

The Texas Lottery Commission (Commission) proposes the repeal of existing 16 TAC §§ 402.301 (Bingo Card/Paper) and 402.303 (Pull-tab or Instant Bingo Dispensers); the addition of new 16 TAC §§ 402.105 (Postmarks, Timely Filing of Forms, Reports, Applications and Payment of Taxes and Fees), 402.301 (Approval of Pull-Tab Bingo Tickets), 402.302 (Pull-Tab Bingo Manufacturing Requirements), 402.303 (Pull-Tab Bingo Sales and Redemption), 402.304 (Pull-Tab Bingo Record Keeping), 402.305 (Pull-Tab Bingo Styles of Play), 402.306 (Bingo Card/Paper Definitions), 402.307 (Bingo Card/Paper Approval), 402.308 (Bingo Card/Paper Manufacturing Requirements), 402.309 (Bingo Card/Paper Record Keeping), 402.310 (Bingo Card/Paper Styles of Play), and 402.311 (Pull-Tab or Instant Bingo Dispensers); and amendments to 16 TAC §§ 402.100 (Definitions), 402.101 (Advisory Opinions), 402.102 (Bingo Advisory Committee), 402.103 (Training Program), 402.200 (General Restrictions on the Conduct of Bingo), 402.201 (Prohibited Bingo Occasion), 402.202 (Transfer of Funds), 402.203 (Unit Accounting), 402.210 (House Rules), 402.212 (Promotional Bingo), 402.300 (Pull-Tab Bingo), 402.324 (Card-Minding Systems--Approval of Card-Minding Systems), 402.325 (Card-Minding Systems--Licensed Authorized Organizations Requirements), 402.326 (Card-Minding Systems--Distributor Requirements), 402.334 (Shutter Card Bingo Systems - Approval of Shutter Card Bingo Systems), 402.400 (General Licensing Provisions), 402.401 (Temporary License), 402.402 (Registry of Bingo Workers), 402.404 (License Classes and Fees), 402.411 (License Renewal), 402.443 (Transfer of a Grandfathered Lessor's Commercial Lessor License), 402.500 (General Records Requirements), 402.502 (Charitable Use of Net Proceeds Recordkeeping), 402.600 (Bingo Reports and Payments), 402.601 (Interest on Delinquent Tax), 402.602 (Waiver of Penalty, Settlement of Prize Fees, Penalty and/or Interest), 402.702 (Disqualifying Convictions), 402.703 (Audit Policy), 402.706 (Schedule of Sanctions), and 402.707 (Expedited Administrative Penalty Guideline).

The proposed repeals, new rules, and 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 of what classifies as a bingo hall's 'premises'..." (addressed in Rule 402.100), "no clarification that bingo products may not be purchased using a credit card ..." (addressed in Rule 402.200), "no clarification of how certain grandfathered bingo licenses may be transferred" (addressed in Rule 402.443), and "no definition of what constitutes a repeat violation ..." (addressed in Rule 402.706). The Staff Report also recommended considering a licensee's compliance history in audit determinations (addressed in Rule 402.703) and eliminating warnings for serious offenses and repeat violations of less serious offenses (addressed in Rules 402.706 and 402.707).

This proposal also amends aspects of the Bingo Advisory Committee (BAC) to ensure that it complies with the Bingo Enabling Act (BEA); breaks two comprehensive rules on pull-tabs and bingo paper into multiple smaller rules for ease of reference; creates a single standard for determining when a form, report, application, or payment has been mailed to the Commission; clarifies and updates agency processes; eliminates references to terms, laws, and processes that are no longer in place; and conforms the rules to the BEA.

The proposed new Rule 402.105 establishes a single standard for determining the timeliness of filings by licensees. A form, report, application, or payment will be deemed filed or paid based on the postmark or receipt mark date, or, if filed electronically, the day that it was filed. Currently, there are different standards throughout the rules depending on the type of document or payment filed. The different standards will be deleted in this rulemaking and replaced by this single rule. This new rule was modeled on a similar rule adopted by the Comptroller of Public Accounts used to determine the timeliness of tax payments and related forms.

The proposed new Rules 402.301, 402.302, 402.303, 402.304 and 402.305 are necessary to break the current Rule 402.300, regarding pull-tab bingo tickets, into smaller rules for ease of reference. There are no changes to the rule language from the current version.

The proposed new Rules 402.306, 402.307, 402.308, 402.309, and 402.310 are necessary to break the current Rule 402.301, regarding bingo card/paper, into smaller rules for ease of reference. The new Rules 402.306 and 402.310 also contain amendments allowing break-open bingo games to be pre-called, and will properly categorize braille and loteria cards as bingo equipment that require approval by the Commission. There are no other changes to the rule language from the current version.

The proposed new Rule 402.311, regarding pull-tab or instant bingo dispensers, is currently at Rule 402.303 and needs to be moved to break Rule 402.300 into multiple parts. There are no changes to the rule language from the current version.

The proposed amendments to Rule 402.100 include a definition of “premises” that conforms with the BEA. This change addresses a gap that was identified by the Staff Report.

The proposed amendments to Rule 402.101 change a reference to the bingo operations director from “his” to “his or her” and eliminate the requirement that the general counsel approve a bingo advisory opinion before it is issued.

