

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 372. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES AND SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAMS

SUBCHAPTER B. ELIGIBILITY

DIVISION 9. CRIMINAL ACTIVITY

1 TAC §372.501

The Texas Health and Human Service Commission (HHSC) adopts an amendment to §372.501, concerning Disqualifications Due to Criminal Activity, without changes to the proposed text as published in the April 29, 2016, issue of the *Texas Register* (41 TexReg 3030). The rule will not be republished.

Background and Justification

In 2015, the 84th Legislature enacted Texas Human Resources Code §33.018, which modifies Supplemental Nutrition Assistance Program (SNAP) eligibility standards for certain individuals who have been convicted of felonies. See Act of May 28, 2015, 84th Leg., R.S., ch. 837, §2.29 (S.B. 200). As authorized by 21 U.S.C. §862a(d)(1), Texas Human Resources Code §33.018 affects SNAP eligibility in three ways. First, §33.018 removes the SNAP permanent disqualification for an individual with a felony drug conviction that occurred after August 22, 1996. Second, §33.018 requires that an individual who is convicted of a felony drug offense on or after September 1, 2015, and who does not comply with his or her parole or community supervision conditions is ineligible for SNAP for two years. Third, under §33.018, an individual who received a felony drug conviction on or after September 1, 2015, and who incurs a subsequent felony drug conviction while receiving SNAP is permanently disqualified from receiving SNAP. The permanent disqualification does not apply if an individual is convicted of a subsequent offense while not receiving SNAP.

The amendments to 1 Texas Administrative Code (TAC) §372.501 implement §33.018.

Comments

The 30-day comment period ended May 29, 2016. During this period, HHSC did not receive any comments regarding the amended rule.

The amendment is adopted in accordance with Texas Human Resources Code §33.018, which modifies SNAP eligibility for certain individuals. Texas Government Code §531.0055 provides the Executive Commissioner of HHSC with broad rule-

making authority, and Texas Human Resources Code §33.052 requires HHSC to develop procedures to ensure that clear guidance on program eligibility requirements is provided to SNAP applicants and prospective applicants.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 18, 2016.

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For further information, please call: (512) 424-6900



TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 402. CHARITABLE BINGO OPERATIONS DIVISION

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §§402.103 (Training Program), 402.200 (General Restrictions on the Conduct of Bingo), 402.203 (Unit Accounting), 402.205 (Unit Agreements), 402.210 (House Rules), 402.300 (Pull-Tab Bingo), 402.301 (Bingo Card/Paper), 402.303 (Pull-tab or Instant Bingo Dispensers), 402.324 (Card-Minding Systems--Approval of Card-Minding Systems), 402.325 (Card-Minding Systems--Licensed Authorized Organizations Requirements), 402.400 (General Licensing Provisions), 402.404 (License and Registry Fees), 402.407 (Unit Manager), 402.411 (License Renewal), 402.420 (Qualifications and Requirements for Conductor's License), 402.424 (Amendment of a License by Electronic Mail, Telephone or Facsimile), 402.451 (Operating Capital), 402.500 (General Records Requirements), 402.504 (Debit Card Transactions), 402.506 (Disbursement Records Requirements), 402.511 (Required Inventory Records), 402.514 (Electronic Fund Transfers), 402.600 (Bingo Reports and Payments), 402.602 (Waiver of Penalty, Settlement of Prize Fees, Rental Tax, Penalty and/or Interest), 402.603 (Bond or Other Security), 402.703 (Audit Policy), 402.706 (Schedule of Sanctions), 402.707 (Expedited Administrative Penalty Guideline), and 402.708 (Dispute Resolution), with changes to the proposed text as published in the April 29, 2016, issue of the *Texas Register* (41 TexReg 3050).

The adopted rule amendments are a result of both the Commission's recent review of the Charitable Bingo Operations Division's (CBOD) rules conducted in accordance with Texas Government Code §2001.039, and several stakeholder meetings between Commission staff and various representatives of the bingo community. The Commission solicited from these representatives any proposed rule changes desired by the bingo community, and the proposed changes were discussed at length in the meetings. Many (but not all) of the bingo community's proposed changes are reflected in this rulemaking adoption, including certain changes noted below made in response to public comments, as are certain other changes identified in the rule review and/or desired by the Commission.

A public comment hearing was held on Wednesday, May 11, 2016, at 10:00 a.m., at 611 E. 6th Street, Austin, Texas 78701. The following persons commented at the hearing in support of some, and in opposition to some, of the proposed amendments: Kimberly L. Kiplin for Department of Texas, Veterans of Foreign Wars (VFW); Stephen Fenoglio for Texas Charity Advocates and the members of over 350 other charitable and business organizations involved in charitable bingo (TCA); Steve Bresnen for the Bingo Interest Group (BIG); Sharon Ives for Fort Worth Book-keeping (FWB) (generally supporting the comments of the TCA and the BIG); Mark Clark for the AMVETS (for and against portions of §§402.210, .325, and .703 only). In addition, Will Martin for the American Legion for the State of Texas and Conservative Texans for Charitable Bingo commented in opposition to §402.404; Charles Hutchings for the AMVETS commented in opposition to portions of §402.200; Richard Bunkley for Littlefield Corporation commented in opposition to portions of §§402.200 and .300; and Melodye Green for Everman Jaycees commented in opposition to §402.602. At the hearing, the TCA provided a written side-by-side comparison of the TCA's recommended changes to certain rules (§§402.200, .210, .300, .325, .400, .411, .511, .600, .602, .703, .706, .707, and .708.), and the TCA and the BIG generally requested the inclusion of any of the proposed rule language in the comparison that was not included (in substance) in the Commission's proposal.

The Commission also received written follow-up comments on the proposed amendments from the VFW, the TCA, the BIG, and FWB; as well as written comments from State Representative Senfronia Thompson regarding §402.200(n), Patricia Greenfield for Greenfield Bingo Services (seeking clarification to §402.300(g)(2)), and Mary B. Magnuson for the National Association of Fundraising Ticket Manufacturers (NAFTM) (in support of the proposed amendments to §402.300(b) and (d)(13)(D)). The public comments and the Commission's responses are summarized below.

§402.103 Training Program: The amendment to §402.103 removes an obsolete reference to the "Bingo Bulletin," which is no longer published.

COMMENT SUMMARY: The VFW supports the proposed amendments.

COMMISSION RESPONSE: No changes will be made in response to this comment.

