scratch ticket game rule to
21 make it more consistent with the draw game rule; update the scratch and draw ticket prize claim
22 processes; and update the language regarding lottery security to state that several divisions of the
23 Commission are responsible for developing and maintaining security plans and procedures, and

1 confirming that these plans and procedures are protected from required public disclosure as
2 allowed under the Texas Public Information Act.

3 The amendments to Rule 401.101 clarify the rules governing the Invitation for Bid (IFB)
4 procurement method by reorganizing the section and by adding language that describes the process
5 used for IFBs. The amendments also clarify certain differences between the Request for Proposals
6 (RFP) and IFB procurement methods.

7 The amendments to Rule 401.102 add language stating that the email address designated
8 by the vendor for correspondence in the procurement will also serve as the email address for notice
9 of proceedings and decisions under this section.

10 The amendments to Rule 401.103(g) clarify the time period a successful bidder or proposer
11 has to respond to an appeal of an agency determination of a vendor's protest to a contract award
12 resulting from a competitive solicitation. Also, the proposal adds language stating that the email
13 address designated by the vendor for correspondence in the procurement will also serve as the
14 email address for notice of proceedings and decisions under this section.

15 The amendments to Rule 401.104 clarify that the agency may assign designated personnel
16 to monitor contract compliance and facilitate historically underutilized business participation, in
17 addition to the existing divisions within the agency that handle these matters.

18 The amendments to Rule 401.153(b)(12) clarify that an application for a sales agent license
19 will be denied if the applicant intends to sell lottery tickets via the internet, and the amendments
20 to Rule 401.153(b)(13) reiterate the prohibition in the State Lottery Act that an application for a
21 sales agent license will be denied if the applicant intends to engage in business exclusively as a
22 Texas Lottery ticket sales agent (as defined in the proposed amendments). These changes address
23 gaps that were identified by the Sunset Report.

1 The amendments to Rule 401.153 also add a provision that, based upon consideration of
2 the factors in Rule 401.160(g), the director may determine a person or organization whose license
3 has been revoked, surrendered or denied is not eligible to apply for another license for one year.

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5 to buy additional items when paying for lottery tickets with a debit card and the amendments to
6 Rule 401.158(b)(27) make it an express violation to sell lottery tickets over the internet.

7 The amendments to Rule 401.160 update the penalty chart and correspond with the
8 proposed amendments to Rules 401.158(b)(23) and (27) referenced above.

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10 definitions to increase the clarity of those definitions. The amendments also add a definition of
11 “Present at the terminal” that was deleted in a non-substantive rule amendment in August 2020.
12 The purpose of re-inserting the definition, in combination with the related amendment to Rule
13 401.304(b)(3), is to dispel any misconception that the deletion was substantive and make clear that
14 all aspects of a sales transaction under Rule 401.304 must take place at the retail location.

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16 Game Rules (General)) regarding the requirement that all aspects of a ticket purchase must take
17 place at a licensed retail location, to make Rule 401.302 more consistent with Rule 401.304. The
18 amendments to Rule 401.302(e)(6) and (f)(2) update the rule by requiring all scratch ticket prize
19 claim processes to be made in accordance with Commission procedures and deleting requirements
20 that are inapplicable to mobile prize claims.

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22 rule amendment in 2020 to reiterate and clarify that no part of a draw game ticket sale may take
23 place away from the terminal. The amendments to Rule 401.304(d)(3) update the rule by requiring

1 all draw ticket prize claim processes to be made in accordance with Commission procedures and
2 deleting requirements that are inapplicable to mobile prize claims.

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4 the internet, a gap that was identified by the Sunset Report, and the amendments to Rule 401.355(b)
5 update a cross-reference.

6 The amendments to Rule 401.501 update the language regarding lottery security to state
7 that several divisions of the Commission are responsible for developing and maintaining security
8 plans and procedures, including information security, gaming security, and facility security as
9 required by the State Lottery Act to ensure the integrity and security of the lottery games, and
10 confirming that these plans and procedures are protected from required public disclosure as
11 allowed under the Texas Public Information Act.

12 The Commission received no comments on the proposed amendments during public
13 comment period.

14 These amendments are adopted under Texas Government Code §466.015(c), which
15 authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102,
16 which authorizes the Commission to adopt rules for the enforcement and administration of the
17 laws under the Commission's jurisdiction.

18 §401.101. Lottery Procurement Procedures.

19 (a) Definitions. The following words and terms, when used in this subchapter, shall have the
20 following meanings, unless the context clearly indicates otherwise.

21 (1) Act--The State Lottery Act.

1 (2) Agency--For the purposes of this subchapter that deals with procurements for the
2 administration of the lottery, the term "agency" refers to the commission as defined in paragraph
3 (5) of this subsection.

4 (3) Best and Final Offer (BAFO)--A revised final bid or proposal submitted after all
5 clarifications, discussions, and negotiations with the agency.

6 (4) Executive director--The executive director of the Commission.

7 (5) Commission--The state agency established under Chapter 466 and Chapter 467,
8 Government Code. However, this subchapter applies only to the procurement of goods and
9 services for the administration of the lottery authorized by the State Lottery Act. For the sake of
10 clarity, this subchapter will refer to the commission as "agency" and to the appointed board as the
11 "Texas Lottery Commission".

12 (6) Cost--The price at which the agency can purchase goods and/or services.

13 (7) Electronic State Business Daily or Business Daily--An online directory administered
14 by the Comptroller of Public Accounts, or its successor, that publishes solicitations for the purpose
15 of informing vendors of procurement opportunities and provides public notice of contract awards.

16 (8) Emergency procurement--A situation requiring the state agency to make the
17 procurement more quickly to prevent a hazard to life, health, safety, welfare, or property or to
18 avoid undue additional cost to the state.

19 (9) Goods--Supplies, materials, and equipment.

20 (10) IFB--A written invitation for bids.

21 (11) Lottery--The procedures and operations of the agency under the State Lottery Act
22 through which prizes are awarded or distributed by chance among persons who have paid, or
23 unconditionally agreed to pay, for a chance or other opportunity to receive a prize.

1 (12) Nonresident bidder or proposer--A person whose principal place of business is not in
2 Texas, but does not include a bidder whose majority owner or parent company has its principal
3 place of business in Texas.

4 (13) Principal place of business--The state in which the head office of a business is located,
5 and generally, where the executive management is located and the business records are maintained.

6 (14) Produced in Texas--Those goods that are manufactured in Texas, excluding the sole
7 process of packaging or repackaging. Packaging or repackaging does not constitute being
8 manufactured in Texas.

9 (15) Proprietary purchase--A product or service that is unique to a single vendor or
10 manufacturer and is not available from other sources.

11 (16) Resident bidder or proposer--A person whose principal place of business is in this
12 state, including a contractor whose ultimate parent company or majority owner has its principal
13 place of business in this state.

14 (17) RFP--A written request for proposals.

15 (18) RFQ--A written request for qualifications.

16 (19) Services--The furnishing of skilled or unskilled labor or professional work.

17 (20) State or statewide contract--A contract for goods or services established and
18 administered by another state agency (e.g., Texas Comptroller of Public Accounts, Texas
19 Department of Information Resources) for use by all state agencies.

20 (21) Texas Lottery Commission--The appointive board or commission established in
21 Chapter 467, Government Code.

22 (b) Use and Effect. This subchapter is prescribed for the performance of the statutory powers and
23 functions vested in the agency. In no event shall they, or any of them, be construed as a limitation

1 or restriction upon the exercise of any discretion authorized to be exercised by the Texas Lottery
2 Commission.

3 (c) Procurement method.

4 (1) For the purchase or lease of goods and services not expected to exceed \$10,000, or for
5 the purchase or lease of goods and services available under a state contract, a competitive
6 solicitation, whether formal or informal, may be conducted, but is not required.

7 (2) For the purchase or lease of goods and services not expected to exceed \$25,000, the
8 agency, at a minimum, will conduct an informal competitive solicitation in an attempt to obtain at
9 least three competitive bids and will solicit at least two HUB vendors.

10 (3) For the purchase or lease of goods and services expected to exceed \$25,000, the agency
11 will conduct a formal competitive solicitation in an attempt to obtain at least three competitive
12 bids or proposals and will solicit at least two HUB vendors.

13 (4) Printing services. For the purchase of printing services over \$2,500, the agency will
14 submit print job specifications and bid requests to the State Print Shops. If no responsive bids are
15 received from a State Print Shop or, after the results of the bid evaluation, the agency determines
16 that best value would be achieved through a private sector vendor, the agency may perform a
17 competitive solicitation outlined in paragraph (2) or (3) of this subsection.

18 (5) Emergency procurement. Notwithstanding paragraphs (1) - (4) of this subsection, the
19 agency may make an emergency purchase or lease of goods or services. Prior to making an
20 emergency purchase or lease of goods or services, the existence of an emergency should be
21 documented. For emergency purchases in excess of \$10,000, the agency may conduct an informal
22 competitive solicitation in an attempt to obtain at least three competitive bids, whenever possible.
23 For emergency purchases in excess of \$25,000, the procurement will be posted on the Electronic

1 State Business Daily; however, the minimum posting requirements do not apply. Posting of the
2 advertisement and/or the award notice satisfies this requirement. In response to an emergency, the
3 agency may procure goods or services in the most expeditious manner deemed appropriate,
4 including from a sole source.

5 (6) Proprietary purchase. When the agency believes that a purchase of goods or services
6 over \$10,000 is proprietary to one vendor or one manufacturer, a written proprietary purchase
7 justification will be included in the procurement file. If the estimated purchase price exceeds
8 \$25,000, the procurement will be posted on the Electronic State Business Daily prior to a purchase
9 order or contract being issued.

10 (7) Notwithstanding paragraphs (1) - (4) of this subsection, the agency may make a
11 purchase or lease of goods or services under any other procedure not otherwise prohibited by law.

12 (d) Informal competitive solicitations.

13 (1) An informal competitive solicitation is a process conducted in an effort to receive at
14 least three competitive bids for a specifically identified good or service, without the advertisement
15 and issuance of an IFB or RFP. The bids may be solicited by letter, electronic mail, facsimile, or
16 telephone call. The following information will be recorded by the agency in the procurement file:

17 (A) the name and telephone number of each person or company to which the
18 solicitation was provided;

19 (B) the name and telephone number of the person or company submitting the bid;

20 (C) the date the bid was received;

21 (D) the amount of the bid;

22 (E) bidder's Historically Underutilized Business status; and

23 (F) the name and telephone number of the person receiving the bid for the agency.

1 (2) The agency will award a contract to the qualified bidder submitting the lowest and best
2 bid, except that the agency may reject all bids if it is determined to be in the best interest of the
3 state.

4 (3) The contract will be awarded by the issuance of a written purchase order.

5 (e) Formal competitive solicitations.

6 (1) A formal competitive solicitation is a process conducted in order to receive at least
7 three sealed competitive bids or proposals pursuant to the issuance of an IFB, RFP, RFQ, or
8 another statewide contract process, respectively.

9 (A) An IFB will be used when the agency is able to describe, by way of established
10 specifications, exactly what it wishes to procure, and wants bidders to offer such at a specific price.
11 For formal competitive solicitations where an IFB is used, the agency will award a contract to the
12 qualified bidder submitting the lowest cost responsible bid meeting all specifications and providing
13 the best value for the agency, as determined during the evaluation of the bids.

14 (B) An RFP will be used when the agency knows generally what it wishes to
15 procure in order to accomplish a certain goal(s) or objective(s); requirements cannot be completely
16 and accurately described; requirements can be satisfied in a number of ways, all of which could be
17 acceptable; or, where oral or written communications with proposers may be necessary in order to
18 effectively communicate requirements and/or assess proposals, and the agency wants proposers to
19 offer a solution(s) to address such need(s) at a specific price(s). The RFP process allows for
20 negotiations between a proposer and the issuing agency.

21 (C) An RFQ will be used when the agency wants to procure professional services
22 and evaluate proposers solely on their qualifications.

23

1 (2) The agency will advertise formal competitive solicitations, whether by IFB, RFP, or
2 RFQ on the Electronic State Business Daily in accordance with the Comptroller of Public
3 Accounts posting time requirements. The agency may advertise such solicitations in other media
4 determined appropriate by the agency.

5 (3) For all formal competitive solicitations, the agency will award a contract to the most
6 qualified bidder or proposer as determined during the evaluation of the bids or proposals. The
7 agency may reject all bids or proposals if it is determined to be in the best interest of the agency.
8 At the time a purchase order is issued or a contract is executed, the agency will notify, in writing,
9 all other bidders or proposers of the contract award by facsimile, email or by certified mail. Any
10 information relating to the solicitation not made privileged from disclosure by law will be made
11 available for public disclosure, after award of a contract, pursuant to the Texas Public Information
12 Act.

13 (4) For those formal competitive solicitations where fewer than two bids or proposals are
14 received, the agency will document the reasons, if known, for the lack of two bids or proposals. If
15 fewer than two bids or proposals are received, the agency may cancel the solicitation and conduct
16 another solicitation, or it may award a contract if one acceptable bid or proposal is received.

17 (f) RFPs and IFBs.

18 (1) Submission of RFP. When an RFP is used by the agency, the RFP will contain, at a
19 minimum, the following:

20 (A) a general description of the goods and/or services to be provided, and a specific
21 identification of the goals or objectives to be achieved;

22 (B) a description of the format proposals must follow and the elements they must
23 contain;

1 (C) the time and date proposals are due, and the location and person to whom they
2 must be submitted;

3 (D) an identification of the process to be utilized in evaluating proposals; and

4 (E) a listing of the factors to be utilized in evaluating proposals and awarding a
5 contract. At a minimum, the factors should include:

6 (i) the proposer's price to provide the goods or services;

7 (ii) the probable quality of the offered goods or services;

8 (iii) the agency's evaluation of the likelihood of the proposal to produce the
9 desired outcome for the agency, considering, among other criteria:

10 (I) the quality of the proposer's past performance in contracting with
11 the agency, with other state entities, or with private sector entities;

12 (II) the qualifications of the proposer's personnel;

13 (III) the experience of the proposer in providing the requested goods
14 or services;

15 (IV) the financial status of the proposer; and

16 (iv) whether the proposer performed the good faith effort required by the
17 HUB subcontracting plan, when the agency has determined that subcontracting is probable.

18 (2) Submission of IFB. When an IFB is used by the agency, a bidder will submit a bid in
19 response to the solicitation. The IFB solicitation will contain, at a minimum, the following:

20 (A) A detailed description of the goods and/or services to be provided, and specific
21 specifications for the goods or services to be procured;

22 (B) A description of the format bids must follow and the elements they must
23 contain;

1 (C) The time and date bids are due, and the location and person to whom they must
2 be submitted;

3 (D) an identification of the process to be utilized in evaluating bids; and

4 (E) a listing of the factors to be utilized in evaluating bids and awarding a purchase
5 order. At a minimum, the factors should include:

6 (i) the bidder's price to provide the goods or services;

7 (ii) the probable quality of the offered goods or services;

8 (iii) the quality of the bidder's past performance in contracting with the
9 Texas Lottery, with other state entities or with private sector entities;

10 (iv) the bidder's experience in providing the requested goods or services;

11 (v) the qualifications of the bidder's personnel; and,

12 (vi) whether the bidder performed the good faith effort required by the HUB
13 subcontracting plan, as applicable.

14 (3) Evaluation Process. The agency will, prior to the deadline for receipt of proposals or
15 bids, develop and establish comprehensive evaluation criteria to be utilized by an evaluation
16 committee in evaluating the proposals or bids. All proposals or bids that are responsive to the
17 procurement will be reviewed by the evaluation committee. Part of the initial evaluation process
18 may include an inspection trip to the proposer's facilities, and/or proposers may be requested to
19 make an oral presentation to the committee. The evaluation committee may seek advice from
20 consultants. If consultants are employed, they may be provided all information provided by the
21 proposers or bidders. The evaluation committee will evaluate and score all proposals in accordance
22 with the evaluation criteria.

