

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.