§402.200 (General Restrictions on the Conduct of Bingo): The amendments to §402.200 affect the general conduct of bingo. First, the amendments require bingo conductors to make available upon request the written procedure that addresses equipment malfunctions and improper calls or placements. Next, the amendments clarify that bingo cards may never be reserved for

a particular player. The amendments also permit bingo conductors to value bingo equipment awarded as bingo prizes at the price actually paid for the equipment. The amendments also allow a bingo conductor to designate more than one individual as the bingo operator. The amendments also require a conductor's bingo caller to announce prior to the start of a bingo game the pattern needed to win the game and the prize(s), unless the prize amount is based on sales or attendance, in which case the prize must be announced prior to the end of the game. Finally, the amendments clarify that a bingo occasion is considered to have occurred on the date on which the occasion began.

COMMENT SUMMARY: The VFW supports the proposed amendments to subsections 402.200(e), (f), (h)(3), (i), (k)(4), and (o). The BIG supports the proposed amendments to subsections 402.200(b)(6), (e), (f), (i), (k)(4), and (o).

COMMISSION RESPONSE: No changes will be made in response to these comments.

COMMENT SUMMARY: The TCA, the VFW, the BIG, FWB, and Mr. Hutchings (AMVETS) propose eliminating the requirement in subsections (b)(3) and (b)(5) for a conductor organization to maintain a bingo ball log, and in subsection (b)(5) for a conductor to maintain a console and flashboard inspection log. The VFW and the BIG stated the logs are unnecessary and of no regulatory benefit, add a record-keeping burden to the organizations, and set up a "trap" for an organization to be found noncompliant in an audit.

COMMISSION RESPONSE: The Commission agrees with these comments, and has deleted the referenced requirements from the adopted rule changes.

COMMENT SUMMARY: The VFW requests clarification that the proposed amendment to subsection (b)(6) (requiring an organization to make its procedures on addressing problems during a bingo occasion available to players upon request) is satisfied if an organization posts these procedures in the hall. The TCA requests deletion of the proposed language, stating such a requirement does not serve a regulatory purpose.

COMMISSION RESPONSE: No changes will be made in response to these comments. In response to the VFW's comments, the Commission clarifies that bingo conductors may comply with this requirement by posting their procedures on addressing problems in a conspicuous place at the bingo hall. The Commission disagrees with the TCA's comments, and believes the proposal to make dispute procedures available to players (as clarified in this response) will improve transparency regarding such procedures to bingo hall patrons.

COMMENT SUMMARY: The TCA, the BIG, and Mr. Hutchings (AMVETS) request that the Commission add to the list of merchandise bingo prizes under subsection (f), a raffle ticket conforming to the Charitable Raffle Act (Texas Occupations Code Chapter 2002). At the public comment hearing, the TCA presented information regarding the potential revenue benefit to charities associated with offering raffle tickets as bingo prizes.

COMMISSION RESPONSE: No changes will be made in response to these comments. In a 2002 Texas Attorney General Opinion to then-Senator Frank Madla (Opinion No. JC-480), the Attorney General opined (at page 9), "[A]lthough the Bingo Enabling Act, Tex. Occ. Code Ann. ch. 2001 (Vernon 2002), and the Charitable Raffle Enabling Act, *id.* ch. 2002, might not expressly prohibit the award of a raffle ticket as a prize in a bingo game, the award of a raffle ticket as a bingo prize would vio-

late section 47.03 of the Penal Code, if the bingo conductor acts knowingly or intentionally." While the Commission appreciates the commenters' position, the Commission will follow the advice of the Attorney General until such time as Opinion No. JC-480 is modified or overruled by a subsequent Attorney General opinion, statutory amendment, or judicial decision. (See Attorney General Letter Opinion No. 93-80 (1993) at 1.)

COMMENT SUMMARY: The TCA recommended adding language in subsection (f) (regarding merchandise prizes) stating, "the prize fees paid shall be based upon the cost to the licensed authorized organizations."

COMMISSION RESPONSE: No changes will be made in response to this comment. Prize fees paid must be based either on the current retail price or, if applicable, the actual price paid by the licensed authorized organization and supported by a receipt or other documentation.

COMMENT SUMMARY: The TCA recommends deleting subsection (h)(1), which requires a conductor organization to obtain, maintain, keep current, and make available for review to any person upon request a copy of the Bingo Enabling Act and the Charitable Bingo Administrative Rules. The TCA stated there is no comparable requirement at several other Texas state agencies, that any interested person can obtain these items via the Internet, and that lottery licensees are not subject to such a requirement.

COMMISSION RESPONSE: The Commission agrees with this comment and has deleted the referenced requirement from the adopted rule.

COMMENT SUMMARY: The VFW, the TCA, the BIG, FWB, and Mr. Hutchings (AMVETS) propose eliminating the requirement of a game schedule in subsections (h)(4) and (h)(5). The VFW stated an organization should be allowed to make its own business decision regarding game schedules, and requests subsection (h)(4) be revised to say: "The charity must keep a record of all items sold and prizes paid", and subsection (h)(5) be revised to reflect that if a licensed authorized organization uses a game schedule, it may amend the schedule during the bingo occasion.

COMMISSION RESPONSE: No changes will be made in response to these comments. The written schedule is used by patrons to inform them of the costs of games, the games being played, and the prizes to be awarded. CBOD staff uses this information for audit purposes to provide assurance that sales and prizes are accurately and completely reported by licensees. Additionally, the game schedule requirement in this rule was only recently adopted (effective January 2014), after consulting with industry representatives.

COMMENT SUMMARY: State Representative Senfronia Thompson, the VFW, the TCA, the BIG, Littlefield Corporation, and Mr. Hutchings (AMVETS) request that subsection (n) be revised to make it clear that any number of prizes of \$50 or less may be awarded in a single bingo game without such prizes counting towards the \$2500 prize cap per bingo occasion, regardless of whether the prize announced for the game was more than \$50. Rep. Thompson stated the subsection as currently written is inconsistent with the language and intent of §2001.420(b)(2) of the Texas Occupations Code, a view that was shared by the other commenters. This statutory provision was enacted pursuant to H.B. 394 in the 83rd Texas Legislature, Regular Session, legislation that Rep. Thompson sponsored. The BIG submitted proposed language to amend subsection (n), which Rep. Thompson urged the Commission to adopt to

bring subsection (n) into conformity with the statute. The TCA also supports the BIG's proposed language.

COMMISSION RESPONSE: The Commission is persuaded by Rep. Thompson's statement, and agrees with the comments. The proposed language provided by the BIG, and supported by Rep. Thompson and the TCA, has been included in the adopted rule to bring subsection (n) into conformity with the statute.