1 (4) Best and Final Offers (BAFO). With an RFP, the agency may select top proposers,
2 which may each be given an opportunity to discuss, clarify, and negotiate with the agency, and
3 submit revisions to their respective proposals to the agency through a BAFO process. During
4 discussions between the proposers and the agency, no information from a competing proposal may
5 be revealed by the agency to another competitor. Any type of auction practice or allowing the
6 transfer of technical information is specifically prohibited. At the conclusion of the discussions,
7 BAFOs may be formally requested from the proposers and a deadline will be set for submission.
8 BAFOs will be submitted by supplemental pages and not a complete resubmission of the proposal.
9 All BAFOs will be reviewed by the evaluation committee. The evaluation committee will evaluate
10 and score the BAFO response together with the original proposal in accordance with the evaluation
11 criteria.

12 (5) Negotiation.

13 (A) RFP. If a BAFO process is not used, the agency will attempt to negotiate a
14 contract with the selected proposer. If a contract cannot be negotiated with the selected proposer
15 on terms the agency determines reasonable, negotiations with that proposer will be terminated, and
16 negotiations will be undertaken with the next highest scored proposer. This process will be
17 continued until a contract is executed by a proposer and the agency, or negotiations with all
18 qualified proposers are terminated. If no contract is executed, the agency may cancel the
19 solicitation.

20 (B) IFB. Negotiations are not authorized when utilizing an IFB procurement
21 method; however, if only one response is received, negotiations are allowed, provided,
22 negotiations may not result in a material change to the advertised specifications.

1 (6) Multiple Award. The agency may award a contract to two or more vendors or
2 contractors using a single solicitation to furnish the same or similar supplies or services, where
3 more than one vendor or contractor is needed to meet the agency's requirements for quantity,
4 delivery, or service.

5 (g) RFQ.

6 (1) Submission. When an RFQ is used by the agency, the RFQ will contain, at a minimum,
7 the following:

8 (A) a general description of the professional services to be performed, and a specific
9 identification of the goals or objectives to be achieved;

10 (B) a description of the format proposals must follow and the elements they must
11 contain;

12 (C) the time and date proposals are due, and the location and person to whom they
13 are to be submitted;

14 (D) an identification of the process to be utilized in evaluating proposals and
15 awarding a contract; and

16 (E) a listing of the factors to be utilized in evaluating proposals and awarding a
17 contract. At a minimum, the factors should include:

18 (i) the demonstrated competence and qualifications to perform the services;

19 (ii) the quality of the proposer's past performance in contracting with the
20 agency, with other state entities, or with private sector entities;

21 (iii) the financial status of the proposer;

22 (iv) the qualifications of the proposer's personnel;

23 (v) the experience of the proposer in providing the requested services; and

1 (vi) whether the proposer performed the good faith effort required by the
2 HUB subcontracting plan, when the agency has determined that subcontracting is probable.

3 (2) Evaluation Process. The agency will, prior to the deadline for receipt of proposals,
4 develop and establish comprehensive evaluation criteria to be utilized by an evaluation committee
5 in evaluating the proposals. All proposals that are responsive to the RFQ will be reviewed by the
6 evaluation committee. The evaluation committee will evaluate and score all proposals in
7 accordance with the evaluation criteria.

8 (3) Negotiation. The agency will then attempt to negotiate a contract, for a fair and
9 reasonable price, with the selected proposer; or, the agency may engage in simultaneous
10 negotiations with multiple proposers. If a contract cannot be negotiated with the selected proposer
11 on terms the agency determines reasonable, negotiations with that proposer will be terminated, and
12 negotiations will be undertaken with the next highest scored proposer. This process will continue
13 until a contract is executed by a proposer and the agency, or negotiations with all qualified
14 proposers are terminated. If no contract is executed, the agency may cancel the solicitation.

15 (h) Preferences.

16 (1) If, after application of the preferences required by Texas law, a tie continues, the
17 contract award will be made by the drawing of lots.

18 (2) A bidder or proposer entitled to a preference(s) under Texas law shall claim the
19 preference(s) in its bid or proposal.

20 (i) Contract terms. A contract for the purchase or lease of goods or services relating to the
21 implementation, operation, or administration of the lottery will provide that the executive director
22 may terminate the contract, without penalty, if an investigation made pursuant to the Act reveals
23 that the person to whom the contract was awarded would not be eligible to receive a sales agent

1 license under the State Lottery Act, Texas Government Code, §466.155. An IFB, RFP or RFQ
2 may require that bidders or proposers provide in their bids or proposals sufficient information to
3 allow the agency to determine whether the bidder or proposer meets the eligibility requirements
4 for a sales agent license.

5 §401.102. Protests of the Terms of a Formal Competitive Solicitation.

6 (a) Any person aggrieved by the terms of any formal solicitation may protest the agency's action
7 to the director of administration. If the director of administration cannot resolve the protest, the
8 aggrieved party may appeal the director of administration's decision to the executive director. If
9 the executive director cannot resolve the protest, the aggrieved party may appeal the executive
10 director's decision to the Texas Lottery Commission. At any time, the executive director may refer
11 a protest directly to the Texas Lottery Commission for determination. The procedures applicable
12 to an appeal to the commission will then apply.

13 (b) A protest of the terms of any formal solicitation must be filed electronically with the
14 commission's general counsel, by email to legal.input@lottery.state.tx.us, within 72 hours after
15 issuance of the formal competitive solicitation. The protestant must include its email address with
16 the protest. A protest is considered timely filed if it is electronically filed before the filing deadline.

17 An electronically filed protest is deemed filed when transmitted to the protestant's electronic filing
18 service provider. Unless otherwise requested by the commission, the protestant is not required to
19 file a paper copy of its protest. For good cause shown by the protestant, the commission may allow
20 an alternate form of filing. The electronically filed protest must be in a text-searchable PDF format.

21 The protestant is solely responsible for ensuring its protest is complete and filed timely with the
22 office of the general counsel. A protest not filed timely will not be considered, and the protestant
23 will be so notified in writing by the commission's general counsel by electronic notice sent to the

1 protestant's designated email address. A protestant may supplement its timely filed protest. The
2 deadline to supplement is 5 p.m. central time, 10 calendar days after the formal solicitation is
3 issued.

4 (c) To be considered, a protest must contain:

5 (1) a specific identification of the statutory provision, rule provision, or procurement
6 procedure allegedly violated;

7 (2) a brief statement of the relevant facts;

8 (3) an identification of the issue or issues to be resolved;

9 (4) arguments and authorities in support of the protest; and

10 (5) an affidavit that the contents of the protest are true and correct.

11 (d) In the event of a timely filed protest of a formal competitive solicitation, the agency will
12 suspend the solicitation pending resolution of the protest unless the executive director determines,
13 in writing, that such action is not necessary to protect the interests of the lottery.

14 (e) The director of administration will review the protest, and the solicitation file, and will make a
15 written determination of the protest, which may include canceling the solicitation. The director of
16 administration's written determination will be served by email on the protestant. Confirmation that
17 the notice was sent to an email address designated for the receipt of correspondence in the
18 procurement will be conclusive proof that delivery was made. The decision of the director of
19 administration may be appealed to the executive director. The appeal must be filed electronically
20 with the commission's general counsel by 5 p.m. the next business day after issuance of the written
21 determination. An appeal is considered timely filed if it is electronically filed before the filing
22 deadline. An electronically filed appeal is deemed filed when transmitted to the protestant's
23 electronic filing service provider.

1 (f) On appeal of the director of administration's determination, the executive director will review
2 the protest, the solicitation file, any responses, and the director of administration's determination,
3 including any reasoning that supports the determination. The executive director will then make a
4 written determination of the appeal, which may include canceling the solicitation. The executive
5 director's written determination will be served, by email on the protestant. Confirmation that the
6 notice was sent to an email address designated for the receipt of correspondence in the procurement
7 will be conclusive proof that delivery was made. An appeal to the Texas Lottery Commission of
8 the determination of the executive director must be filed electronically with the commission's
9 general counsel by 5 p.m. the next business day after issuance of the written determination. An
10 appeal is considered timely if it is electronically filed before the filing deadline. An electronically
11 filed appeal is deemed filed when transmitted to the protestant's electronic filing service provider.

12 (g) On timely receipt of the notice of appeal to the Texas Lottery Commission, the general counsel
13 will appoint a staff attorney who did not participate in drafting the solicitation and did not render
14 legal advice with respect to the solicitation to evaluate the protest. The staff attorney will make a
15 written recommendation to the Texas Lottery Commission, including proposed findings of fact
16 and conclusions of law.

17 (h) The Texas Lottery Commission, at its discretion, may allow oral argument by the protestant
18 and any necessary agency staff. The Texas Lottery Commission may limit the time for oral
19 argument. Oral argument must be based solely on the written protest. The executive director may
20 be present to respond to questions and will have the opportunity to make a presentation to the
21 Texas Lottery Commission regarding the protest of the terms of the formal competitive
22 solicitation. The staff attorney who made the written recommendation to the Texas Lottery
23 Commission may also be present to respond to any questions.

(i) The Texas Lottery Commission will make a written determination of the protest. To make its determination, the commission will review:

(1) The protest;

(2) The solicitation file;

(3) The oral argument, and executive director's presentation, if any;

(4) The executive director's determination, including any reasoning that supports the determination; and

(5) The staff attorney's recommendation. The written determination on the protest may include a determination canceling the solicitation. The Texas Lottery Commission's written determination will be served by email on the protestant. Confirmation that the notice was sent to an email address designated for the receipt of correspondence in the procurement will be conclusive proof that delivery was made. The Texas Lottery Commission's determination shall be administratively final when issued.

§401.103. Protests of Contract Award.

(a) Any bidder or proposer aggrieved by a contract award may protest the agency's action to the director of administration. If the director of administration cannot resolve the protest, the aggrieved party may appeal the director of administration's decision to the executive director. If the executive director cannot resolve the protest, the aggrieved party may appeal the executive director's decision to the Texas Lottery Commission. At any time, the executive director may refer the protest directly to the Texas Lottery Commission for determination. The procedures applicable to an appeal to the commission will then apply.

(b) A protest of any contract award must be filed electronically with the commission's general counsel, by email to legal.input@lottery.state.tx.us, within 72 hours after receipt of notice of

1 contract award. A copy of the protest must be delivered to the successful bidder or proposer at the
2 same time that the protest or supplement is delivered to the agency. The protestant must include
3 its email address with the protest. A protest is considered timely filed if it is electronically filed
4 before the filing deadline. An electronically filed protest is deemed filed when transmitted to the
5 protestant's electronic filing service provider. Unless otherwise requested by the commission, the
6 protestant is not required to file a paper copy of its protest. For good cause shown by the protestant,
7 the commission may allow an alternate form of filing. The electronically filed protest must be in a
8 text-searchable PDF format. The protestant is solely responsible for ensuring its protest is complete
9 and filed timely with the office of the general counsel and a copy is sent to the successful bidder
10 or proposer. A protest not filed timely will not be considered, and the protestant will be so notified
11 in writing by the commission's general counsel by electronic notice sent to the protestant's
12 designated email address, or the email address identified for notices in the procurement response.
13 A protestant may supplement its timely filed protest. The deadline to supplement is 5 p.m. central
14 time, 10 calendar days after notice of contract award.

15 (c) In the event of a protest of a contract award, the successful bidder(s) or proposer(s) may file a
16 written response electronically to the protest within 72 hours after the office of the general
17 counsel's receipt of the protest or any supplemental filing. The successful bidder(s) or proposer(s)
18 must include its email address with the response. A response is considered timely filed if it is
19 electronically filed before the filing deadline. An electronically filed response is deemed filed
20 when transmitted to the successful bidder(s) or proposer(s)'s electronic filing service provider. The
21 electronically filed response must be in a text-searchable PDF format. The successful bidder(s) or
22 proposer(s) is solely responsible for ensuring the response is complete and filed timely with the
23 office of the general counsel. Responses not filed timely will not be considered, and the successful

bidder(s) or proposer(s) will be so notified in writing by the commission's general counsel by electronic notice sent to the successful bidder(s) or proposer(s)'s designated email address, or the email address identified for notices in the procurement response.

(d) To be considered, a protest must contain:

(1) a specific identification of the statutory provision, rule provision, or procurement procedure allegedly violated;

(2) a brief statement of the relevant facts;

(3) an identification of the issue or issues to be resolved;

(4) arguments and authorities in support of the protest;

(5) an affidavit that the contents of the protest are true and correct; and

(6) a certification that a copy of the protest has been served on the successful proposer(s).

(e) In the event of a timely filed protest of a contract award, the executive director will be notified and may abate the award of the contract until the protest is finally resolved.

(f) The director of administration will review the protest, the contract award file, any responses, and will make a written determination of the protest, which may include canceling the award of the contract. The director of administration's written determination will be served, by facsimile or by email, on the protestant and the successful bidder(s) or proposer(s). Confirmation that the notice was sent to an email address designated for the receipt of correspondence, will be conclusive proof that delivery was made. The decision of the director of administration may be appealed to the executive director. The appeal must be filed electronically with the commission's general counsel by 5 p.m. of the next business day after issuance of the written determination. An appeal is considered timely filed if it is electronically filed before the filing deadline. An electronically filed appeal is deemed filed when transmitted to the protestant's electronic filing service provider.

1 (g) The successful bidder(s) or proposer(s) may file a response electronically to the appeal of a
2 determination made by the director of administration or the executive director by 5 p.m. of the
3 next business day after notice of the commission's receipt of the appeal. The successful bidder(s)
4 or proposer(s) must include its email address with the response. A response is considered timely
5 filed if it is electronically filed before the filing deadline. An electronically filed response is
6 deemed filed when transmitted to the successful bidder(s) or proposer(s)'s electronic filing service
7 provider. Unless otherwise requested by the commission, the successful bidder(s) or proposer(s)
8 is not required to file a paper copy of its response. The electronically filed response must be in
9 text-searchable PDF format. The successful bidder(s) or proposer(s) is solely responsible for
10 ensuring the response is complete and filed timely with the office of the general counsel. Responses
11 not filed timely will not be considered, and the respondent will be so notified in writing by the
12 commission's general counsel by electronic notice sent to the successful bidder(s) or proposer(s)'s
13 designated email address.

14 (h) On appeal of the director of administration's determination, the executive director will review
15 the protest, the contract award file and responses, and the director of administration's
16 determination, including any reasoning that supports the determination. The executive director will
17 then make a written determination of the protest, which may include abating the award of the
18 contract. The executive director's written determination will be served by email on the protestant.
19 Confirmation that the notice was sent to an email address designated for the receipt of
20 correspondence will be conclusive proof that delivery was made. An appeal to the Texas Lottery
21 Commission of the determination of the executive director must be filed electronically with the
22 commission's general counsel by 5 p.m. of the next business day after issuance of the written
23 determination. An appeal is considered timely filed if it is electronically filed before the filing

1 deadline. An electronically filed appeal is deemed filed when transmitted to the protestant's
2 electronic filing service provider.

3 (i) On timely receipt of the protest and any response, the general counsel will appoint a staff
4 attorney who did not participate in the decision to award the contract to evaluate the protest and
5 any response. The staff attorney will make a written recommendation to the Texas Lottery
6 Commission, including proposed findings of fact and conclusions of law.

7 (j) The Texas Lottery Commission, at its discretion, may allow oral argument by the protestant,
8 the successful bidder or proposer, and any necessary agency staff. The Texas Lottery Commission
9 may limit the time for oral argument. The executive director may be present to respond to questions
10 and will have the opportunity to make a presentation to the Texas Lottery Commission regarding
11 the protest of the contract award. The staff attorney who made the written recommendation to the
12 Texas Lottery Commission may also be present to respond to any questions.