The proposed amendments to Rule 402.102 eliminate the appointment of a substitute member to the BAC if a member from one of the required interest groups cannot be appointed; clarify that a member serves at the pleasure of the Commission or until they resign or are unable to serve; provide for virtual meetings; and clarify the BAC’s annual reporting deadline and reappointment process.

The proposed amendments to Rule 402.103 clarify that conductors may only choose an on-site bingo training program if one is available. The amendments also codify the agency’s practice that non-regular conductors are not subject to training requirements.

The proposed amendments to Rule 402.200 correct a typo and specify that formal complaints to the Commission must be in writing. The amendments also codify a prior bingo advisory opinion that organizations may not accept credit payments for bingo products. This change addresses a gap that was identified by the Staff Report.

The proposed amendments to Rule 402.201 codify the long-standing Commission practice and process of issuing cease-and-desist letters and copying local law enforcement in substantiated cases of illegal bingo.

The proposed amendments to Rule 402.202 delete a reference to the timely submission of a transfer of funds form. This rule is no longer necessary due to the new rule on timeliness of submissions at Rule 402.105.

The proposed amendments to Rule 402.203 delete a reference that allows the sale of pull-tab bingo tickets between organizations with the prior written consent of the Commission. The authority for an organization to sell certain bingo products to another organization with the prior approval of the Commission comes from Bingo Enabling Act §2001.407(f). That section does not provide for the sale of pull-tabs.

The proposed amendments to Rule 402.210 require organizations to prohibit any person from offering to sell bingo products or offering to award bingo prizes to persons outside of a bingo occasion via a telecommunications device.

The proposed amendments to Rule 402.212 clarify that approval for a promotional bingo event will only be issued if the request complies with all the requirements of the rule.

The proposed amendments to Rule 402.300 are necessary to break the current Rule 402.300, regarding pull-tab bingo tickets, into smaller rules for ease of reference. There are no changes to the rule language from the current version.

The proposed amendments to Rule 402.324 eliminate all references to the Commission's testing lab and require manufacturers to provide any forms and documentation necessary to ensure that their card-minding systems comply with required standards.

The proposed amendments to Rule 402.325 provide that the voided receipts organizations are required to attach to the bingo occasion report must include all payments (cash or otherwise) for pre-sales.

The proposed amendments to Rule 402.326 delete an obsolete reference to "dedicated modem phone lines."

The proposed amendments to Rule 402.334 provide that a manufacturer must provide any software necessary to determine if its shutter card bingo system meets rule requirements.

The proposed amendments to Rule 402.400 provide that the Commission will not return a license application when the applicant has failed to respond to a request for more information within 21 days.

The proposed amendments to Rule 402.401 clarify that a regular organization that surrenders its regular license may retain up to 12 unused temporary licenses so long as their dates-of-use are designated within 10 days of the surrender. The amendments also correct references to two forms.

The proposed amendments to Rule 402.402 eliminate the requirement for an applicant to list his or her race on an application for the worker registry.

The proposed amendments to Rule 402.404 eliminate unnecessary references to “regular” licenses.

The proposed amendments to Rule 402.411 allow the division to “provide” renewal notices rather than “mail” them, and delete a reference to the timely submission of license renewal applications, which is no longer necessary due to the proposed new Rule 402.105.

The proposed amendments to Rule 402.443 provide that a grandfathered license held by a legal entity is not considered to be transferred due to changes to the legal entity so long as the entity’s taxpayer number remains the same. This rule codifies the Commission’s practice on the transfer of grandfathered lessor licenses and conforms with a previously issued Office of the Attorney General Opinion. This change addresses a gap that was identified by the Staff Report.

The proposed amendments to Rule 402.500 codify the Commission’s practice that bingo operations must use cash basis accounting.

The proposed amendments to Rule 402.502 eliminate unnecessary language related to the kinds of documentation that may be relied on to prove charitable distributions were properly made.

The proposed amendments to Rule 402.600 delete references to the timely submission of bingo reports and payments. These references are no longer necessary due to the new rule on timeliness of all submissions at Rule 402.105.

The proposed amendments to Rule 402.601 provide that a credit of \$100 or less entered by an organization or lessor on its quarterly report will be accessible for viewing in the Bingo Service Portal, rather than preprinted on the quarterly report.

The proposed amendments to Rule 402.602 eliminate waivers of penalties and interest due to the late payment of prize fees. Penalties and interest for late prize fee payments come from BEA §2001.504. That section does not provide for a waiver of the penalty and interest, in contrast to BEA §2001.451(k) which explicitly allows the director to waive net proceeds and charitable distribution requirements. The difference between those provisions indicates that the legislature did not intend to give the director the ability to waive penalties and interest for the late payment of prize fees.

The proposed amendments to Rule 402.702 eliminate a reference to a statute that no longer exists.

The proposed amendments to Rule 402.703 provide that a licensee’s compliance history shall be considered as a risk factor in audit determinations. This change addresses a gap that was identified by the Staff Report.

The proposed amendments to Rule 402.706 eliminate warnings for first time violations of serious offenses or repeat violations of lesser offenses. The amendments also provide a definition of “repeat violation.” This change addresses a gap that was identified by the Staff Report.

The proposed amendments to Rule 402.707 change the bingo operations director’s pronoun from “his” to “his or her”; reiterate that formal complaints must be in writing; and eliminate warnings for repeat offenses. This change addresses a gap that was identified by the Staff Report.