§402.203 (Unit Accounting): The amendments to §402.203 remove obsolete references to a specific form and the payment of the gross rentals tax.

COMMENT SUMMARY: The VFW has no objection to the proposed amendments. The TCA supports the proposed amendments.

COMMISSION RESPONSE: No changes will be made in response to these comments.

§402.205 (Unit Agreements): The amendments to §402.205 clarify that a bingo bookkeeper may only be a business contact for a commercial lessor and a designated agent for an accounting unit if the bookkeeper is not an employee of the commercial lessor. The amendments also clarify that when an organization joins an accounting unit and transfers bingo equipment and supplies to that unit, the written inventory of that equipment and supplies must include all pull-tab tickets.

COMMENT SUMMARY: The VFW and the TCA support the proposed amendment in subsection (f)(2). The VFW has no objection to the proposed amendments in subsections (g)(7) and (i).

COMMISSION RESPONSE: No changes will be made in response to these comments.

§402.210 (House Rules): The amendments to §402.210 add a requirement that a bingo conductor's house rules be posted at the bingo premises in a location that is easily accessible to all patrons.

COMMENT SUMMARY: The VFW, FWB, and Mr. Clark (AMVETS) request clarification of the new phrase "easily accessible to all patrons" in subsection (e), stating this term is subject to interpretation and could be construed differently by different bingo inspectors. The BIG similarly expressed concern about uneven enforcement of the proposed "easily accessible" requirement by CBOD staff. The TCA and FWB disagree with this proposed amendment and recommend its deletion.

COMMISSION RESPONSE: No changes will be made in response to these comments. However, the Commission clarifies that under this amendment bingo conductors are required to post their house rules in a conspicuous place at the bingo hall. The Commission disagrees with the TCA's comments, and believes the proposal to make house rules easily accessible to all patrons (as clarified in this response) will improve transparency regarding the conduct of bingo to bingo hall patrons.

§402.300 (Pull-Tab Bingo): The amendments to §402.300 affect pull-tab bingo games. First, the amendments clarify that instant pull-tab tickets may be sold over multiple bingo occasions, and a winning instant ticket may only be claimed during the bingo occasion(s) where tickets from the winning ticket's deal are sold. Regarding event pull-tab tickets, the amendments clarify that the event which determines the ticket winner(s) must occur during the same bingo occasion at which the first event pull-tab ticket from the deal was sold. Further, a winning event pull-tab ticket may only be claimed during the bingo occasion at which the event occurred. However, the amendments include except-

tions that would permit licensed authorized organizations that are unit members, and organizations that conduct bingo on consecutive occasions within one 24-hour period, to hold an event and pay a winning ticket at certain other bingo occasions. The amendments will still require certain information, including ticket price and game name, to be printed on a pull-tab ticket, but the amendments abolish the requirement that the information be printed on a specific side of the ticket. The amendments also provide a consistent basis by which to determine the value of merchandise prizes. The amendments also remove the absolute prohibition on pull-tab tickets displaying images of alcoholic beverages and weapons, but the amendments add a prohibition on the display of violent acts. The amendments also allow the Commission to determine how many pull-tab tickets a manufacturer must submit for testing, which codifies current practice. The amendments also require manufacturers to include with a pull-tab ticket deal instructions on at least one permissible method to play the game. The amendments also alter the distance required between numbers/symbols and the window perforations on a pull-tab ticket. Finally, the amendments clarify the definitions of instant and event pull-tab tickets and no longer require bingo conductors to include distributor information in their pull-tab ticket purchase log.

COMMENT SUMMARY: The VFW supports the proposed amendments regarding the design of the pull-tab because they will allow for more flexibility in ticket design, and the proposed amendment in subsection (a)(8) that allows bingo equipment to be awarded as pull-tab bingo prizes. The NAFTM commented in support of subsection (b) regarding Commission approval of pull-tab bingo tickets and subsection (d)(13)(D) regarding manufacturing standards for pull-tab bingo tickets. The TCA supports the proposed amendments to subsection (d)(15).

COMMISSION RESPONSE: No changes will be made in response to these comments.

COMMENT SUMMARY: The TCA, the BIG, and Littlefield Corporation request that the Commission add to the definition of "Merchandise" used as a pull-tab prize under subsection (a)(8), a raffle ticket conforming to the Charitable Raffle Act (Texas Occupations Code Chapter 2002). The BIG commented that the Texas Occupations Code Chapter 2001 (Bingo Enabling Act) grant of rulemaking authority to the Commission over pull-tab bingo (at §2001.408 of the Act) is sufficient for the Commission to authorize raffle tickets as a pull-tab bingo prize.

COMMISSION RESPONSE: No changes will be made in response to these comments. As discussed in the response to comments to §402.200 above, the Attorney General in Opinion No. JC-480 opined that "the award of a raffle ticket as a bingo prize would violate section 47.03 of the Penal Code, if the bingo conductor acts knowingly or intentionally." While the Commission appreciates the commenters' position, the Commission will follow the advice of the Attorney General until such time as Opinion No. JC-480 is modified or overruled by a subsequent Attorney General opinion, statutory amendment, or judicial decision.

COMMENT SUMMARY: The VFW and the TCA oppose the proposed use of the word "offensive" in subsection (b)(3)(G) in connection with Commission approval of pull-tab artwork, because the term is subjective, vague, and does not provide meaningful guidance on what is considered "offensive". The TCA additionally requests that the Commission provide a process for an expedited challenge to the Commission's rejection of proposed artwork.

COMMISSION RESPONSE: The Commission agrees with the comments regarding the word "offensive", which has been deleted from the adopted rule changes. In light of this change, the Commission declines to expressly provide a specific process for an expedited challenge to the Commission's rejection of proposed artwork.

COMMENT SUMMARY: The TCA and the BIG request that the rule expressly allow the use of bar code technology on pull-tab bingo tickets (referencing subsections (d)(10) and (d)(13)). The TCA stated this would greatly assist with inventory control.

COMMISSION RESPONSE: No changes will be made in response to these comments. Nothing in the Bingo Enabling Act or Commission rules prevents the use of bar code technology for ticket sale or inventory purposes.

COMMENT SUMMARY: The BIG expressed concern that it is not clear that subsection (e) maintains an organization's existing authority to sell pull-tabs during an intermission. The BIG further cautioned that, regardless of whether there are scheduled intermissions during a bingo occasion, the Commission should be careful not to restrict conductor organizations from conducting activities that are currently authorized.