13 (k) The Texas Lottery Commission will make a written determination of the protest. To make its
14 determination, the commission will review:

15 (1) The protest;

16 (2) The contract award file;

17 (3) Any responses;

18 (4) The oral argument, and Executive Director's presentation, if any;

19 (5) The executive director's determination, including any reasoning that supports the
20 determination; and

21 (6) The staff attorney's recommendation. The written determination of the protest will
22 include findings of fact and conclusions of law, and may include a determination voiding or
23 sustaining the contract. The Texas Lottery Commission's written determination will be served by

1 email on the protestant and all parties to the protest proceedings. Confirmation that the notice was
2 sent to an email address designated for the receipt of correspondence, will be conclusive proof that
3 delivery was made. The Texas Lottery Commission's determination shall be administratively final
4 when issued.

5 §401.104. Contract Monitoring Roles and Responsibilities.

6 The contract monitoring roles and responsibilities of agency internal audit staff (or contractor) and
7 other inspection, investigative, or compliance staff are as follows:

8 (1) A division within the agency or, pursuant to a delegation of authority from the State
9 Auditor's Office, an authorized agency representative (including a contracted audit firm selected
10 following a formal competitive solicitation) will perform internal audit activities that may include
11 providing audit services and/or rendering routine professional advice and answering technical
12 questions to the commission and staff to assist them in contract monitoring and compliance.

13 (2) A division within the agency will seek to improve contract compliance by serving as a
14 central repository for agency contracts so the agency can perform contract compliance reviews.

15 (3) A division within the agency will function as the agency's criminal enforcement unit.
16 This unit will take action regarding criminal activity related to agency contracts.

17 (4) A division or divisions, or other designated personnel within the agency, will monitor
18 and report to other appropriate agency divisions or units regarding contract compliance.

19 (5) A HUB coordinator and any other designated personnel within the agency will assist
20 the administering division or divisions and the contract management section in monitoring agency
21 contracts in connection with applicable historically underutilized and minority business contract
22 requirements.

23 §401.153. Qualifications for License.

1 (a) Before issuing a license to any person under this subchapter, the director shall consider:

2 (1) the financial responsibility and security of the applicant and the business or activity in
3 which the applicant is engaged. Consideration of this factor may include the analysis of the
4 applicant's credit record, compliance with tax laws of other jurisdictions, status of permits and
5 licenses, results of criminal background check, adequacy of security procedures against theft,
6 whether the location is fixed and permanent, whether the applicant can provide appropriate
7 security, and any other factor that may assist the director in such evaluation;

8 (2) the public accessibility of the applicant's place of business or activity. Consideration of
9 this factor may include analysis of the applicant's hours of operation, proximity to major transit
10 routes, proximity to large employers, public parking availability, and any other factor that may
11 assist the director in such evaluation;

12 (3) the sufficiency of existing sales agents to serve the public convenience. Consideration
13 of this factor may include analysis of number and proximity of other sales agents in a given market
14 area, and/or number of "minority businesses" (as that term is defined in the Government Code,
15 §466.107(b)) licensed in a given market area, with the possibility that additional licenses for any
16 given market area may be denied if the area is determined to be adequately served by existing
17 licensees;

18 (4) whether individuals under 18 years of age constitute a majority of the applicant's
19 customers or as customers provide a majority of the applicant's sales volume;

20 (5) the volume of expected lottery sales at the applicant's place of business or activity; and

21 (6) any other factor that is helpful in determining whether the applicant's experience,
22 character, and general fitness are such that the applicant's participation as a sales agent will not
23 detract from the integrity, security, honesty, or fairness of the operation of the lottery. An example

of the type of factor considered in this regard is the analysis of the type of product sold or form of service provided by the applicant.

(b) The director may grant or deny an application for a license under this subchapter based on any one or more factors listed in subsection (a) of this section. In addition, the director shall deny an application for a license under this subchapter upon a finding that the applicant:

(1) has been convicted of a felony, criminal fraud, gambling or a gambling-related offense, or a misdemeanor involving moral turpitude, if less than 10 years has elapsed since the termination of the sentence, parole, mandatory supervision, or probation served for the offense;

(2) is or has been a professional gambler. A "professional gambler" is a person whose profession is, or whose major source of income derives from, playing games of chance for profit;

(3) has been finally determined to be delinquent in the payment of a tax or other money collected by the comptroller, the Texas Workforce Commission, or the Texas Alcoholic Beverage Commission;

(4) is married to a person described in paragraph (1), (2), or (3) of this subsection;

(5) has violated the Act or a rule adopted by the commission in furtherance of the State Lottery Act;

(6) is not an individual, and an individual described in one or more of paragraphs (1) - (5) of this subsection:

(A) is an officer or director of the applicant;

(B) holds more than 10% of any class of issued and outstanding stock in the applicant;

(C) holds an equitable ownership interest greater than 10% in the applicant;

1 (D) is a creditor of the applicant to the extent of more than 10% of the applicant's
2 outstanding debt at any time after the application is filed but before the director acts to grant or
3 deny the license;

4 (E) is the owner or lessee of a business that the applicant conducts or through which
5 the applicant will conduct a ticket sales agency;

6 (F) shares or will share in the profits, other than stock dividends, of the applicant
7 or sales agent;

8 (G) participates in managing the affairs of the applicant; or

9 (H) is an employee of the applicant who is or will be involved in selling tickets or
10 handling money from the sale of tickets;

11 (7) provided false or misleading information on the application form, or failed to provide
12 information required as part of the application;

13 (8) failed to provide fingerprint identification for individuals for which such identification
14 is requested in a form acceptable to the division following the division's request for such
15 identification;

16 (9) has previously had a sales agent's license revoked, unless the director is satisfied the
17 person will comply with the State Lottery Act and the rules under this chapter;

18 (10) failed to certify to the director the applicant's compliance with the federal Americans
19 With Disabilities Act;

20 (11) is the subject of a license suspension or decision issued under Chapter 232, Family
21 Code;

22 (12) intends to sell lottery tickets via the internet; or

1 (13) intends to engage in business exclusively as a Texas Lottery ticket sales agent. For
2 purposes of this section, an applicant “intends to engage in business exclusively as a Texas Lottery
3 ticket sales agent” if the applicant does not sell any goods or services to the public other than Texas
4 Lottery tickets.

5 (c) Without limiting the foregoing grounds for denial of a license under this subchapter, the director
6 shall deny a license to any person whose location for the sales agency is either:

7 (1) a location licensed for games of bingo under the Bingo Enabling Act (Occupations
8 Code, Chapter 2001);

9 (2) on land owned by the State of Texas; or a political subdivision of this state and on
10 which is located a public primary or secondary school, an institution of higher education, or an
11 agency of the state; or

12 (3) a location for which a person holds a wine and malt beverage retailer's permit, mixed
13 beverage permit, mixed beverage permit with a retailer late hours certificate, private club
14 registration permit, or private club registration permit with a retailer late hours certificate issued
15 under the Alcoholic Beverage Code, Chapter 25, 28, 29, or 32, other than a location for which a
16 person holds a wine and malt beverage retailer's permit issued under Chapter 25, Alcoholic
17 Beverage Code, that derives less than 30 percent of the location's gross receipts from the sale or
18 service of alcoholic beverages.

19 (d) Any applicant whose application is denied under this subchapter, or who is granted a license
20 the terms of which are more restricted than those applied for, shall be notified by the director in
21 writing of the denial or restriction and of the reasons therefore. The applicant may appeal the
22 director's decision in accordance with rules adopted by the commission for that purpose.

(e) A license issued under this chapter may by its terms limit the type of games and/or method of sales authorized by the license. A determination of appropriate limitations on any license are within the director's sole discretion, provided that the director shall furnish the licensee with a written explanation or the reasons for any such limitations.

(f) Based upon consideration of the factors in §401.160(g) of this title (relating to Standard Penalty Chart), the director may determine a person or organization whose license has been revoked or surrendered, or whose application has been denied for reasons which would justify a revocation of an existing license, will not be eligible to apply for another license earlier than one year from the date of revocation, surrender, or denial.

§401.158. Suspension or Revocation of License.

(a) The commission may suspend or revoke any license issued under this subchapter if the commission finds that any factor listed as grounds for denial of a license under §401.153(b) of this title (relating to Qualifications for License) or any factor listed in subsection (b) of this section apply to the licensee. The commission shall inform the sales agent in writing of the decision to suspend or revoke a license for any of these reasons. In addition, in the event of a license suspension under this section, the director of the Lottery Operations Division shall also inform the licensee of the terms under which the suspended license may be reissued.

(b) Without limiting the commission's ability to consider factors listed in §401.153(b) of this title as grounds for suspension or revocation of a license issued under this subchapter, the commission may also suspend or revoke a license for reasons including, but not limited to, any of the following:

(1) licensee engages in telecommunication or printed advertising that the director determines to have been false, deceptive or misleading;

1 (2) licensee conditions redemption of a lottery prize upon the purchase of any other item
2 or service;

3 (3) licensee imposes a restriction upon the redemption of a lottery prize not specifically
4 authorized by the director;

5 (4) licensee fails to follow instructions and procedures for the conduct of any lottery game,
6 lottery special event or promotion;

7 (5) licensee and/or its employee(s) exhibit discourteous treatment including, but not limited
8 to, abusive language toward customers, commission employees or commission vendors;

9 (6) licensee fails to establish or maintain reasonable security precautions regarding the
10 handling of lottery tickets and other materials;

11 (7) licensee fails to deface a validated ticket;

12 (8) licensee sells a draw game ticket for a draw that has already taken place;

13 (9) licensee fails to follow validation procedures, including, but not limited to, paying a
14 claim without validating the ticket, failing to pay a valid prize after validating a customer's winning
15 ticket, or retaining a customer's winning ticket that has not been validated;

16 (10) licensee violates any directive or instruction issued by the director of the Lottery
17 Operations Division;

18 (11) licensee violates any express term or condition of its license not specifically set forth
19 in this subchapter;

20 (12) licensee sells a scratch ticket from a game that has closed after the date designated for
21 the end of the game;

22 (13) licensee refuses to refund or properly cancel a Pick 3 or Daily 4 ticket;

1 (14) licensee fails to return an exchange ticket to a prize claimant claiming a prize on a
2 multi-draw ticket if an exchange ticket is produced by the licensee's terminal;

3 (15) licensee fails to keep accurate and complete records of all tickets that have not been
4 sold from confirmed, active, and settled packs;

5 (16) licensee fails to meet any requirement under §401.368 of this title (relating to Lottery
6 Ticket Vending Machines), if the licensee has been supplied with a self-service lottery ticket
7 vending machine by the commission;

8 (17) licensee fails to take readily achievable measures within the allowed time period to
9 comply with the barrier removal requirements regarding the ADA;

10 (18) licensee fails to prominently post license;

11 (19) licensee sells tickets that were assigned to another licensed location;

12 (20) licensee knowingly sells a ticket or pays a lottery prize to another person who is:

13 (A) an officer or an employee of the commission;

14 (B) an officer, member, or employee of a lottery operator;

15 (C) an officer, member, or employee of a contractor or subcontractor that is
16 excluded by the terms of its contract from playing lottery games;

17 (D) the spouse, child, brother, sister, or parent of a person described by
18 subparagraph (A), (B), or (C) of this paragraph who resides within the same household as that
19 person;

20 (21) licensee endangers the security and/or integrity of the lottery games operated by the
21 commission;

22 (22) licensee intentionally or knowingly sells a ticket at a price the licensee knows is greater
23 than the price set by the executive director;

1 (23) licensee charges a fee for lottery ticket purchases using a debit card, requires an
2 additional purchase with a debit card, and/or requires a minimum dollar amount for debit card
3 purchases of only lottery tickets.

4 (24) licensee sells tickets at a location that is not licensed;

5 (25) licensee intentionally or knowingly sells a ticket by extending credit or lends money
6 to enable a person to buy a ticket;

7 (26) licensee intentionally or knowingly sells a ticket and accepts anything for payment not
8 specifically allowed under the State Lottery Act;

9 (27) licensee sells tickets over the telephone or internet, or via mail order sales; or
10 establishes or promotes a group purchase or pooling arrangement under which tickets are
11 purchased on behalf of the group or pool and any prize is divided among the members of the group
12 or pool, and the licensee intentionally or knowingly:

13 (A) uses any part of the funds solicited or accepted for a purpose other than
14 purchasing tickets on behalf of the group or pool; or

15 (B) retains a share of any prize awarded as compensation for establishing or
16 promoting the group purchase or pooling arrangement;

17 (28) licensee intentionally or knowingly alters or forges a ticket;

18 (29) licensee intentionally or knowingly influences or attempts to influence the selection
19 of a winner of a lottery game;

20 (30) licensee intentionally or knowingly claims a lottery prize or a share of a lottery prize
21 by means of fraud, deceit, or misrepresentation; or aids or agrees to aid another person or persons
22 to claim a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation;

1 (31) licensee intentionally or knowingly tampers with, damages, defaces, or renders
2 inoperable any vending machine, electronic computer terminal, or other mechanical device used
3 in a lottery game, or fails to exercise due care in the treatment of commission property;

4 (32) licensee:

5 (A) induces another person to assign or transfer a right to claim a prize;

6 (B) initiates or accepts an offer to sell the right to claim a prize;

7 (C) initiates or accepts an offer of compensation from another person to claim a
8 lottery prize; or

9 (D) purchases, for anything of value, a lottery ticket from a person who is not a
10 licensed lottery retailer;

11 (33) licensee intentionally or knowingly makes a statement or entry that the person knows
12 to be false or misleading on a required report;

13 (34) licensee fails to maintain or make an entry the licensee knows is required to be
14 maintained or made for a required report;

15 (35) licensee knowingly refuses to permit the director of the Lottery Operations Division,
16 the executive director, commission, the lottery operator, the employees or agents of the lottery
17 operator, or the state auditor to examine the agent's books, records, papers or other objects, or
18 refuses to answer any question authorized under the State Lottery Act;

19 (36) licensee intentionally or knowingly makes a material and false or incorrect, or
20 deceptive statement, written or oral, to a person conducting an investigation under the State Lottery
21 Act or a commission rule;

22 (37) licensee commits an offense of conspiracy as defined in the State Lottery Act;

1 (38) licensee sells or offers for sale any interest in a lottery of another state or state
2 government or an Indian tribe or tribal government, including an interest in an actual lottery ticket,
3 receipt, contingent promise to pay, order to purchase, or other record of the interest;

4 (39) licensee intentionally or knowingly sells or offers to sell a ticket to a person that the
5 licensee knows is younger than 18 years (revocation only);

6 (40) licensee incurs four (4) notices of nonsufficient fund transfers or non-transfer of funds
7 within a 12-month period (revocation only);

8 (41) licensee fails to pay the full amount of money owed to the commission after a
9 nonsufficient funds transfer or non-transfer of funds to the commission's account (revocation
10 only); or

11 (42) licensee has violated a provision of the State Lottery Act, Government Code, Chapter
12 466, or a commission rule adopted under the State Lottery Act.

13 §401.160. Standard Penalty Chart.

14 (a) The commission, through the director of the Lottery Operations Division, may offer settlements
15 to persons charged with violating the provisions of the State Lottery Act or rules of the
16 commission. Settlement of those cases, unless otherwise provided for elsewhere in this rule, shall
17 be in compliance with the following standard penalty chart. A settlement will be in the form of an
18 Agreement and Consent Order of the commission.

19 (b) A repeat violation by a licensee justifies the penalty for a second or third violation if it occurs
20 within 12 months of the first violation. Violations need not be the same or similar in nature to
21 previous violations to be considered repeat violations.

22 (c) A penalty for an alleged repeat violation shall not be assessed unless the alleged violation
23 occurs after the licensee has been notified, in writing, of the first alleged violation.

1 Notwithstanding the preceding sentence, if an alleged violation is discovered during an undercover
2 operation, then no notice of any prior alleged violations may be necessary to assess a penalty for
3 a repeat violation. The requirement that written notice be given to a licensee shall not be interpreted
4 to require that a notice of hearing for the violation be delivered to the licensee.

5 (d) The list of violations in the standard penalty chart is not an exclusive list of violations of the
6 commission or rules of the commission. The commission is authorized to assess penalties for any
7 violation of any of the foregoing statutes or rules for which a penalty is not provided on the chart.
8 Any penalty assessed for a violation not provided for on the standard penalty chart shall be
9 approved by the director of the Lottery Operations Division or his/her designee prior to its
10 assessment.

11 (e) Any person responsible for assessing a penalty for a violation may deviate from the standard
12 penalty chart if mitigating circumstances are involved and consideration will be given to all the
13 factors listed in subsection (g) of this section. If a recommendation deviating from the standard
14 penalty chart is made, it must be made in writing and be filed with the case report. Final approval
15 shall be made by the director of the Lottery Operations Division or his/her designee.

16 (f) The standard penalty chart does not bind an administrative law judge or the commission as to
17 penalties for any violation determined to have occurred by the facts presented in an administrative
18 hearing and the record of that proceeding shall be the determining factor as to the sufficiency of
19 the penalty assessed.

20 (g) Based upon consideration of the following factors, the commission may impose penalties other
21 than the penalties recommended in §401.158 of this title (relating to Suspension or Revocation of
22 License) and/or this section:

23 (1) Severity of the offense;

- 1 (2) Danger to the public;
- 2 (3) Number of repetition of offenses;
- 3 (4) Number of complaints previously found justified against the licensee;
- 4 (5) Length of time the licensee has held a license;
- 5 (6) Actual damage, physical or otherwise, caused by the violations;
- 6 (7) Deterrent effect of the penalty imposed;
- 7 (8) Attempts by licensee to correct or stop violations or refusal by licensee to correct or
- 8 stop violations;
- 9 (9) Penalties imposed for related offenses;
- 10 (10) Current employment status of any employee(s) that committed violation(s); or
- 11 (11) Any other mitigating or aggravating circumstances.
- 12 (h) Standard Penalty Chart.

1 Figure: 16 TAC §401.160(h)

TEXAS LOTTERY COMMISSION RETAILER REGULATORY VIOLATIONS AND RELATED PENALTIES				
No.	DESCRIPTION OF VIOLATION	1st OCCURRENCE	2nd OCCURRENCE	3rd OCCURRENCE
1st Tier Violations				
1.	Licensee engages in telecommunication or printed advertising that the director determines to have been false, deceptive or misleading.	Warning Letter (Notification in writing to the licensee of the detected violation, including a warning that future violations will result in more severe administrative penalties including Suspension and/or revocation of the license.)	10-90 day Suspension	30-90 day Suspension to Revocation
2.	Licensee conditions redemption of a lottery prize upon the purchase of any other item or service.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
3.	Licensee imposes a restriction upon the redemption of a lottery prize not specifically authorized by the director.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
4.	Licensee fails to follow instructions and procedures for the conduct of any lottery game, lottery special event or promotion.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation

5.	Licensee and/or its employee(s) exhibit discourteous treatment including, but not limited to, abusive language toward customers, commission employees or commission vendors.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
6.	Licensee fails to establish or maintain reasonable security precautions regarding the handling of lottery tickets and other materials.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
7.	Licensee fails to deface a validated ticket.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
8.	Licensee sells a draw game ticket for a draw that has already taken place.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
9.	Licensee fails to follow validation procedures, including, but not limited to, paying a claim without validating the ticket, failing to pay a valid prize after validating a customer's winning ticket, or retaining a customer's winning ticket that has not been validated.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
10.	Licensee violates any directive or instruction issued by the director of Lottery Operations.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
11.	Licensee violates any express term or condition of its license not specifically set forth in this subchapter.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
12.	Licensee sells a scratch ticket from a game that has closed after the date designated for the end of the game.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
13.	Licensee refuses to refund or properly cancel a Pick 3 or Daily 4 ticket.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation

14.	Licensee fails to return an exchange ticket to a prize claimant claiming a prize on a multi-draw ticket if an exchange ticket is produced by the licensee's terminal.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
15.	Licensee fails to keep accurate and complete records of all tickets that have not been sold from confirmed, active, and settled packs.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
16.	Licensee fails to meet any requirement under §401.368, Lottery Ticket Vending Machines rule, if the licensee has been supplied with a self-service lottery ticket vending machine by the commission.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
17.	Licensee fails to take readily achievable measures within the allowed time period to comply with the barrier removal requirements regarding the ADA.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
18.	Licensee fails to prominently post license.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
19.	Licensee sells tickets that were assigned to another licensed location.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
20.	Licensee knowingly sells a ticket or pays a lottery prize to another person who is: (A) an officer or an employee of the commission; (B) an officer, member, or employee of a lottery operator; (C) an officer, member, or employee of a contractor or subcontractor that is excluded by the terms of its contract from playing lottery games; (D) the spouse, child, brother, sister, or parent of a person described by (A), (B), or (C) above who resides within the same household as that person.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
2nd Tier Violations				
21.	Licensee endangers the security and/or integrity of the lottery games operated by the commission.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation

22.	Licensee intentionally or knowingly sells a ticket at a price the licensee knows is greater than the price set by the executive director.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
23.	Licensee charges a fee for lottery ticket purchases using a debit card, requires an additional purchase with a debit card, and/or requires a minimum dollar amount for debit card purchases of only lottery tickets.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
24.	Licensee sells tickets at a location that is not licensed.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
25.	Licensee intentionally or knowingly sells a ticket by extending credit or lends money to enable a person to buy a ticket.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
26.	Licensee intentionally or knowingly sells a ticket and accepts anything for payment not specifically allowed under the State Lottery Act.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
27.	Licensee sells tickets over the telephone or internet, or via mail order sales; or establishes or promotes a group purchase or pooling arrangement under which tickets are purchased on behalf of the group or pool and any prize is divided among the members of the group or pool, and the licensee intentionally or knowingly: (A) uses any part of the funds solicited or accepted for a purpose other than purchasing tickets on behalf of the group or pool; or (B) retains a share of any prize awarded as compensation for establishing or promoting the group purchase or pooling arrangement.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
28.	Licensee intentionally or knowingly alters or forges a ticket.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation

29.	Licensee intentionally or knowingly influences or attempts to influence the selection of a winner of a lottery game.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
30.	Licensee intentionally or knowingly claims a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation; or aids or agrees to aid another person or persons to claim a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
31.	Licensee intentionally or knowingly tampers with, damages, defaces, or renders inoperable any vending machine, electronic computer terminal, or other mechanical device used in a lottery game, or fails to exercise due care in the treatment of commission property.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
32.	Licensee: (A) induces another person to assign or transfer a right to claim a prize; (B) initiates or accepts an offer to sell the right to claim a prize; (C) initiates or accepts an offer of compensation from another person to claim a lottery prize; or (D) purchases, for anything of value, a lottery ticket from a person who is not a licensed lottery retailer.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
33.	Licensee intentionally or knowingly makes a statement or entry that the person knows to be false or misleading on a required report.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
34.	Licensee fails to maintain or make an entry the licensee knows is required to be maintained or made for a required report.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
35.	Licensee knowingly refuses to permit the director of the Lottery Operations Division, the executive director, commission, the lottery operator, the employees or agents of the lottery operator, or the state auditor to examine the agent's books, records, papers or other objects, or refuses to answer any question authorized under the State Lottery Act.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation

36.	Licensee intentionally or knowingly makes a material and false or incorrect, or deceptive statement, written or oral, to a person conducting an investigation under the State Lottery Act or a commission rule.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
37.	Licensee commits an offense of conspiracy as defined in the State Lottery Act.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
38.	Licensee sells or offers for sale any interest in a lottery of another state or state government or an Indian tribe or tribal government, including an interest in an actual lottery ticket, receipt, contingent promise to pay, order to purchase, or other record of the interest.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
3rd Tier Violations				
39.	Licensee intentionally or knowingly sells or offers to sell a ticket to a person that the licensee knows is younger than 18 years.	Revocation	n/a	n/a
40.	Licensee incurs four (4) notices of nonsufficient fund transfers or non-transfer of funds within a 12-month period.	Revocation	n/a	n/a
41.	Licensee fails to pay the full amount of money owed to the commission after a nonsufficient funds transfer or non-transfer of funds to the commission's account.	Revocation	n/a	n/a

1 §401.301. General Definitions.

2 The following words and terms, when used in this chapter, shall have the following meanings,
3 unless the context clearly indicates otherwise.

4 (1) Caption--The letters or other characters appearing below the play symbols in the play
5 area of a ticket that verify the correctness of the play symbols.

6 (2) Certified drawing--A drawing in which a lottery drawing representative and an
7 independent certified public accountant attest that the drawing equipment functioned properly and
8 that a random selection of a winning combination occurred.

9 (3) Claim center--A claims office of the commission at which a claimant may claim a prize.

10 (4) Claim form--The printed or electronic form authorized and provided by the commission
11 that a claimant shall complete and submit to the commission when claiming a prize.

12 (5) Claimant--A player who has submitted a valid claim for payment within the required
13 time frame.

14 (6) Commission--The Texas Lottery Commission. Unless the context clearly requires
15 otherwise, "commission" includes authorized Texas Lottery commission staff
16 members/employees.

17 (7) Current draw period--The period of time in which the player selections and Quick Pick
18 selections are accumulated into a pool of plays eligible for winning in a drawing held at the end of
19 the designated period.

20 (8) Director--The director of Lottery Operations of the Texas Lottery Commission.

21 (9) Direct prize category contribution--A specified percentage of net sales allocated to the
22 prize categories as described in the rules of the specific game being played.

23 (10) Division--Lottery Operations of the Texas Lottery Commission.

1 (11) Draw break--Time periods before a drawing for a draw game during which no request
2 for plays for that drawing may be entered into the lottery gaming system.

3 (12) Draw game--A lottery game which utilizes a computer system to administer plays, the
4 type of game, and amount of play for a specified drawing date, and in which a player either selects
5 a combination of numbers or allows number selection by a random number generator approved by
6 the commission, referred to as Quick Pick. The commission, or other authorized entity, will
7 conduct a drawing to determine the winning combination(s) in accordance with the rules of the
8 specific game being played and the draw procedures for the specific game. Sometimes, draw games
9 are called "on-line games."

10 (13) Draw game ticket--A ticket issued to a player, by a retailer, and generated by a terminal
11 provided by the commission or commission's vendor on official Texas Lottery paper stock, or, for
12 third-party point-of-sale systems approved by the commission, printed on paper stock or otherwise
13 issued in a manner approved by the commission to provide tangible evidence of participation in a
14 lottery game. That ticket shall be the only acceptable evidence of the combination of digits,
15 numbers, or symbols selected. Draw game tickets may be purchased only from retailers.

16 (14) Drawing--The procedure by which the commission randomly selects winning
17 combinations of digits, numbers, or symbols in accordance with the rules of the game as set forth
18 in the rules of the specific game being played and the draw procedures for the specific game.

19 (15) Drawing pool--The amount of money available for all prize categories for a specific
20 drawing.

21 (16) Draw procedures--The written document approved by the executive director that
22 specifies the draw procedures for a particular game, if a drawing is designed as part of the game.

1 (17) Duplicate ticket--A ticket produced by photograph, xerography, or any other method
2 other than a ticket generated by a terminal.

3 (18) Executive director--The executive director of the Texas Lottery Commission.

4 (19) Game number--The number on the back of the scratch ticket which refers to the
5 number associated with the particular scratch ticket game.

6 (20) Game procedures--The written document approved by the director that includes,
7 among other things, the game name, how a prize is won, game prize structure, play style, and
8 eligibility for a drawing, if any.

9 (21) High-tier prize--A prize of \$600 or more.

10 (22) Indirect prize category contribution--Amounts allocated from the roll-over and prize
11 breakage for a specific draw game drawing.

12 (23) Invalid ticket--Any ticket that fails to meet all validation requirements of the
13 commission.

14 (24) Lottery gaming system--The commission or commission's vendor's computer system
15 consisting of terminals, central processing equipment, and a communication network.

16 (25) Lottery retailer or retailer--A licensed sales agent, as contemplated by Chapter 466,
17 Government Code.

18 (26) Low-tier prize--A prize of less than \$25.

19 (27) Mid-tier prize--A prize of \$25 or more but less than \$600.

20 (28) Minor--An individual younger than 18 years of age.

21 (29) Pack number--The unique number on the back of the scratch ticket that designates the
22 number of the pack within a specific scratch ticket game.

1 (30) Play--A set of numbers that appear on a ticket that are to be wagered by a player in a
2 lottery game, or as otherwise defined in a particular draw game rule.

3 (31) Playslip--The physical or electronic means by which a player communicates their
4 intended Play selection, plus any game specific add-on features, to the retailer. A playslip has no
5 pecuniary value and shall not constitute evidence of ticket purchase or of numbers selected.

6 (32) Play area--The covered area of a scratch ticket that when removed, reveals the ticket
7 play symbols.

8 (33) Play style--The method of play to determine a winner for an individual game.

9 (34) Play symbol--The printed data on a scratch ticket that is used to determine eligibility
10 for a prize. The symbols for individual games will be specified in individual scratch ticket game
11 procedures.

12 (35) Present at the terminal--A player remains physically present at the terminal from the
13 time the player's order for the purchase of draw game tickets is paid for and accepted by the retailer
14 until the processing of the order is completed and the tickets are delivered to the player at the
15 retailer terminal location.

16 (36) Prize amounts--The amount of money payable to each share in a prize category, the
17 annuitized future value of each share in a prize category, or the net present cash value of each share
18 in a prize category for each draw game drawing. Prize amounts are calculated by dividing the prize
19 category contribution, the annuitized future value of the prize category contribution, or the net
20 present cash value of the prize category contribution by the number of shares determined for the
21 prize category.

1 (37) Prize breakage--The money which is left over from the rounding down of the pari-
2 mutuel prize levels to the next lowest whole dollar amount or money which is in excess of the
3 amount needed to pay a prize.

4 (38) Prize category--The matching combinations of numbers and their corresponding prize
5 levels as described in rules for the specific game being played.

6 (39) Prize category contributions--Refers to contributions for each drawing to each prize
7 category, including direct and indirect prize category contributions.

8 (40) Prize fund--The monies allocated to be returned to players in winning tickets within a
9 specific scratch ticket game.

10 (41) Prize pool--In a draw game, the total amount of money available for prizes as a
11 percentage of the total sales for the current draw period.

12 (42) Prize structure--The number, value, prize payout percentage, and odds of winning
13 prizes for an individual game as approved by the executive director.

14 (43) Promotion--One or more events coordinated or conducted by the commission at retail
15 sites, fairs, festivals and other appropriate venues, or in conjunction with one or more particular
16 Texas Lottery games, to educate players about Texas Lottery products and/or sell Texas Lottery
17 games through a retailer in specific markets to maximize Texas Lottery sales and statewide
18 awareness.

19 (44) Promotional drawing--A drawing in which qualified contestants are awarded prizes in
20 a random manner in accordance with the procedures set forth for a specific promotion.

21 (45) Quick Pick--A play option that generates random numbers in a manner approved by
22 the commission.

1 (46) Roll-over--The amount in a specific draw game prize pool category resulting from no
2 matching combinations and/or prize breakage from the previous drawing.

3 (47) Sales agent--A person licensed under the State Lottery Act to sell Texas Lottery
4 tickets.

5 (48) Scratch ticket--A scratch ticket lottery game, developed and offered for sale to the
6 public in accordance with commission rules, that is played by revealing the ticket play symbols.