COMMISSION RESPONSE: No changes will be made in response to these comments. The Commission notes that bingo occasions currently do not include formal intermissions (statutory references to required intermissions in the Bingo Enabling Act were deleted in the 81st Regular Legislative Session in 2009) and bingo games may be conducted back-to-back during a bingo occasion. The Commission clarifies that pull-tab and event tab bingo tickets may be sold at any time during an authorized bingo occasion.

COMMENT SUMMARY: With respect to subsection (g)(2) regarding records, the VFW requests confirmation that, so long as the required information is captured in a schedule that then rolls into the cash report, a conductor organization is in compliance with this requirement; that the Daily Schedule of Prizes is part of the Occasion Cash Report; and that including the form number on the Daily Schedule of Prizes satisfies the requirement of the form number being on the Occasion Cash Report. The VFW noted that, if the foregoing does not satisfy the requirement, it will require some organizations to incur a cost to modify their reporting format. Greenfield Bingo Services similarly requests such confirmation.

COMMISSION RESPONSE: The Commission confirms that the description of records as provided by the VFW will satisfy the requirements of subsection (g)(2).

COMMENT SUMMARY: The TCA proposed language for subsection (h)(8) deleting the requirement that a multiple part event or multiple part instant ticket must be broken apart and sold in sections by a licensed authorized organization. The TCA's proposed language would require only that the two or more sections of the ticket be separated by a perforation.

COMMISSION RESPONSE: No changes will be made in response to this comment. The requirement to sell each part of a multiple part ticket separately ensures that the prize amount does not exceed the \$750 per game prize cap.

COMMENT SUMMARY: The BIG urged the Commission to include language allowing video confirmation of pull-tab tickets.

COMMISSION RESPONSE: No changes will be made in response to this comment. The Commission recently considered

the issue of allowing video confirmation of pull-tab tickets in a 2014 rulemaking proceeding; and, after receiving public comment, declined to amend the rule. The Commission does not believe circumstances have changed since the 2014 proceeding to warrant further consideration of such an amendment at this time.

§402.301 (Bingo Card/Paper): The amendments to §402.301 remove the absolute prohibition on bingo cards and paper displaying images of alcoholic beverages and weapons.

COMMENT SUMMARY: The VFW and the TCA oppose the proposed use of the word "offensive" in subsection (b)(3) in connection with Commission approval of bingo card/paper artwork, because the term is subjective, vague, and does not provide meaningful guidance on what is considered "offensive". In addition, the TCA requests the right to an expedited challenge of the Commission's rejection of proposed artwork that contains language or text the Commission staff finds objectionable.

COMMISSION RESPONSE: The Commission agrees with the comments regarding the word "offensive", which has been deleted from the adopted rule changes. In light of this change, the Commission declines to expressly provide a specific process for an expedited challenge to the Commission's rejection of proposed artwork.

§402.303 (Pull-tab or Instant Bingo Dispensers): The amendments to §402.303 remove the requirement that, when pull-tab bingo tickets are sold from a dispenser, the entire deal or package of pull-tab bingo tickets must be offered for sale. The amendments also remove the requirement that manufacturers, distributors, and conductors maintain logs related to pull-tab bingo ticket dispensers. The proposed amendments also delete an obsolete reference to the Problem Gamblers' Help Line.

COMMENT SUMMARY: The VFW and the TCA have no objection to the deletion of subsection (b)(6), which removes obsolete language; and support the deletion of the language in subsection (e) regarding records. The TCA also supports the deletions in subsection (c)(4) regarding the sale of pull-tab tickets and instant bingo cards.

COMMISSION RESPONSE: No changes will be made in response to these comments.

§402.324 (Card-Minding Systems-Approval of Card-Minding Systems): The amendments to §402.324 remove both the requirement that a manufacturer notify the Commission in writing before submitting a card-minding system to an independent testing facility for review and the requirement that the independent testing facility communicate with the manufacturer and/or Commission if any testing questions arise. The amendments also require the Commission to notify both the manufacturer and the independent testing facility whether the Commission has approved or disapproved a specific card-minding system.

COMMENT SUMMARY: The VFW and the TCA support the proposed amendments.

COMMISSION RESPONSE: No changes will be made in response to these comments.

§402.325 (Card-Minding Systems-Licensed Authorized Organizations Requirements): The amendments to §402.325 no longer require a player seeking a refund from a voided transaction to provide their address and telephone number. The amendments also remove the prohibition on reserving card-minding devices for players.

COMMENT SUMMARY: Mr. Clark (AMVETS) commented in support of the proposed changes to this rule. The VFW, the TCA, and the BIG support elimination (in old subsection(k)) of the prohibition on reserving card-minding devices for players.

COMMISSION RESPONSE: No changes will be made in response to these comments.

COMMENT SUMMARY: The VFW supports elimination of the requirement in subsection (d)(3) that a player be required to provide their address and phone number (in addition to name, signature, and amount of the refund) to obtain a refund for a void transaction. The TCA and FWB recommend adding the words "Unless the player refuses" to this subsection, stating sometimes players refuse or are unable to provide even their name and signature. The TCA stated further that this requirement serves no regulatory purpose.

COMMISSION RESPONSE: In response to the comments of the TCA and FWB, the Commission has added language to subsection (d)(3) that, if a player seeking a refund refuses or is unable to provide the required information, the organization shall so note on the back of the receipt.

§402.400 (General Licensing Provisions): The amendments to §402.400 remove obsolete references to a specific schedule and replace it with the proper form name.

COMMENT SUMMARY: The TCA proposed language in subsection (a) requiring the Commission to "review its applications, application instructions, and ancillary schedules annually and update them, as applicable."

COMMISSION RESPONSE: No changes will be made in response to this comment. The Commission declines to prescribe by rule a schedule to govern internal management processes such as updating agency forms. However, the CBOD continually evaluates the efficacy of its forms, and welcomes industry suggestions for any improvements to them.

COMMENT SUMMARY: The VFW and the TCA request that subsection (a)(3) be deleted. Subsection (a)(3) provides that an application is incomplete if the applicable license fee is not provided. The commenters stated the CBOD has taken the position an application will be returned unprocessed if it is incomplete, which causes a problem if there is a legitimate dispute regarding the fee amount. The VFW further stated the CBOD's practice of returning applications unprocessed if they are incomplete is inconsistent with subsection (e), which provides that the Commission will notify an applicant if an application is incomplete.

COMMISSION RESPONSE: No changes will be made in response to this comment. The Commission understands this comment refers to past debt collection efforts resulting from the CBOD ledger reconciliation project, and clarifies that any future debt collection efforts will be pursued separately from, and not tied to, the license renewal process. Further, the Commission recognizes the agency's obligation under Texas Government Code §403.055 to establish a debt prior to initiating collection efforts or reporting a debtor to the Comptroller of Public Accounts for a warrant hold.

COMMENT SUMMARY: The VFW and the TCA proposed language for subsections (d), (e), and (n) that would impose deadlines on the Commission's review of license applications, which the Commission did not include in its proposal. Each commenter requested the language they submitted be included in the adopted rule. The TCA commented specifically on its proposed language in subsection (d) requiring the Commission

to notify the applicant of an original application within three business days after receiving the application of any key missing information, and to notify the applicant within 14 days if any additional information is required.

COMMISSION RESPONSE: No changes will be made in response to these comments. The Commission declines to prescribe by rule internal deadlines to govern the CBOD's application and licensing process. However, the CBOD will continue to review its process to identify potential improvements and streamlining opportunities, and welcomes industry suggestions. Further, the Commission notes that §2001.304 of the Bingo Enabling Act (Temporary Authorization) requires the Commission to issue a temporary authorization for the activity requested if a license for such activity is not issued or denied before the 31st day after the earliest date on which each of the following has occurred: (1) the filing of an application for the license; (2) the payment of the proper license fee; (3) the filing of a copy of a tax exemption statement issued by the Internal Revenue Service under §501(c), Internal Revenue Code of 1986, if required; and (4) the completion of a criminal background investigation.

COMMENT SUMMARY: The TCA proposed, and FWB supported, language for subsection (k) to allow a conductor organization to place a regular license in administrative hold status at any time.

COMMISSION RESPONSE: No changes will be made in response to these comments. The restriction on placing a license in administrative hold only at the time of license renewal was only recently adopted (effective February 2015), after consulting with industry representatives. The Commission does not believe circumstances have changed since the 2015 adoption to warrant further consideration of such an amendment at this time.

COMMENT SUMMARY: The TCA commented on subsection (m) that the Commission staff can, and sometimes does, refuse to discuss a licensing matter with a licensed attorney who has filed paperwork stating that the attorney represents the charitable organization, but instead requires the attorney to submit a required form before the staff will discuss substantive matters. The TCA stated no other state agency has this requirement and that it is over-regulation that serves to hinder the licensee.

COMMISSION RESPONSE: No changes will be made in response to this comment. To ensure that a person is authorized to act on behalf of an organization, the CBOD allows for authorized representatives only as requested by the licensee/applicant organization itself.

§402.404 (License and Registry Fees): The amendments to §402.404 remove obsolete language, and shorten the time period when a bingo worker registry renewal application may be submitted (from 90 days to 60 days before the current expiration date).

COMMENT SUMMARY: Mr. Martin commented in opposition to existing language in the rule that sets the amount of a license fee for conducting bingo based on the licensee's annual gross receipts. The commenter stated this fee structure unfairly penalizes organizations that do well in business and rewards those that do not do well, and urged the Commission to reduce license fees to a reasonable rate, such as, a \$100 per year across-the-board fee for all conductor organizations. The TCA also commented that conductor's licenses are too expensive, given the declining number of licensees that are being licensed by the Commission. The TCA stated that bingo is not

an expanding business due to competition from the lottery and other legal and illegal entertainment options.

COMMISSION RESPONSE: No changes will be made in response to these comments. The tiered structure which the Commission follows to set conductor license fees based on a licensee's annual gross receipts is required by §2001.104(a) of the Bingo Enabling Act, which also sets a minimum fee the Commission must charge for each identified class of license. Although the statute grants the Commission some authority to determine the actual fee amount for each class of license identified in the statute, the tiered fee structure Mr. Martin opposes is set in the statute and would require a legislative amendment to change. The Commission will continue to evaluate the actual fee amounts set by Commission rule to ensure they are not more than an amount reasonable to defray administrative costs.

COMMENT SUMMARY: The VFW and the TCA requested that subsection (h)(2)(B), Refunds, be amended to make it clear that the reference to "any other outstanding bingo liabilities to the State" means liabilities that have been established, not simply by virtue of a Notice of Outstanding Liabilities Due being sent.

COMMISSION RESPONSE: No changes will be made in response to these comments. The Commission recognizes the agency's obligation under Texas Government Code §403.055 to establish a debt prior to initiating collection efforts or reporting a debtor to the Comptroller of Public Accounts for a warrant hold.

§402.407 (Unit Manager): The amendments to §402.407 delete the formula used to determine the bond amounts for unit managers. The new formula is located in §402.603.

COMMENT SUMMARY: The VFW and the TCA have no objection to the proposed amendments.

COMMISSION RESPONSE: No changes will be made in response to these comments.

§402.411 (License Renewal): The amendments to §402.411 shorten the time period when a license renewal application may be submitted (from 90 days to 60 days before the current expiration date).

COMMENT SUMMARY: FWB requested that the Commission allow renewed licenses to be printed on demand.

COMMISSION RESPONSE: No changes will be made in response to these comments. The Commission clarifies that, under current practice, the bingo chairperson is authorized to print licenses on demand.

COMMENT SUMMARY: The VFW and the TCA (supported by FWB) proposed language to subsections (b) and (l) to provide that a renewal application is not considered incomplete based on a failure to submit the license renewal fee or a portion thereof, and to prohibit delaying issuance of a license renewal based on an alleged debt that has not been finally established. The TCA provided several example regarding claims of debts owed to the state without supporting documentation. The VFW stated it is the CBOD's position that it will return an application unprocessed if it is incomplete, and that the problem with this approach is there are hard deadlines for license renewals. The VFW stated that missing a renewal deadline can cause either additional fees, or, in the case of a grandfathered lessor license, an outright loss of the license.

COMMISSION RESPONSE: No changes will be made in response to these comments. The Commission understands these comments refer to past debt collection efforts resulting from the

CBOD ledger reconciliation project, and clarifies that any future debt collection efforts will be pursued separately from, and not tied to, the license renewal process. Further, the Commission recognizes the agency's obligation under Texas Government Code §403.055 to establish a debt prior to initiating collection efforts or reporting a debtor to the Comptroller of Public Accounts for a warrant hold.

COMMENT SUMMARY: The VFW opposes the proposed amendment to subsection (m) that shortens the time within which the Division will accept a renewal application, currently from 90 days to proposed 60 days.

COMMISSION RESPONSE: No changes will be made in response to this comment. As explained in the preamble to the proposal, this proposed change aligns the rule with the requirements of the bingo operating service system (BOSS), the computer system that supports the CBOD regulatory program. This change also reflects current CBOD operating practices.