7 (49) Shares--In a draw game, the total number of matching combinations within each prize
8 category as determined for each drawing.

9 (50) Terminal--A device authorized by the commission for the purpose of issuing draw
10 game tickets and/or validating claims, including the commission or commission's vendor's
11 computer hardware as well as commission-authorized third-party point-of-sale systems.

12 (51) Third-party point-of-sale systems--Self-contained computerized equipment (not
13 owned or operated by the commission or lottery operator) that performs sales-related tasks at a
14 licensed lottery ticket retailer's checkout counter and that has the sole Texas Lottery-related
15 purpose of selling lottery tickets. Third-party point-of-sale systems will only perform the same
16 lottery-related tasks as terminals owned or operated by the commission or lottery operator and may
17 not issue electronic tickets or display outcomes for draw and scratch games using casino-style
18 graphics of any kind. Third-party point-of-sale systems do not include any gambling device.

19 (52) Ticket--Any tangible evidence issued to provide participation in a lottery game or
20 activity authorized by the State Lottery Act.

21 (53) Ticket bearer--The person who has signed the ticket or who has possession of an
22 unsigned ticket.

1 (54) Ticket number--The number on the back of the scratch ticket that refers to the ticket
2 sequence within a specific pack of a scratch ticket game.

3 (55) Validation number--The unique alphanumeric number sequence or barcode printed on
4 a ticket that provides for the verification of the ticket as a valid winner.

5 (56) Valid ticket--A ticket which meets all specifications and validation requirements and
6 entitles the holder to a specific prize amount.

7 (57) Void ticket--Any ticket that is stolen, unissued, illegible, mutilated, altered, counterfeit
8 in whole or part, misregistered, defective, incomplete, printed or produced in error, multiply
9 printed, fails any of the commission's confidential validation tests, or is a ticket produced by or for
10 the commission for education and training purposes.

11 (58) Winning combination--One or more digits, numbers, or symbols randomly selected
12 by the commission in a drawing which has been certified.

13 §401.302. Scratch Ticket Game Rules.

14 (a) Sale of scratch tickets.

15 (1) Only retailers who have been licensed by the commission are authorized to sell scratch
16 tickets, and scratch tickets shall be sold only at the location listed on each retailer's license from
17 the commission. For purposes of this section, the sale of a scratch ticket at the licensed location
18 means a lottery transaction in which all elements of the sale between the retailer and the purchaser
19 must take place at the retailer location, including the exchange of consideration and the exchange
20 of the scratch ticket.

21 (2) Each scratch ticket shall sell for the retail sales price authorized by the executive
22 director and stated in the individual game procedures; provided that, the purchase price for
23 promotional groups of tickets shall be determined by the executive director.

(3) Each scratch ticket shall state the overall estimated odds of winning a prize of any kind, including a break-even prize.

(b) Game procedures.

(1) The director may approve and publish individual game procedures prior to each scratch ticket game being introduced for sale to the public. Game procedures shall be published in the Texas Register and shall be made available upon request to the public.

(2) At a minimum, the game procedures for each game shall contain the following information:

(A) confirming captions;

(B) game name;

(C) game number;

(D) prize structure;

(E) play style;

(F) play symbols;

(G) ticket order quantity;

(H) retail sales price;

(I) dollar amount of prizes that may be paid by retailers; and

(J) eligibility requirements for a prize or promotional drawing, if any.

(3) The play style for an individual game shall be fully described in the game procedures and may take the form of one of the following methods of play:

(A) match up;

(B) add up;

(C) three in a line;

1 (D) key number/symbol match;

2 (E) yours beats theirs;

3 (F) prize legend;

4 (G) cards;

5 (H) bingo;

6 (I) directional arrows through maze;

7 (J) bonus game features; or

8 (K) any other approved play style or bonus game feature developed by the
9 commission.

10 (c) Determination of prize winner.

11 (1) The play symbols shall be used by a player to determine eligibility for prizes. Qualifying
12 play symbols are stated in the game procedures.

13 (2) A player's eligibility to win a prize is subject to the ticket validation requirements
14 provided in subsection (d) of this section.

15 (3) For each individual game, the player shall reveal the play symbols according to the play
16 instructions for the game. Eligibility to win a prize is based on the approved play style as follows.

17 (A) Match up. If the designated number of identical play symbols is revealed on
18 the ticket, the player shall win the prize indicated.

19 (B) Add up. If the player adds up all of the play symbols printed on the ticket and
20 the amount is greater than or equal to the required total amount printed on the ticket, the player
21 shall win the prize indicated.

22 (C) Three in a line. If the player reveals three identical play symbols, either
23 diagonally, vertically, or horizontally, on the same ticket, the player shall win the prize indicated.

1 (D) Key number/symbol match. If the player reveals a play symbol that matches
2 the designated key play symbol, the player shall win the prize indicated.

3 (E) Yours beats theirs. If the player reveals a play symbol designated as yours that
4 is greater than the play symbol(s) designated as theirs, the player shall win the prize indicated.

5 (F) Prize legend. If the player reveals the designated number of play symbols, the
6 player wins the prize amount that corresponds to the legend.

7 (G) Cards. If the player reveals the play symbol needed for that particular card game
8 in a winning combination, the player shall win the prize indicated.

9 (H) Bingo. If the player matches their Bingo card numbers with all of the Caller's
10 Card numbers and reveals certain patterns as specified on the ticket, the player shall win the prize
11 indicated for that Bingo card and pattern.

12 (I) Directional arrows through maze. If the player follows the directional arrows to
13 make a path or paths through a maze and the path(s) leads to a prize amount, the player shall win
14 that prize.

15 (J) Bonus game features. These features are added to the game for extra play value
16 and entertainment. The specific variants, as described below, are used for a particular game and
17 are described in the individual game procedures:

18 (i) Doubler. If the player reveals the designated play symbol as part of the
19 winning combination of the game, the player doubles their prize. The player may also reveal the
20 "doubler" play symbol in a prize box, in which case the prize amount that the player won is
21 doubled.

22 (ii) Wild card. The player may use this designated play symbol as part of
23 the winning combination of the game.

(iii) Double and Double Doubler. If the player reveals one of these designated play symbols as part of the winning combination of the game, the player either doubles or quadruples their prize respectively, as stated in the game card itself. The player may also reveal the "double" or "double doubler" play symbols in a prize box, in which case the prize amount that the player won is either doubled or quadrupled respectively, as stated in the game card itself.

(iv) Tripler. If the player reveals the designated play symbol as part of the winning combination of the game, the player triples their prize. The player may also reveal the "tripler" play symbol in a prize box, in which case the prize amount that the player won is tripled.

(v) Auto win. If the player reveals the designated play symbol, the player wins the corresponding prize automatically.

(vi) Entry ticket. If the player reveals the designated play symbol, the player may use the ticket as a means of entering a drawing, subject to the game procedures for each game.

(K) Any other approved play style or bonus game feature developed by the commission. If the player reveals the designated play symbols or bonus play features, the player shall win the prize(s) as indicated.

(d) Ticket validation requirements.

(1) Each scratch ticket shall be validated according to validation procedures prior to payment of a prize.

(2) A scratch ticket shall comply with all of the following.

(A) The ticket shall not be stolen or appear on any list of omitted tickets on file with the commission.

(B) The ticket shall not be counterfeit or forged, in whole or in part.

1 (C) The ticket shall not be mutilated, altered, unreadable, reconstituted, or tampered
2 with in any manner.

3 (D) The ticket shall have been issued by the commission in an authorized manner.

4 (E) The ticket shall have been received or recorded by the commission by
5 applicable deadlines.

6 (F) The ticket shall pass all the confidential validation and security tests appropriate
7 to the applicable play style.

8 (G) The validation number of an apparent winning ticket shall appear on the
9 commission's official list of validation numbers of winning tickets for the particular game and
10 pack. A ticket with that validation number shall not have been paid previously.

11 (3) The commission may pay the prize for a ticket that is partially mutilated or not intact if
12 the ticket can still be verified as a valid ticket and validated by the other validation requirements
13 and procedures.

14 (4) Any ticket not passing all of the validation tests and requirements is void and ineligible
15 for any prize and shall not be paid. The executive director may, at his/her exclusive determination,
16 reimburse the player for the cost of the void ticket.

17 (5) If a defective ticket is purchased and is void, the sole remedy available against the
18 commission and the commission's sole liability shall be, at the executive director's sole discretion,
19 reimbursement for the cost of the void ticket, or replacement of the defective ticket with another
20 unplayed ticket in that scratch ticket game (or a ticket of equivalent sales price from any other
21 current scratch ticket game).

22 (e) Payment of low-tier and mid-tier prizes.

23 (1) Any prize less than \$600 may be paid by any retailer.

1 (2) Retailers may pay prizes in cash. If acceptable to the claimant, retailers may also pay
2 cash prizes by business check, certified check, cashier's check, money order, gift card, stored-value
3 card, or store merchandise. If a retailer decides to pay with anything other than cash, it is the
4 responsibility of the retailer to ensure the claimant has voluntarily agreed to the non-cash prize
5 payment.

6 (3) Retailers may pay claims for prizes, if the commission's validation system is
7 operational.

8 (4) Before paying a prize, retailers shall validate the winning ticket according to established
9 validation requirements and procedures.

10 (5) Payment of a prize by a retailer will be made to the bearer of the validated winning
11 ticket for that prize upon presentation of proper identification, if appropriate.

12 (6) If a low- or mid-tier claim is presented to the commission, the claimant shall follow all
13 procedures of the commission related to claiming a prize. Upon validation of the ticket as a
14 winning ticket, the commission shall pay the claimant the amount due in accordance with
15 commission procedures. If the ticket is determined to be a non-winning ticket, the claim shall be
16 denied and the claimant shall be promptly notified.

17 (f) Payment of high-tier prizes.

18 (1) High-tier prizes must be presented for payment to the commission. For purposes of this
19 provision, the term "commission" includes claim centers located throughout Texas. In connection
20 with certain scratch ticket games, the top-level prizes must be claimed at commission headquarters.

21 (2) If a high-tier claim is presented to the commission, the claimant shall follow all
22 procedures of the commission related to claiming a prize. Upon validation of the ticket as a
23 winning ticket, the commission shall pay the claimant the amount due in accordance with

1 commission procedures. If the ticket is determined to be a non-winning ticket, the claim shall be
2 denied and the claimant shall be promptly notified.

3 (3) Before paying any prize, claim center personnel shall validate the winning ticket
4 according to established validation requirements and procedures.

5 (4) All prizes shall be subject to tax withholding, offsets, and other withholdings as
6 provided by law.

7 (5) If a person is indebted or owes delinquent taxes to the state, other than those specified
8 in paragraph (4) of this subsection, the winnings of a person shall be withheld until the debt or
9 taxes are paid.

10 (6) When paying a prize of \$600 or more, the commission shall file the appropriate income
11 reporting form with the Internal Revenue Service.

12 (7) Payment of a prize will be made to the bearer of the validated winning ticket for that
13 prize upon presentation of proper identification.

14 (8) The director shall recognize only one person as claimant of a particular prize. A claim
15 may be made in the name of a person other than an individual only if the person possesses a federal
16 employer identification number (FEIN) issued by the Internal Revenue Service and such number
17 is shown on the claim form. Groups, family units, clubs, organizations, or other persons without
18 an FEIN shall designate one individual in whose name the claim is to be filed. If a claim is
19 erroneously entered with multiple claimants, the claimants shall designate one of them as the
20 individual recipient of the prize, or, if they fail to designate an individual recipient, the director
21 may designate any one of the claimants as the sole recipient. In either case, the claim shall then be
22 considered as if it were originally entered in the name of the designated individual and payment of

any prizes won shall be made to that single individual. Once a ticket is submitted as a claim, it will not be returned to the winner.

(9) The executive director has discretion to set a maximum total cash amount or maximum payment time period for each prize level.

(g) Payment of prize awarded to minor.

(1) A person 18 years of age or older may purchase a ticket to give as a gift to another person, including a minor.

(2) If a minor is entitled to a cash prize of less than \$600, the commission shall deliver to an adult member of the minor's family or to the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

(3) If a minor is entitled to a cash prize of \$600 or more, the commission shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

(4) If a minor is entitled to a prize other than money, the commission shall pay the cash equivalent of such prize in the manner provided by paragraphs (2) and (3) of this subsection.

(5) A retailer is not authorized to pay a prize claimed by a minor.

(h) Ticket responsibility.

(1) A ticket is a bearer instrument until signed on the back by the ticket holder.

(2) The commission shall not be responsible for lost, stolen, or destroyed tickets.

(3) The commission shall not be responsible for erroneous or mutilated tickets.

(4) The commission shall not be responsible for tickets claimed by a player in error for a lower prize at a retailer.

(5) The commission shall not be responsible for tickets delivered to any address other than that designated by the commission for such purpose.

(i) Disputed ticket. If a dispute arises between the commission and a ticket claimant concerning whether the ticket is a winning ticket and if the ticket prize has not been paid, the executive director may, exclusively at his/her determination, reimburse the claimant for the cost of the disputed ticket. This shall be the claimant's exclusive remedy.

(j) Game closing.

(1) The executive director or his/her designee shall determine the closing date for an individual scratch ticket game in accordance with a scratch ticket game closing procedure that defines the criteria used to monitor scratch ticket sales performance and that identifies when scratch ticket games should be closed.

(A) The procedure shall provide for the timely closing of a scratch ticket game after all top-level prizes in the game have been claimed or on an earlier date as determined by the executive director.

(B) The procedure shall provide for ending ticket sales in a scratch ticket game within 45 days after game closing procedures have been initiated.

(2) No tickets in a scratch ticket game may be sold after the scratch ticket game closing date.

(k) Governing law. In purchasing a scratch ticket, the lottery player agrees to comply with and abide by Texas law, all rules, procedures, and final decisions of the commission, and all procedures and instructions established by the executive director for the conduct of the scratch ticket game.

§401.304. Draw Game Rules (General).

(a) Price of tickets and prizes.

1 (1) The purchase price of each draw game ticket shall be as set forth in the rules of the
2 specific game being played; provided that, the purchase price for promotional groups of tickets
3 shall be determined by the executive director.

4 (2) The prize pool for draw games shall have contributions to prize categories as set forth
5 in the rules of the specific game being played.

6 (b) Sale of tickets.

7 (1) Entry of Plays. Plays may be entered using the lottery retailer terminal keypad or touch
8 screen, by means of a playslip, using authorized third-party point-of-sale ("POS") systems, or by
9 other means approved by the commission. Retailers shall not permit any device to be physically
10 or wirelessly connected to a lottery terminal to enter Plays, except as approved by the commission.
11 A ticket generated using a selection method that is not approved by the commission is not valid.

12 Acceptable methods of Play selection may include:

13 (A) using a self-service lottery ticket vending machine;

14 (B) using a playslip;

15 (C) using a previously-generated draw game ticket, from the game being played,
16 provided by the player;

17 (D) selecting a Quick Pick;

18 (E) requesting a retailer to manually enter numbers; or

19 (F) using a QR code generated through a Texas Lottery Mobile Application offered
20 and approved by the commission.

21 (2) Except to the extent that sales in draw games are impeded by draw breaks, draw game
22 tickets may be sold during draw game operating hours. Retailers must give prompt service to
23 lottery customers present and waiting at the terminal to purchase tickets for draw games.

1 (3) Draw game tickets shall be sold only at the location listed on each retailer's license from
2 the commission. For purposes of this section, the sale of a draw game lottery ticket at the licensed
3 location means a lottery transaction in which all elements of the sale between the retailer and the
4 purchaser must take place at the retailer location using their terminal, including the exchange of
5 consideration, the exchange of the playslip if one is used, and the exchange of the draw game
6 ticket. No part of the sale may take place away from the terminal.

7 (4) The executive director may authorize promotions in connection with any draw game.