§402.420 (Qualifications and Requirements for Conductor's License): The amendments to §402.420 only alter the attached figure. The amendments remove obsolete references to form names and replace them with the proper names, and correct a spelling error.

COMMENT SUMMARY: The VFW and the TCA request that the Commission include language in the chart, which is part of the rule, to clarify that a fraternal/non-profit organization must have had at least three years of tax-exempt status before filing the application. The VFW stated their belief the CBOD has recently applied a new interpretation of the Bingo Enabling Act license eligibility statutes for fraternal organizations, and that the prior interpretation was that an organization must have obtained tax exempt status prior to the filing of its application to conduct bingo. The VFW stated the Commission should put all interested persons on notice of its interpretation of license eligibility criteria so applicants don't pay a substantial license fee to be denied because of a new interpretation.

COMMISSION RESPONSE: No changes will be made in response to these comments. The Commission notes that, at the time of this rule adoption, the issue raised in these comments is the subject of a pending contested case. Further, the resolution of this issue potentially impacts not only fraternal organizations, but also certain medical and veterans organizations. Because this issue is being litigated, and because it affects several categories of bingo conductor organizations that may not have been apprised of the issue in this proceeding, the Commission declines to make the requested change to the adopted rule in this proceeding.

§402.424 (Amendment of a License by Electronic Mail, Telephone or Facsimile): The amendments to §402.424 allow a license amendment request application to be submitted via electronic mail, telephone or facsimile.

COMMENT SUMMARY: The VFW and the TCA have no objection to the proposed amendments.

COMMISSION RESPONSE: No changes will be made in response to these comments.

§402.451 (Operating Capital): The amendments to §402.451 remove obsolete language and the attached figure regarding the disbursement of any bingo account balance in excess of the bingo conductor's or accounting unit's operating capital limit.

COMMENT SUMMARY: The VFW and the TCA have no objection to the proposed amendments.

COMMISSION RESPONSE: No changes will be made in response to these comments.

§402.500 (General Records Requirements): The amendments to §402.500 clarify that any bingo licensee must provide to the Commission upon request any information required to be maintained by the Bingo Enabling Act or the Charitable Bingo Administrative Rules.

COMMENT SUMMARY: The VFW and the TCA have no objection to the proposed amendments.

COMMISSION RESPONSE: No changes will be made in response to these comments.

§402.504 (Debit Card Transactions): The amendments to §402.504 require a bingo conductor to provide a debit card transaction sales receipt to the purchaser only upon request. The amendments also clarify that bingo conductors must maintain either an electronic or hard copy of all debit card transaction sales receipts.

COMMENT SUMMARY: The VFW and the TCA have no objection to the proposed amendments.

COMMISSION RESPONSE: No changes will be made in response to these comments.

§402.506 (Disbursement Records Requirements): The amendments to §402.506 clarify that the types of records listed in subsection (b) of the rule are only examples of the types of records that are acceptable to substantiate bingo expenses. The amendments also remove the requirement that a bingo conductor's Cash Disbursements Journal include the conductor's or unit's name, taxpayer or unit number, and the calendar quarter.

COMMENT SUMMARY: The VFW, the TCA, and FWB support the proposed amendments. FWB specifically supports the proposed deletion of subsections (e)(2)(A) - (C) (requirement to include organization or unit name, taxpayer or unit number, and calendar quarter on the Cash Disbursement Journal), noting that some accounting software programs do not allow a user to manipulate the programming or headers of forms to include this information.

COMMISSION RESPONSE: No changes will be made in response to these comments.

§402.511 (Required Inventory Records): The amendments to §402.511 add a requirement that a bingo conductor's perpetual inventory of pull-tab bingo tickets contain the occasion date(s) that the pull-tab tickets were sold.

COMMENT SUMMARY: The VFW supports the proposed amendment; however, under subsections (d)(2) and (e)(2), the VFW, the BIG, the TCA, and FWB request deletion of the requirement that the perpetual inventory of disposable bingo cards contain the distributor's name and taxpayer number because this requirement is unnecessary and burdensome. The TCA further requested the deletion of the following information from the perpetual inventory of pull-tab bingo tickets: number of tickets per deal; number of tickets sold, missing, or damaged by occasion date; and number of pull-tab tickets remaining if the deal is closed.

COMMISSION RESPONSE: The Commission agrees with the comments regarding the bingo product distributor's name and taxpayer number, and the adopted rule deletes the requirement

to include this information on the perpetual inventory of both disposable bingo cards (in subsection (d)(2)) and pull-tab bingo tickets (in subsection (e)(2)). The Commission declines to delete the additional requested information from the perpetual inventory of pull-tab bingo tickets because this ticket information is needed for CBOD audit purposes.

§402.514 (Electronic Fund Transfers): The amendments to §402.514 permit the bingo chairperson of a bingo conductor that is part of an accounting unit to designate another individual to review the accounting records and bank statements with the conductor's bookkeeper.

COMMENT SUMMARY: The VFW supports the proposed amendments. The TCA has no objection to the proposed amendments.

COMMISSION RESPONSE: No changes will be made in response to these comments.

§402.600 (Bingo Reports and Payments): The amendments to §402.600 remove obsolete references to the payment of gross rental taxes. The amendments also clarify that all quarterly report supplements must be submitted to the Commission in accordance with the same requirements for the report itself. The amendments also require commercial lessors to include in their quarterly reports information regarding property taxes paid by the lessor and reimbursed by the lessee bingo conductor. Finally, the amendments require indicated quarterly report monetary amount entries to be rounded to whole dollar amounts.

COMMENT SUMMARY: The VFW, the TCA, and FWB stated their support of many of the proposed amendments to this rule. The BIG stated its support for the proposed changes addressing the rounding of dollar amounts under subsection (m).

COMMISSION RESPONSE: No changes will be made in response to these comments.

COMMENT SUMMARY: The TCA recommended striking subsection (e) which allows the Commission to deny or revoke a commercial lessor license if the licensee remits two insufficient checks for rental tax within four quarters.

COMMISSION RESPONSE: The Commission's proposal deletes subsection (e) because it is an obsolete reference to gross rental taxes.

COMMENT SUMMARY: The TCA, the BIG, and FWB support the Commission's proposal in subsection (m) to allow rounding of dollar amounts for certain entries in the quarterly reports.

COMMISSION RESPONSE: To clarify subsection (m) further, the Commission has added the words "where indicated" to the end of the first sentence, so that it reads: "Quarterly report entries must be rounded to whole dollar amounts, where indicated." The added language is intended to clarify that only entries required to be reported as whole dollars (as indicated on the report form) will be rounded.

COMMENT SUMMARY: The TCA stated its hope that the new references to "supplements" in this rule do not mean the Commission will be creating many new forms for charities to complete, and, at the public hearing, asked the Commission to explain what the term "supplements" means.

COMMISSION RESPONSE: No changes will be made in response to these comments. Any particular supplemental document that is required will depend on a licensee's particular cir-

cumstances, and the CBOD will inform the licensee of any supplemental filing requirement.

§402.602 (Waiver of Penalty, Settlement of Prize Fees, Rental Tax, Penalty and/or Interest): The amendments to §402.602 require the Commission to notify inactive accounts that a prize fee or rental tax is owed, and provide the accounts with existing documents that support the delinquency determination.

COMMENT SUMMARY: The VFW, the TCA, the BIG, FWB, and Ms. Green (for Everman Jaycees) oppose the proposed sentence in subsection (b) stating, "Failure to produce documents supporting the delinquency determination does not limit the Division's ability to collect the debt." The VFW requests that language be added to this rule that the Commission may not pursue collecting on a debt it cannot establish and the Commission may not deny a license application due to the Commission's belief a debt is owed. The TCA proposed alternative language to subsections (b) and (c) to address the same concern, as well as a new subsection (d) that would prohibit the Commission from denying a license based on an alleged delinquent tax or fee unless the debt has been established through a jeopardy determination process.

COMMISSION RESPONSE: The Commission agrees with the comments in support of deleting the referenced sentence and has deleted that sentence from the adopted rule changes, but declines to make the additional requested changes. The Commission understands these comments refer to past debt collection efforts resulting from the CBOD ledger reconciliation project, and clarifies that any future debt collection efforts will be pursued separately from, and not tied to, the license renewal process. Further, the Commission recognizes the agency's obligation under Texas Government Code §403.055 to establish a debt prior to initiating collection efforts or reporting a debtor to the Comptroller of Public Accounts for a warrant hold.

§402.603 (Bond or Other Security): The amendments to §402.603 alter and clarify the bond and security requirements for bingo conductors, manufacturers, accounting units, and unit managers. The bond requirement for commercial lessors to secure payment of the gross rentals tax was abolished in the 84th Regular Legislative Session, therefore the amendments also remove all references to commercial lessors' bond requirements.

COMMENT SUMMARY: The VFW does not oppose the proposed amendments in principle, but asks the Commission to understand there will be a financial impact on licensees who have been paying prize fees on time and currently have a zero bond amount, to now have to obtain a bond, even if the bond is in the amount of \$100. The TCA provided examples of the difficulty newer charities (without eight consecutive quarters of compliance history) can have in obtaining the higher required bond amount.

COMMISSION RESPONSE: No changes will be made in response to these comments. The Bingo Enabling Act requires conductor licensees to obtain a bond. After much discussion of this matter in stakeholder meetings, the Commission believes requiring a nominal \$100 bond for a licensee that has complied with paying their prize fees for eight consecutive quarters is a reasonable and fair standard. Further, the Commission notes that the tiered bond amounts for organizations that do not qualify for the \$100 bond have not changed as a result of this rulemaking.

COMMENT SUMMARY: The TCA proposed the following language to replace the last sentence in proposed subsection (a)(4)(B), to clarify that, when a new charity without a history of eight consecutive quarters of compliance joins an existing accounting unit, that charity must obtain its own bond and the funds of the other charities in the unit should not be used to pay for it: "If another organization subsequently joins such a Unit and this organization is not covered in subsection (a)(1)(C), the new organization must pay separately for its security amount; in such situation, the Unit cannot pay for the security amount unless and until the new organization has been licensed for eight (8) consecutive quarters with no jeopardy determination." The TCA expressed its support for the other proposed changes to this rule.

COMMISSION RESPONSE: No changes will be made in response to this comment. The Commission believes it is up to the other unit members to make the business decision in a particular instance whether to pay for the new organization's security amount.

§402.703 (Audit Policy): The amendments to §402.703 provide that the audit fieldwork may take place at the licensee's business office, bingo premises, bookkeeper's office, or accountant's office, as well as at a location designated by the auditor.

COMMENT SUMMARY: The VFW, the BIG, the TCA, FWB, and Mr. Clark (AMVETS) requested that the rule be revised to shorten the time an audit can remain open, which is now 5 years. The TCA proposed language to shorten the time frame for completing an audit.

COMMISSION RESPONSE: In response to the comments, the Commission has made two changes to this rule: First, subsection (b)(2) has been modified by adding the following sentence at the end to clarify the timeframe when an audit will begin: "An audit must commence by the fourth anniversary of the date a licensee is identified for audit." Second, subsection (d)(2) has been modified to state that an audit "must be completed within two years from the date of the entrance conference unless the Director extends the time period and notifies the licensee of the extension." Further, the Commission notes that the CBOD currently provides an estimated date for issuing an audit report when it sends an audit engagement letter to a licensee.

COMMENT SUMMARY: The VFW, the TCA, and FWB support the amendment to subsection (e) that allows field work to occur at the licensee's business office, bingo premises, bookkeeper's office or accountant's office instead of a location designated by the auditor.

COMMISSION RESPONSE: The preamble to the proposed amendments stated the proposed change to subsection (e) would "require" that audit fieldwork take place at the licensee's business office, bingo premises, bookkeeper's office, or accountant's office, suggesting that such work would not occur at any other location, including a Commission office. Upon further reflection, the Commission believes it needs the flexibility, in specific instances, to conduct fieldwork at a location other than those specified in the proposed amendments. Thus, while the Commission intends for the CBOD staff to conduct audit fieldwork at a licensee location whenever practicable, in the adopted rules the Commission has retained the ability to conduct fieldwork at "a location designated by the auditor(s)", which may include a Commission office. This change essentially retains the language the Commission had proposed to delete in the published proposal, in addition to the proposed new language.

COMMENT SUMMARY: The TCA proposed language in subsection (e) to require a CBOD auditor to promptly notify a licensee if a violation is discovered during an audit or inspection.

COMMISSION RESPONSE: No changes will be made in response to this comment. A game inspection report does not contain findings of violations; its purpose is to collect relevant information which later will be used by CBOD management to assess potential non-compliance issues. Findings regarding non-compliance are communicated to the licensee only after the relevant information has been reviewed by CBOD management, at which time the licensee will have an opportunity to respond. The CBOD currently provides a licensee a copy of the report of a game inspection performed on site before leaving the bingo location. The report must be signed by the authorized person on staff at the bingo location prior to the auditor leaving the bingo hall. Any additional notification, including potential violations found during an audit, could disrupt the ongoing audit/inspection and may not give the CBOD an opportunity to review relevant evidence.