8 (5) Announcement of incentive or bonus program. The executive director shall announce
9 each incentive or bonus program prior to its commencement. The announcement shall specify the
10 beginning and ending time, if applicable, of the incentive or bonus program and the value for the
11 award.

12 (6) Player Responsibility. It shall be the sole responsibility of the player to verify the
13 accuracy of the game Play or Plays and other data printed on the ticket. The placing of Plays is
14 done at the player's own risk through the licensed sales agent who is acting on behalf of the player
15 in entering the Play or Plays.

16 (c) Drawings and end of sales prior to drawings.

17 (1) The manner and frequency of drawings shall be as set forth in the rules of the specific
18 game being played and the draw procedures for the specific game.

19 (2) The drawings shall be conducted at times and locations to be announced by the
20 executive director.

21 (3) The executive director shall establish the times for draw breaks for each draw game.

22 (4) The executive director or his/her designee shall designate the type of drawing
23 equipment to be used and shall establish draw procedures to randomly select the winning

1 combination for each type of draw game. Draw procedures shall include provisions for the
2 substitution of backup drawing equipment in the event the primary drawing equipment
3 malfunctions or fails for any reason.

4 (5) A lottery drawing representative and an independent certified public accountant, shall
5 be responsible for conducting the drawing in compliance with the lottery's draw procedures. A
6 lottery drawing representative and an independent certified public accountant, shall attest whether
7 the drawing was conducted in accordance with proper draw procedures at the end of each drawing.

8 (d) Procedures for claiming draw game prizes.

9 (1) All apparent winning tickets presented for payment to the lottery or a retailer must meet
10 the commission's validation requirements as set forth in subsection (e) of this section.

11 (2) To claim a draw game prize of less than \$600, the claimant may present the winning
12 draw game ticket to a retailer or to the commission. All tickets validated by a retailer must be paid
13 by that retailer. If the retailer chooses not to validate the winning draw game ticket, the retailer
14 does not have to pay the draw game prize. The commission will pay all winning draw game tickets
15 pursuant to this section.

16 (3) To claim a draw game prize of \$600 or more, the claimant shall present the winning
17 draw game ticket to the commission. In connection with certain draw games, the top-level prizes
18 must be claimed at commission headquarters. For any claim presented to the commission, the
19 claimant shall follow all procedures of the commission related to claiming a prize. Upon validation
20 of the ticket as a winning ticket, the commission shall pay the claimant the amount due in
21 accordance with commission procedures. If the ticket is determined to be a non-winning ticket, the
22 claim shall be denied and the claimant shall be promptly notified.

1 (4) Before paying any prize, claim center personnel shall validate the winning ticket
2 according to established validation requirements and procedures.

3 (5) All prizes shall be subject to tax withholding, offsets, and other withholdings as
4 provided by law.

5 (6) If a person is indebted or owes delinquent taxes to the state, other than those specified
6 in paragraph (5) of this subsection, the winnings of a person shall be withheld until the debt or
7 taxes are paid.

8 (7) When paying a prize of \$600 or more, the commission shall file the appropriate income
9 reporting form with the Internal Revenue Service.

10 (8) Payment of a prize will be made to the bearer of the validated winning ticket for that
11 prize upon presentation of proper identification following the completion of all procedures of the
12 commission related to claiming a prize.

13 (9) The commission shall recognize only one person as claimant of a particular prize. A
14 claim may be made in the name of a person other than an individual only if the person possesses a
15 federal employer identification number (FEIN) issued by the Internal Revenue Service and such
16 number is shown on the claim form. Groups, family units, clubs, organizations, or other persons
17 without an FEIN shall designate one individual in whose name the claim is to be filed. If a claim
18 is erroneously entered with multiple claimants, the claimants shall designate one of them as the
19 individual recipient of the prize, or, if they fail to designate an individual recipient, the director
20 may designate any one of the claimants as the sole recipient. In either case, the claim shall then be
21 considered as if it were originally entered in the name of the designated individual and payment of
22 any prizes won shall be made to that single individual. Once a ticket is submitted as a claim, it will
23 not be returned to the winner.

1 (10) The executive director has discretion to set a maximum total cash amount or maximum
2 payment time period for each prize level.

3 (e) Validation requirements.

4 (1) To be a valid winning draw game ticket, all of the following conditions must be met.

5 (A) All printing on the ticket shall be present in its entirety, be legible, and
6 correspond, using the computer validation file, to the combination and data printed on the ticket.
7 The ticket must have been produced prior to the drawing.

8 (B) The ticket shall not be mutilated, altered, unreadable, reconstituted,
9 misregistered, defective, incomplete, or tampered with in any manner.

10 (C) The ticket shall not be counterfeit or forged, in whole or in part, or an exact
11 duplicate of another winning ticket.

12 (D) The ticket must have been issued by an authorized retailer in an authorized
13 manner on official Texas Lottery paper stock, or, for third-party point-of-sale systems approved
14 by the commission, printed on paper stock or otherwise issued in a manner approved by the
15 commission to provide tangible evidence of participation in a lottery game.

16 (E) The ticket shall not be stolen. Neither the commission nor its retailers shall be
17 responsible for the payment of prizes for lost or stolen tickets.

18 (F) The ticket shall not have been previously paid.

19 (G) The ticket data shall have been recorded on the central computer system prior
20 to the drawing, and the ticket data must match the computer record data in every respect.

21 (H) The ticket shall pass all other confidential security checks of the commission.

22 (2) The commission may pay the prize for a draw game ticket that is partially mutilated or
23 not intact if the ticket can still be validated by the other validation requirements.

1 (3) Liability for void tickets, if any, is limited to the replacement of ticket or refund of the
2 sales price.

3 (4) A ticket shall be the only valid receipt for claiming a prize. A copy of a ticket or a
4 playslip has no pecuniary or prize value and shall not constitute evidence of ticket purchase or of
5 numbers selected.

6 (5) In submitting an official draw game ticket for validation, the player agrees to abide by
7 applicable laws, all commission rules, regulations, policies, directives, instructions, conditions,
8 procedures, and final decisions of the executive director.

9 (6) All prizes shall be subject to tax withholdings, offsets, and other withholdings as
10 provided by law.

11 (f) Payment of prizes by retailers.

12 (1) A retailer may pay to the ticket bearer game prizes of an amount less than \$600 for any
13 valid claims presented to that retailer. All tickets validated by a retailer must be paid by that
14 retailer. Retailers may pay claims for prizes if the commission's validation system is operational.
15 The retailer shall not charge the claimant any fee for payment of the prize or for cashing a business
16 check drawn on the licensed retailer's account.

17 (2) Retailers may pay prizes in cash. If acceptable to the claimant, retailers may also pay
18 cash prizes by business check, certified check, cashier's check, money order, gift card, stored-value
19 card, or store merchandise. If a retailer decides to pay with anything other than cash, it is the
20 responsibility of the retailer to ensure the claimant has voluntarily agreed to the non-cash prize
21 payment.

22 (g) Payment of prize awarded to minor.

1 (1) A person 18 years of age or older may purchase a ticket to give as a gift to another
2 person, including a minor.

3 (2) If a minor is entitled to a cash prize of less than \$600, the commission shall deliver to
4 an adult member of the minor's family or to the minor's guardian a check or warrant in the amount
5 of the prize payable to the order of the minor.

6 (3) If a minor is entitled to a cash prize of \$600 or more, the commission shall deposit the
7 amount of the prize in a custodial bank account, with an adult member of the minor's family or the
8 minor's guardian serving as custodian for the minor.

9 (4) If a minor is entitled to a prize other than money, the commission shall pay the cash
10 equivalent of such prize in the manner provided by paragraphs (2) and (3) of this subsection.

11 (5) A retailer is not authorized to pay a prize claimed by a minor.

12 (h) Game termination and prize claim period.

13 (1) The executive director or his/her designee, at any time, may announce the termination
14 date for a draw game. If this occurs, no tickets for that draw game shall be sold past the termination
15 date.

16 (2) Draw game prizes shall be claimed no later than 180 days after the applicable draw date
17 of the draw game. In the event any player who has a valid winning ticket does not claim the prize
18 within 180 days after the drawing in which the prize was won, the prize amount shall be deposited
19 in accordance with Government Code, §466.408.

20 §401.355. Restricted Sales.

21 (a) Retailers shall not sell lottery tickets via the internet or by mail, phone, fax, or other similar
22 method of communications. Retailers shall not sell a lottery ticket or any other document
23 evidencing a right, privilege, or share in a lottery ticket from another jurisdiction by any means.

(b) Retailers shall not sell tickets to persons under the age of 18. Any ticket purchased by or sold to an individual under the age of 18 years shall be void and the prize otherwise payable on the ticket is treated as an unclaimed prize under Texas Government Code §466.408.

(c) Retailers shall not sell a ticket or pay a lottery prize to another person that the retailer knows is:

(1) an officer or an employee of the commission;

(2) an officer, member, or employee of a lottery operator;

(3) an officer, member, or employee of a contractor or subcontractor that is excluded by the terms of its contract from playing lottery games;

(4) the spouse, child, brother, sister, or parent of a person described by paragraph (1), (2), or (3) of this subsection who resides within the same household as that person.

(d) Retailers shall not sell tickets from a game after the game's closing date.

§401.501. Lottery Security.

The Texas Lottery Commission considers security and integrity to be every commission employee's responsibility. The Texas Lottery Commission shall develop and maintain security plans and procedures through its designated divisions as required by the State Lottery Act, Texas Government Code, Chapter 466. The commission's security plans and procedures shall be designed to ensure the integrity and security of the operation of the Lottery and, to the extent that they are not inconsistent with Texas Public Information Act, Texas Government Code, Chapter 552, are exempt from disclosure to the public.

TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §§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), 401.153 (Qualifications for License), 401.158 (Suspension or Revocation of License), 401.160 (Standard Penalty Chart), 401.301 (General Definitions), 401.302 (Scratch Ticket Game Rules), 401.304 (Draw Game Rules (General)), 401.355 (Restricted Sales), and 401.501 (Lottery Security).

The proposed rule amendments are the result of the Commission's recent rule review conducted in accordance with Texas Government Code §2001.039, as well as the agency's recent review by the Texas Sunset Advisory Commission. Among the more significant changes, this proposal addresses issues identified as rulemaking gaps in the May 2024 Texas Sunset Advisory Commission Staff Report (Staff Report). Specifically, the Staff Report noted that there was "no clarification as to whether internet sales of lottery products are prohibited" (addressed in Rules 401.153(b)(12), 401.158(b)(27), 401.160(h), and 401.355(a)), and "no explanation of what it means for a person to 'engage in a business exclusively as a (lottery) sales agent' for purposes of licensure" (addressed in Rule 401.153(b)(13)).

The proposed rule amendments also clarify procurement procedures and the time period a bidder or proposer has to respond to an appeal of certain protest decisions issued by the agency in procurements; update several definitions; update a provision in the scratch ticket game rule to make it more consistent with the draw game rule; update the scratch and draw ticket prize claim processes; and update the language regarding lottery security to state that several divisions of the Commission are responsible for developing and maintaining security plans and procedures, and confirming that these plans and procedures are protected from required public disclosure as allowed under the Texas Public Information Act.

The proposed amendments to Rule 401.101 clarify the rules governing the Invitation for Bid (IFB) procurement method by reorganizing the section and by adding language that describes the process used for IFBs. The proposed amendments also clarify certain differences between the Request for Proposals (RFP) and IFB procurement methods.

The proposed amendments to Rule 401.102 add language stating that the email address designated by the vendor for correspondence in the procurement will also serve as the email address for notice of proceedings and decisions under this section.

The proposed amendments to Rule 401.103(g) clarify the time period a successful bidder or proposer has to respond to an appeal of an agency determination of a vendor's protest to a contract award resulting from a competitive solicitation. Also, the proposal adds language stating that the email address designated by the vendor for correspondence in the procurement will also serve as the email address for notice of proceedings and decisions under this section.

The proposed amendments to Rule 401.104 clarify that the agency may assign designated personnel to monitor contract compliance and facilitate historically underutilized business participation, in addition to the existing divisions within the agency that handle these matters.

The proposed amendments to Rule 401.153(b)(12) clarify that an application for a sales agent license will be denied if the applicant intends to sell lottery tickets via the internet, and the proposed amendments to Rule 401.153(b)(13) reiterate the prohibition in the State Lottery Act that an application for a sales agent license will be denied if the applicant intends to engage in business exclusively as a Texas Lottery ticket sales agent (as defined in the proposed amendments). This change addresses gaps that were identified by the Staff Report.

The proposed amendments to Rule 401.153 also add a provision that, based upon consideration of the factors in Rule 401.160(g), the director may determine a person or organization whose license has been revoked, surrendered or denied is not eligible to apply for another license for one year.

The proposed amendments to Rule 401.158(b)(23) make it an express violation to require a purchaser to buy additional items when paying for lottery tickets with a debit card and the proposed amendments to Rule 401.158(b)(27) make it an express violation to sell lottery tickets over the internet.

The proposed amendments to Rule 401.160 update the penalty chart and correspond with the proposed amendments to Rules 401.158(b)(23) and (27) referenced above.

The proposed amendments to Rule 401.301(1), (4), (51), and (55) make minor updates to multiple definitions to increase the clarity of those definitions. The proposed amendments also add a definition of "Present at the terminal" that was deleted in a non-substantive rule amendment in August 2020. The purpose of re-inserting the definition, in combination with the related proposed amendment to Rule 401.304(b)(3), is to dispel any misconception that the deletion was substantive and make clear that all aspects of a sales transaction under Rule 401.304 must take place at the retail location.

The proposed amendments to Rule 401.302(a)(1) add language from Rule 401.304(b)(3) (Draw Game Rules (General)) regarding the requirement that all aspects of a ticket purchase must take place at a licensed retail location, to make Rule 401.302 more consistent with Rule 401.304. The proposed amendments to Rule 401.302(e)(6) and (f)(2) update the rule by requiring all scratch ticket prize claim processes to be made in accordance with Commission procedures and deleting requirements that are inapplicable to mobile prize claims.

The proposed amendments to Rule 401.304(b)(3) add language that was deleted in a non-substantive rule amendment in 2020 to reiterate and clarify that no part of a draw game ticket sale may take place away from the terminal. The proposed amendments to Rule 401.304(d)(3) update the rule by requiring all draw ticket prize claim processes to be made in accordance with Commission procedures and deleting requirements that are inapplicable to mobile prize claims.

The proposed amendments to Rule 401.355(a) clarify that retailers shall not sell lottery tickets via the internet, a gap that was identified by the Staff Report, and the proposed amendments to Rule 401.355(b) update a cross-reference.

The proposed amendments to Rule 401.501 update the language regarding lottery security to state that several divisions of

the Commission are responsible for developing and maintaining security plans and procedures, including information security, gaming security, and facility security as required by the State Lottery Act to ensure the integrity and security of the lottery games, and confirming that these plans and procedures are protected from required public disclosure as allowed under the Texas Public Information Act.

Angela Zgabay-Zgarba, Administration Director, has determined that for each year of the first five years the proposed amendments will be in effect, the anticipated public benefit will be greater clarity regarding agency procedures governing procurement.

Robert Tirloni, Lottery Operations Director, has determined that for each year of the first five years the proposed amendments will be in effect, the anticipated public benefit includes a greater understanding of the Commission's rules and games by licensed lottery retailers and lottery players based on the removal of obsolete language and the addition of new, clarifying language; and addressing issues identified as rulemaking gaps in the Staff Report. The new rule language should lead to an increase in understanding and compliance.

Sergio Rey, 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).

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, Sergio Rey, 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 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 45 days after publication of this proposal in the *Texas Register* to be considered. The Commission will also hold a public hearing to receive comments on this proposal at 1:00 p.m. on January 15, 2025, at 1801 Congress Ave., George H. W. Bush Building, 4th Floor, Board Room 4.300, Austin, TX, 78701.

SUBCHAPTER A. PROCUREMENT

16 TAC §§401.101 - 401.104

These amendments are proposed under Texas Government Code §466.015(c), 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.

§401.101. Lottery Procurement Procedures.

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

(e) Formal competitive solicitations.

(1) A formal competitive solicitation is a process conducted in order to receive at least three sealed competitive bids or proposals pursuant to the issuance of an IFB, RFP, RFQ, or another statewide contract process, respectively.

(A) An IFB will be used when the agency is able to describe, by way of established specifications, exactly what it wishes to procure, and wants bidders to offer such at a specific price. For formal competitive solicitations where an IFB is used, the agency will award a contract to the qualified bidder submitting the lowest cost responsible bid meeting all specifications and providing the best value for the agency, as determined during the evaluation of the bids.

(B) - (C) (No change.)

(2) - (4) (No change.)

[(5) For formal competitive solicitations where an IFB is used, the agency will award a contract to the qualified bidder submitting the lowest cost responsible bid meeting all specifications and providing the best value for the agency, as determined during the evaluation of the bids. Negotiations are not authorized when utilizing an IFB procurement method; however, if only one response is received, negotiations are allowed, provided, negotiations may not result in a material change to the advertised specifications.]

(f) RFPs and IFBs [RFP].

(1) Submission of RFP. When an RFP is used by the agency, the RFP will contain, at a minimum, the following:

(A) - (B) (No change.)

(C) the time and date proposals are due, and the location and person to whom they must [are to] be submitted;

(D) - (E) (No change.)

(2) Submission of IFB. When an IFB is used by the agency, a bidder will submit a bid in response to the solicitation. The IFB solicitation will contain, at a minimum, the following:

(A) A detailed description of the goods and/or services to be provided, and specific specifications for the goods or services to be procured;

(B) A description of the format bids must follow and the elements they must contain;

(C) The time and date bids are due, and the location and person to whom they must be submitted;

(D) an identification of the process to be utilized in evaluating bids; and

(E) a listing of the factors to be utilized in evaluating bids and awarding a purchase order. At a minimum, the factors should include:

(i) the bidder's price to provide the goods or services;

(ii) the probable quality of the offered goods or services;

(iii) the quality of the bidder's past performance in contracting with the Texas Lottery, with other state entities or with private sector entities;

(iv) the bidder's experience in providing the requested goods or services;

(v) the qualifications of the bidder's personnel; and,

(vi) whether the bidder performed the good faith effort required by the HUB subcontracting plan, as applicable.

(3) [(2)] Evaluation Process. The agency will, prior to the deadline for receipt of proposals or bids, develop and establish comprehensive evaluation criteria to be utilized by an evaluation committee in evaluating the proposals or bids. All proposals or bids that are responsive to the procurement [RFP] will be reviewed by the evaluation committee. Part of the initial evaluation process may include an inspection trip to the proposer's facilities, and/or proposers may be requested to make an oral presentation to the committee. The evaluation committee may seek advice from consultants. If consultants are employed, they may be provided all information provided by the proposers or bidders. The evaluation committee will evaluate and score all proposals in accordance with the evaluation criteria.

(4) [(3)] Best and Final Offers (BAFO). With an RFP, the [The] agency may select top proposers, which may each be given an opportunity to discuss, clarify, and negotiate with the agency, and submit revisions to their respective proposals to the agency through a BAFO process. During discussions between the proposers and the agency, no information from a competing proposal may be revealed by the agency to another competitor. Any type of auction practice or allowing the transfer of technical information is specifically prohibited. At the conclusion of the discussions, BAFOs may be formally requested from the proposers and a deadline will be set for submission. BAFOs will be submitted by supplemental pages and not a complete resubmission of the proposal. All BAFOs will be reviewed by the evaluation committee. The evaluation committee will evaluate and score the BAFO response together with the original proposal in accordance with the evaluation criteria.

(5) [(4)] Negotiation.

(A) RFP. If a BAFO process is not used, the agency will attempt to negotiate a contract with the selected proposer. If a contract cannot be negotiated with the selected proposer on terms the agency determines reasonable, negotiations with that proposer will be terminated, and negotiations will be undertaken with the next highest scored

proposer. This process will be continued until a contract is executed by a proposer and the agency, or negotiations with all qualified proposers are terminated. If no contract is executed, the agency may cancel the solicitation.

(B) IFB. Negotiations are not authorized when utilizing an IFB procurement method; however, if only one response is received, negotiations are allowed, provided, negotiations may not result in a material change to the advertised specifications.

(6) [(5)] Multiple Award. The agency may award a contract to two or more vendors or contractors using a single solicitation to furnish the same or similar supplies or services, where more than one vendor or contractor is needed to meet the agency's requirements for quantity, delivery, or service.

(g) - (i) (No change.)

§401.102. *Protests of the Terms of a Formal Competitive Solicitation.*

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

(e) The director of administration will review the protest, and the solicitation file, and will make a written determination of the protest, which may include canceling the solicitation. The director of administration's written determination will be served by email on the protestant. Confirmation that the notice was sent to an email address designated for the receipt of correspondence in the procurement will be conclusive proof that delivery was made. The decision of the director of administration may be appealed to the executive director. The appeal must be filed electronically with the commission's general counsel by 5 p.m. the next business day after issuance of the written determination. An appeal is considered timely filed if it is electronically filed before the filing deadline. An electronically filed appeal is deemed filed when transmitted to the protestant's electronic filing service provider.

(f) On appeal of the director of administration's determination, the executive director will review the protest, the solicitation file, any responses, and the director of administration's determination, including any reasoning that supports the determination. The executive director will then make a written determination of the appeal, which may include canceling the solicitation. The executive director's written determination will be served, by email on the protestant. Confirmation that the notice was sent to an email address designated for the receipt of correspondence in the procurement [correspondence,] will be conclusive proof that delivery was made. An appeal to the Texas Lottery Commission of the determination of the executive director must be filed electronically with the commission's general counsel by 5 p.m. the next business day after issuance of the written determination. An appeal is considered timely if it is electronically filed before the filing deadline. An electronically filed appeal is deemed filed when transmitted to the protestant's electronic filing service provider.

(g) - (h) (No change.)

(i) The Texas Lottery Commission will make a written determination of the protest. To make its determination, the commission [Commission] will review:

(1) - (4) (No change.)

(5) The staff attorney's recommendation. The written determination on the protest may include a determination canceling the solicitation. The Texas Lottery Commission's written determination will be served by email on the protestant. Confirmation that the notice was sent to an email address designated for the receipt of correspondence in the procurement [correspondence,] will be conclusive proof that delivery was made. The Texas Lottery Commission's determination shall be administratively final when issued.

§401.103. *Protests of Contract Award.*

(a) (No change.)

(b) A protest of any contract award must be filed electronically with the commission's general counsel, by email to legal.input@lottery.state.tx.us, within 72 hours after receipt of notice of contract award. A copy of the protest must be delivered to the successful bidder or proposer at the same time that the protest or supplement is delivered to the agency. The protestant must include its email address with the protest. A protest is considered timely filed if it is electronically filed before the filing deadline. An electronically filed protest is deemed filed when transmitted to the protestant's electronic filing service provider. Unless otherwise requested by the commission, the protestant is not required to file a paper copy of its protest. For good cause shown by the protestant, the commission may allow an alternate form of filing. The electronically filed protest must be in a text-searchable PDF format. The protestant is solely responsible for ensuring its protest is complete and filed timely with the office of the general counsel and a copy is sent to the successful bidder or proposer. A protest not filed timely will not be considered, and the protestant will be so notified in writing by the commission's general counsel by electronic notice sent to the protestant's designated email address, or the email address identified for notices in the procurement response. A protestant may supplement its timely filed protest. The deadline to supplement is 5 p.m. central time, 10 calendar days after notice of contract award.

(c) In the event of a protest of a contract award, the successful bidder(s) or proposer(s) may file a written response electronically to the protest within 72 hours after the office of the general counsel's receipt of the protest or any supplemental filing. The successful bidder(s) or proposer(s) must include its email address with the response. A response is considered timely filed if it is electronically filed before the filing deadline. An electronically filed response is deemed filed when transmitted to the successful bidder(s) or proposer(s)'s electronic filing service provider. The electronically filed response must be in a text-searchable PDF format. The successful bidder(s) or proposer(s) is solely responsible for ensuring the response is complete and filed timely with the office of the general counsel. Responses not filed timely will not be considered, and the successful bidder(s) or proposer(s) will be so notified in writing by the commission's general counsel by electronic notice sent to the successful bidder(s) or proposer(s)'s designated email address, or the email address identified for notices in the procurement response.

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

(f) The director of administration will review the protest, the contract award file, any responses, and will make a written determination of the protest, which may include canceling the award of the contract. The director of administration's written determination will be served, by facsimile or by email, on the protestant and the successful bidder(s) or proposer(s). Confirmation that the notice was sent to an email address designated for the receipt of correspondence, will be conclusive proof that delivery was made. The decision of the director of administration may be appealed to the executive director [Executive Director]. The appeal must be filed electronically with the commission's general counsel by 5 p.m. of the next business day after issuance of the written determination. An appeal is considered timely filed if it is electronically filed before the filing deadline. An electronically filed appeal is deemed filed when transmitted to the protestant's electronic filing service provider.

(g) The successful bidder(s) or proposer(s) may file a response electronically to the appeal of a determination made by the director of administration or the executive director by 5 p.m. of the next business

day [Executive Director within 24 hours] after notice of the commission's receipt of the appeal. The successful bidder(s) or proposer(s) must include its email address with the response. A response is considered timely filed if it is electronically filed before the filing deadline. An electronically filed response is deemed filed when transmitted to the successful bidder(s) or proposer(s)'s electronic filing service provider. Unless otherwise requested by the commission, the successful bidder(s) or proposer(s) is not required to file a paper copy of its response. The electronically filed response must be in text-searchable PDF format. The successful bidder(s) or proposer(s) is solely responsible for ensuring the response is complete and filed timely with the office of the general counsel. Responses not filed timely will not be considered, and the respondent will be so notified in writing by the commission's general counsel by electronic notice sent to the successful bidder(s) or proposer(s)'s designated email address.

(h) On appeal of the director of administration's determination, the executive director will review the protest, the contract award file and responses, and the director of administration's determination, including any reasoning that supports the determination. The executive director [Executive Director] will then make a written determination of the protest, which may include abating the award of the contract. The executive director's written determination will be served by email on the protestant. Confirmation that the notice was sent to an email address designated for the receipt of correspondence [correspondence] will be conclusive proof that delivery was made. An appeal to the Texas Lottery Commission of the determination of the executive director must be filed electronically with the commission's general counsel by 5 p.m. of the next business day after issuance of the written determination. An appeal is considered timely filed if it is electronically filed before the filing deadline. An electronically filed appeal is deemed filed when transmitted to the protestant's electronic filing service provider.

(i) - (k) (No change.)

§401.104. *Contract Monitoring Roles and Responsibilities.*

The contract monitoring roles and responsibilities of agency internal audit staff (or contractor) and other inspection, investigative, or compliance staff are as follows:

(1) - (3) (No change.)

(4) A division or divisions, or other designated personnel within the agency, [agency] will monitor and report to other appropriate agency divisions or units regarding contract compliance.

(5) A HUB coordinator and any other designated personnel [division] within the agency will assist the administering division or divisions and the contract management section in monitoring agency contracts in connection with applicable historically underutilized and minority business contract requirements.

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Bob Biard

General Counsel

Texas Lottery Commission

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

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SUBCHAPTER B. LICENSING OF SALES AGENTS

16 TAC §§401.153, 401.158, 401.160

These amendments are proposed under Texas Government Code §466.015(c), 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.

§401.153. *Qualifications for License.*

(a) (No change.)

(b) The director may grant or deny an application for a license under this subchapter based on any one or more factors listed in subsection (a) of this section. In addition, the director shall deny an application for a license under this subchapter upon a finding that the applicant:

(1) - (9) (No change.)

(10) failed to certify to the director the applicant's compliance with the federal Americans With Disabilities Act; [or]

(11) is the subject of a license suspension or decision issued under Chapter 232, Family Code; [Code.]

(12) intends to sell lottery tickets via the internet; or

(13) intends to engage in business exclusively as a Texas Lottery ticket sales agent. For purposes of this section, an applicant "intends to engage in business exclusively as a Texas Lottery ticket sales agent" if the applicant does not sell any goods or services to the public other than Texas Lottery tickets.

(c) - (e) (No change.)

(f) Based upon consideration of the factors in §401.160(g) of this title (relating to Standard Penalty Chart), the director may determine a person or organization whose license has been revoked or surrendered, or whose application has been denied for reasons which would justify a revocation of an existing license, will not be eligible to apply for another license earlier than one year from the date of revocation, surrender, or denial.

§401.158. *Suspension or Revocation of License.*

(a) (No change.)

(b) Without limiting the commission's ability to consider factors listed in §401.153(b) of this title as grounds for suspension or revocation of a license issued under this subchapter, the commission may also suspend or revoke a license for reasons including, but not limited to, any of the following:

(1) - (22) (No change.)

(23) licensee charges a fee for lottery ticket purchases using a debit card, requires an additional purchase with a debit card, and/or requires a minimum dollar amount for debit card purchases of only lottery tickets.

(24) - (26) (No change.)

(27) licensee sells tickets over the telephone or internet, or via mail order sales; or [sales;] establishes or promotes a group purchase or pooling arrangement under which tickets are purchased on behalf of the group or pool and any prize is divided among the members of the group or pool, and the licensee intentionally or knowingly:

(A) - (B) (No change.)

(28) - (39) (No change.)

(40) licensee incurs four (4) notices of nonsufficient fund transfers or non-transfer of funds within a 12-month period (revocation only);

(41) licensee fails to pay the full amount of money owed to the commission after a nonsufficient funds transfer or non-transfer of funds to the commission's account (revocation only); or

(42) (No change.)

§401.160. *Standard Penalty Chart.*

(a) - (f) (No change.)

(g) Based upon consideration of the following factors, the commission may impose penalties other than the penalties recommended in §401.158 of this title (relating to Suspension or Revocation of License) and/or this section:

(1) - (8) (No change.)

(9) Penalties imposed for related offenses; [or]

(10) Current employment status of any employee(s) that committed violation(s); or

(11) [(10)] Any other mitigating or aggravating circumstances.

(h) Standard Penalty Chart.

Figure: 16 TAC §401.160(h)

[Figure: 16 TAC §401.160(h)]

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

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Bob Biard

General Counsel

Texas Lottery Commission

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SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §§401.301, 401.302, 401.304

These amendments are proposed under Texas Government Code §466.015(c), 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.

§401.301. *General Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Caption--The letters or other characters appearing below the play symbols in the play area of a ticket that verify the correctness of the play symbols.

(2) - (3) (No change.)

(4) Claim form--The printed or electronic form authorized and provided by the commission that a claimant shall complete and submit to the commission when claiming a prize.

(5) - (34) (No change.)

(35) Present at the terminal--A player remains physically present at the terminal from the time the player's order for the purchase of draw game tickets is paid for and accepted by the retailer until the processing of the order is completed and the tickets are delivered to the player at the retailer terminal location.

(36) [(35)] Prize amounts--The amount of money payable to each share in a prize category, the annuitized future value of each share in a prize category, or the net present cash value of each share in a prize category for each draw game drawing. Prize amounts are calculated by dividing the prize category contribution, the annuitized future value of the prize category contribution, or the net present cash value of the prize category contribution by the number of shares determined for the prize category.

(37) [(36)] Prize breakage--The money which is left over from the rounding down of the pari-mutuel prize levels to the next lowest whole dollar amount or money which is in excess of the amount needed to pay a prize.

(38) [(37)] Prize category--The matching combinations of numbers and their corresponding prize levels as described in rules for the specific game being played.

(39) [(38)] Prize category contributions--Refers to contributions for each drawing to each prize category, including direct and indirect prize category contributions.

(40) [(39)] Prize fund--The monies allocated to be returned to players in winning tickets within a specific scratch ticket game.

(41) [(40)] Prize pool--In a draw game, the total amount of money available for prizes as a percentage of the total sales for the current draw period.

(42) [(41)] Prize structure--The number, value, prize payout percentage, and odds of winning prizes for an individual game as approved by the executive director.

(43) [(42)] Promotion--One or more events coordinated or conducted by the commission at retail sites, fairs, festivals and other appropriate venues, or in conjunction with one or more particular Texas Lottery games, to educate players about Texas Lottery products and/or sell Texas Lottery games through a retailer in specific markets to maximize Texas Lottery sales and statewide awareness.

(44) [(43)] Promotional drawing--A drawing in which qualified contestants are awarded prizes in a random manner in accordance with the procedures set forth for a specific promotion.

(45) [(44)] Quick Pick--A play option that generates random numbers in a manner approved by the commission.

(46) [(45)] Roll-over--The amount in a specific draw game prize pool category resulting from no matching combinations and/or prize breakage from the previous drawing.

(47) [(46)] Sales agent--A person licensed under the State Lottery Act to sell Texas Lottery tickets.

(48) [(47)] Scratch ticket--A scratch ticket lottery game, developed and offered for sale to the public in accordance with commission rules, that is played by revealing the ticket play symbols.

(49) [(48)] Shares--In a draw game, the total number of matching combinations within each prize category as determined for each drawing.

(50) [(49)] Terminal--A device authorized by the commission for the purpose of issuing draw game tickets and/or validating claims, including the commission or commission's vendor's computer hardware as well as commission-authorized third-party point-of-sale systems.

(51) [(50)] Third-party point-of-sale systems--Self-contained computerized equipment (not owned or operated by the commission or lottery operator) that performs sales-related tasks at a licensed lottery ticket retailer's checkout counter and that has the sole Texas Lottery-related purpose of selling lottery tickets. Third-party point-of-sale systems will only perform the same lottery-related tasks as terminals owned or operated by the commission or lottery operator and may not issue electronic tickets or display outcomes for draw and scratch games using casino-style graphics of any kind. Third-party point-of-sale systems do not include any gambling device.

(52) [(51)] Ticket--Any tangible evidence issued to provide participation in a lottery game or activity authorized by the State Lottery Act.

(53) [(52)] Ticket bearer--The person who has signed the ticket or who has possession of an unsigned ticket.

(54) [(53)] Ticket number--The number on the back of the scratch ticket that refers to the ticket sequence within a specific pack of a scratch ticket game.

(55) [(54)] Validation number--The unique alphanumeric number sequence or barcode printed on a ticket that provides for the verification of the ticket as a valid winner.

(56) [(55)] Valid ticket--A ticket which meets all specifications and validation requirements and entitles the holder to a specific prize amount.

(57) [(56)] Void ticket--Any ticket that is stolen, unissued, illegible, mutilated, altered, counterfeit in whole or part, misregistered, defective, incomplete, printed or produced in error, multiply printed, fails any of the commission's confidential validation tests, or is a ticket produced by or for the commission for education and training purposes.

(58) [(57)] Winning combination--One or more digits, numbers, or symbols randomly selected by the commission in a drawing which has been certified.

§401.302. Scratch Ticket Game Rules.

(a) Sale of scratch tickets.

(1) Only retailers who have been licensed by the commission are authorized to sell scratch tickets, and scratch tickets shall ~~may~~ be sold only at the ~~[a licensed]~~ location listed on each retailer's license from the commission. For purposes of this section, the sale of a scratch ticket at the licensed location means a lottery transaction in which all elements of the sale between the retailer and the purchaser must take place at the retailer location, including the exchange of consideration and the exchange of the scratch ticket.

(2) - (3) (No change.)

(b) - (d) (No change.)

(e) Payment of low-tier and mid-tier prizes.

(1) - (5) (No change.)

(6) If a low- or mid-tier claim is presented to the commission, the claimant shall follow all procedures of the commission related

to claiming a prize [prize; including but not limited to filling out a claim form, presenting appropriate identification if required, completing the back of the ticket, and submitting these items including the apparent winning ticket to the commission by mail or in person]. Upon validation of the ticket as a winning ticket, the commission shall pay the claimant the amount due in accordance with commission procedures. If the ticket is determined to be a non-winning ticket, the claim shall be denied and the claimant shall be promptly notified. [Tickets will not be returned to the claimant.]

(f) Payment of high-tier prizes.

(1) (No change.)

(2) If a high-tier claim is presented to the commission, the claimant shall follow all procedures of the commission related to claiming a prize [prize; including but not limited to filling out a claim form, presenting appropriate identification as required, completing the back of the ticket, and submitting these items including the apparent winning ticket to the commission by mail or in person]. Upon validation of the ticket as a winning ticket, the commission shall pay the claimant the amount due in accordance with commission procedures. If the ticket is determined to be a non-winning ticket, the claim shall be denied and the claimant shall be promptly notified. [Tickets will not be returned to the claimant.]

(3) - (9) (No change.)

(g) - (k) (No change.)

§401.304. Draw Game Rules (General).

(a) (No change.)

(b) Sale of tickets.

(1) - (2) (No change.)

(3) Draw game tickets shall be sold only at the location listed on each retailer's license from the commission. For purposes of this section, the sale of a draw game lottery ticket at the licensed location means a lottery transaction in which all elements of the sale between the retailer and the purchaser must take place at the retailer location using their terminal, including the exchange of consideration, the exchange of the playslip if one is used, and the exchange of the draw game ticket. No part of the sale may take place away from the terminal.

(4) - (6) (No change.)

(c) (No change.)

(d) Procedures for claiming draw game prizes.

(1) - (2) (No change.)

(3) To claim a draw game prize of \$600 or more, the claimant shall present the winning draw game ticket to the commission. [For purposes of this provision, the term "commission" includes claim centers located throughout Texas.] In connection with certain draw games, the top-level prizes must be claimed at commission headquarters. For any claim presented to the commission, the claimant shall follow all procedures of the commission related to claiming a prize [prize; including but not limited to filling out a claim form, presenting appropriate identification as required, completing the back of the ticket, and submitting these items including the apparent winning ticket to the commission by mail or in person]. Upon validation of the ticket as a winning ticket, the commission shall pay the claimant the amount due in accordance with commission procedures. If the ticket is determined to be a non-winning ticket, the claim shall be denied and the claimant shall be promptly notified. [Tickets will not be returned to the claimant.]

(4) - (10) (No change.)

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

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Bob Biard

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SUBCHAPTER E. RETAILER RULES

16 TAC §401.355

These amendments are proposed under Texas Government Code §466.015(c), 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.

§401.355. Restricted Sales.

(a) Retailers shall not sell lottery tickets via the internet or by mail, phone, fax, or other similar method of communications. Retailers shall not sell a lottery ticket or any other document evidencing a right, privilege, or share in a lottery ticket from another jurisdiction by any means.

(b) Retailers shall not sell tickets to persons under the age of 18. Any ticket purchased by or sold to an individual under the age of 18 years shall be void and the prize otherwise payable on the ticket is treated as an unclaimed prize under Texas Government Code §466.408 [§401.302(j)(3) of this title (relating to Scratch Ticket Game Rules)].

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

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SUBCHAPTER G. LOTTERY SECURITY

16 TAC §401.501

These amendments are proposed under Texas Government Code §466.015(c), 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.

§401.501. Lottery Security.

The Texas Lottery Commission considers security and integrity to be every commission [agency] employee's responsibility. [~~The security of the Texas Lottery Commission shall be developed and administered by agency's Security Division.~~] The Texas Lottery Commission [Security Division] shall develop and maintain [an internal] security plans and procedures through its designated divisions as required by the State Lottery Act, Texas Government Code, Chapter 466 [plan]. The commission's [agency's] security plans [plan] and [other security] procedures shall be designed to ensure the integrity and security of the operation of the Lottery and, to the extent that they are not inconsistent with Texas Public Information Act [Texas Open Records law], Texas Government Code, Chapter 552, are exempt from disclosure to the public.

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER BB. COMMISSIONER'S RULES ON REPORTING REQUIREMENTS

19 TAC §61.1028

The Texas Education Agency (TEA) proposes the repeal of §61.1028, concerning reporting of bus collisions. The proposed repeal would relocate the existing requirements to proposed new 19 TAC §103.1231. The proposed new rule would include an update to remove the requirement related to the color of a multifunction school activity bus to align with statute.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 61.1028 requires school districts and open-enrollment charter schools to report bus collisions. The proposed repeal of §61.1028 would move the existing language to proposed new §103.1231. The relocation is necessary due to a comprehensive reorganization of 19 TAC Chapter 61.

Proposed new §103.1231 would be updated to align the definition of "multifunction school activity bus" with Texas Transporta-

tion Code, §541.201, by removing the requirement related to color.

FISCAL IMPACT: James Finley, deputy chief of school safety and security, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, 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 repeal an existing regulation to relocate the requirements.

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 expand or limit 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 AND COST TO PERSONS: Mr. Finley has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to allow for TEA rules to be reorganized. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins December 6, 2024, and ends January 6, 2025. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on December 6, 2024. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Com-

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §401.160(h)

TEXAS LOTTERY COMMISSION RETAILER REGULATORY VIOLATIONS AND RELATED PENALTIES				
No.	DESCRIPTION OF VIOLATION	1st OCCURRENCE	2nd OCCURRENCE	3rd OCCURRENCE
1st Tier Violations				
1.	Licensee engages in telecommunication or printed advertising that the director determines to have been false, deceptive or misleading.	Warning Letter (Notification in writing to the licensee of the detected violation, including a warning that future violations will result in more severe administrative penalties including Suspension and/or revocation of the license.)	10-90 day Suspension	30-90 day Suspension to Revocation
2.	Licensee conditions redemption of a lottery prize upon the purchase of any other item or service.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
3.	Licensee imposes a restriction upon the redemption of a lottery prize not specifically authorized by the director.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
4.	Licensee fails to follow instructions and procedures for the conduct of any lottery game, lottery special event or promotion.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation

5.	Licensee and/or its employee(s) exhibit discourteous treatment including, but not limited to, abusive language toward customers, commission employees or commission vendors.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
6.	Licensee fails to establish or maintain reasonable security precautions regarding the handling of lottery tickets and other materials.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
7.	Licensee fails to deface a validated ticket.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
8.	Licensee sells a draw game ticket for a draw that has already taken place.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
9.	Licensee fails to follow validation procedures, including, but not limited to, paying a claim without validating the ticket, failing to pay a valid prize after validating a customer's winning ticket, or retaining a customer's winning ticket that has not been validated.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
10.	Licensee violates any directive or instruction issued by the director of Lottery Operations.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
11.	Licensee violates any express term or condition of its license not specifically set forth in this subchapter.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
12.	Licensee sells a scratch ticket from a game that has closed after the date designated for the end of the game.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
13.	Licensee refuses to refund or properly cancel a Pick 3 or Daily 4 ticket.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation

14.	Licensee fails to return an exchange ticket to a prize claimant claiming a prize on a multi-draw ticket if an exchange ticket is produced by the licensee's terminal.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
15.	Licensee fails to keep accurate and complete records of all tickets that have not been sold from confirmed, active, and settled packs.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
16.	Licensee fails to meet any requirement under §401.368, Lottery Ticket Vending Machines rule, if the licensee has been supplied with a self-service lottery ticket vending machine by the commission.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
17.	Licensee fails to take readily achievable measures within the allowed time period to comply with the barrier removal requirements regarding the ADA.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
18.	Licensee fails to prominently post license.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
19.	Licensee sells tickets that were assigned to another licensed location.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
20.	Licensee knowingly sells a ticket or pays a lottery prize to another person who is: (A) an officer or an employee of the commission; (B) an officer, member, or employee of a lottery operator; (C) an officer, member, or employee of a contractor or subcontractor that is excluded by the terms of its contract from playing lottery games; (D) the spouse, child, brother, sister, or parent of a person described by (A), (B), or (C) above who resides within the same household as that person.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation

2nd Tier Violations				
		10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
21.	Licensee endangers the security and/or integrity of the lottery games operated by the commission.			
22.	Licensee intentionally or knowingly sells a ticket at a price the licensee knows is greater than the price set by the executive director.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
23.	Licensee charges a fee for lottery ticket purchases using a debit card, <u>requires an additional purchase with a debit card,</u> and/or requires a minimum dollar amount for debit card purchases of only lottery tickets.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
24.	Licensee sells tickets at a location that is not licensed.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
25.	Licensee intentionally or knowingly sells a ticket by extending credit or lends money to enable a person to buy a ticket.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
26.	Licensee intentionally or knowingly sells a ticket and accepts anything for payment not specifically allowed under the State Lottery Act.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
27.	Licensee sells tickets over the telephone or <u>internet,</u> or via mail order <u>sales;</u> [sales;] or establishes or promotes a group purchase or pooling arrangement under which tickets are purchased on behalf of the group or pool and any prize is divided among the members of the group or pool, and the licensee intentionally or knowingly: (A) uses any part of the funds solicited or accepted for a purpose other than purchasing tickets on behalf of the group or pool; or (B) retains a share of any prize awarded as	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation

	compensation for establishing or promoting the group purchase or pooling arrangement.				
28.	Licensee intentionally or knowingly alters or forges a ticket.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation	
29.	Licensee intentionally or knowingly influences or attempts to influence the selection of a winner of a lottery game.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation	
30.	Licensee intentionally or knowingly claims a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation; or aids or agrees to aid another person or persons to claim a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation	
31.	Licensee intentionally or knowingly tampers with, damages, defaces, or renders inoperable any vending machine, electronic computer terminal, or other mechanical device used in a lottery game, or fails to exercise due care in the treatment of commission property.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation	
32.	Licensee: (A) induces another person to assign or transfer a right to claim a prize; (B) initiates or accepts an offer to sell the right to claim a prize; (C) initiates or accepts an offer of compensation from another person to claim a lottery prize; or (D) purchases, for anything of value, a lottery ticket from a person who is not a licensed lottery retailer.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation	
33.	Licensee intentionally or knowingly makes a statement or entry that the person knows to be false or misleading on a required report.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation	

34.	Licensee fails to maintain or make an entry the licensee knows is required to be maintained or made for a required report.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation			Revocation
35.	Licensee knowingly refuses to permit the director of the Lottery Operations Division, the executive director, commission, the lottery operator, the employees or agents of the lottery operator, or the state auditor to examine the agent's books, records, papers or other objects, or refuses to answer any question authorized under the State Lottery Act.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation			Revocation
36.	Licensee intentionally or knowingly makes a material and false or incorrect, or deceptive statement, written or oral, to a person conducting an investigation under the State Lottery Act or a commission rule.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation			Revocation
37.	Licensee commits an offense of conspiracy as defined in the State Lottery Act.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation			Revocation
38.	Licensee sells or offers for sale any interest in a lottery of another state or state government or an Indian tribe or tribal government, including an interest in an actual lottery ticket, receipt, contingent promise to pay, order to purchase, or other record of the interest.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation			Revocation
3rd Tier Violations						
39.	Licensee intentionally or knowingly sells or offers to sell a ticket to a person that the licensee knows is younger than 18 years.	Revocation	n/a			n/a
40.	Licensee incurs four (4) notices of nonsufficient fund transfers or non-transfer of funds within a 12-month period.	Revocation	n/a			n/a

41.	Licensee fails to pay the full amount of money owed to the commission after a nonsufficient funds transfer or non-transfer of funds to the commission's account.	Revocation	n/a	n/a
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