COMMENT SUMMARY: The TCA proposed language in subsection (g)(1) requiring the CBOD to provide a copy of all supporting documentation (if any) of audit findings with a draft audit report, stating that the agency generally is in possession of the licensee's documentation at that time.

COMMISSION RESPONSE: No changes will be made in response to this comment. Under current practice, the CBOD provides the auditee a copy of the draft audit report three days prior to the audit exit conference. All records are returned to the auditee at the exit conference, at which time the audit findings are discussed. Thus, the auditee has possession of their original records that are used by the auditor to support any findings. The auditee then has 20 days to respond to the draft report, and may provide written comments and supporting documents to the auditor. If such a response is submitted, the auditor will review and include it in the final report.

COMMENT SUMMARY: The TCA proposed a new subsection (h), requiring that the CBOD must initiate any administrative disciplinary action against a licensee resulting from an audit no later than 90 days from the date the final audit report is issued; otherwise, the CBOD would be barred from initiating such an action.

COMMISSION RESPONSE: No changes will be made in response to this comment. The Commission is mindful of the potential burden a delay in initiating an enforcement action may impose on a licensee, but believes a rigid 90-day deadline would unduly restrict the CBOD's discretion in determining in which instances an enforcement action is warranted.

§402.706 (Schedule of Sanctions): The amendments to §402.706 implement §2001.358 of the Bingo Enabling Act, which requires the Commission to adopt a schedule of sanctions that defines and summarizes statutory and rule violations to ensure that sanctions imposed are appropriate to the violation. The amendments add to the schedule those violations that could result in license suspension, revocation or denial, or bingo worker registry removal or denial.

COMMENT SUMMARY: The VFW, the TCA, and the BIG question, and seek clarification on, the proposed language in subsection (a) suggesting that the Commission may impose sanctions on non-licensees. The TCA requests the Commission to articulate its authority if this is its position.

COMMISSION RESPONSE: No changes will be made in response to these comments. The Commission clarifies that the

reference to "other persons" in subsection (a) may refer either to individuals listed on the Bingo Worker Registry (who are not referred to as "licensees") that violate the Bingo Enabling Act or Commission rules, or other unlicensed persons engaged in the unauthorized conduct of bingo-related activities. Section 2001.601 of the Bingo Enabling Act states, "The commission may impose an administrative penalty against a person who violates this chapter or a rule or order adopted by the commission under this chapter." Section 2001.606 of the Act further describes the Director's authority to issue orders finding that "a person" has committed a violation and assessing an administrative penalty. Under §2001.002(20) of the Act, a "person" means "an individual, partnership, corporation, or other group." Thus, the Commission's authority is not limited to assessing penalties against a licensee.

COMMENT SUMMARY: The VFW opposes the increased sanction of possible revocation of license for a first violation of the Other Game of Chance rule (§402.211). The VFW stated this penalty is harsh, and noted the Commission's primary responsibility is to administer and regulate bingo so that bingo is fairly conducted and the proceeds derived from bingo are used for an authorized purpose. The VFW stated the Commission should focus on violations of the Bingo Enabling Act and rules that directly relate to this responsibility.

COMMISSION RESPONSE: Based on a Sunset Commission recommendation, the Texas Legislature amended the Bingo Enabling Act, at §2001.358(b)(2), to require the Commission to include in its rules those violations which may result in license revocation, denial, or suspension, or removal from or denial for the registry of bingo workers. The adopted amendments comply with this directive.

§402.707 (Expedited Administrative Penalty Guideline): The amendments to §402.707 add language to the rule's Expedited Administrative Penalty Chart to incorporate §2001.420(b)(2) of the Bingo Enabling Act, which states that prizes of \$50 or less are not included in calculating the \$2,500 prize limit for a single bingo occasion (the language initially proposed has been modified based on the Commission's response to comments on §402.200(n), discussed above). The amendments also remove an obsolete reference to the Problem Gamblers' Help Line of the Texas Council on Problem and Compulsive Gambling. Finally, the amendments allow for an informal dispute resolution conference to occur after a licensee or other person receives a Notice of Administrative Violation and Settlement Agreement.

COMMENT SUMMARY: The VFW supports the proposed amendments. The TCA has no objection to the proposed amendments.

COMMISSION RESPONSE: No changes will be made in response to these comments.

§402.708 (Dispute Resolution): The amendments to §402.708 correct a spelling error and remove obsolete references to the Request for Informal Dispute Resolution Form. The amendments also clarify that if a licensee does not attend a scheduled Dispute Resolution Conference, a formal hearing may occur. Finally, the amendments allow for an informal dispute resolution conference for disputes regarding a Notice of Administrative Violation and Settlement Agreement, an audit finding(s) contained within a final audit report, a determination letter or a notice of opportunity to show compliance letter.

COMMENT SUMMARY: The VFW supports the proposed amendments. The TCA has no objection to the proposed amendments.

COMMISSION RESPONSE: No changes will be made in response to these comments.

COMMENT SUMMARY: FWB supports language originally proposed by the TCA in subsection (c)(4) to allow an informal dispute resolution conference for a game inspection report. FWB further requested that conductor organizations have the right to provide written comments on a game inspection report at the time the inspection is conducted. FWB stated this change would allow organizations to respond to any alleged violations at the time of the inspection.

COMMISSION RESPONSE: No changes will be made in response to these comments. As noted above in the response to comments to §402.703(e), a game inspection report does not contain findings of violations; its purpose is to collect relevant information which later will be used by CBOD management to assess potential non-compliance issues. Findings regarding non-compliance are communicated to the licensee only after the relevant information has been reviewed by CBOD management, at which time the licensee will have an opportunity to respond.

OTHER COMMENTS: In addition to the comments noted above, FWB commented on suggested changes to §§402.102 (Bingo Advisory Committee), 402.401 (Temporary License), and 402.410(a) (Amendment of a License - General Provisions). However, the Commission has not proposed amending these rules and, thus, cannot adopt changes to these rules in this rulemaking proceeding.

SUBCHAPTER A. ADMINISTRATION

16 TAC §402.103

The rule amendments are adopted under: (1) §2001.054 of the Texas Occupations Code, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and (2) §467.102 of the Texas Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of Chapter 467 and the laws under the Commission's jurisdiction. The rule amendments, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

§402.103. *Training Program.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings.

(1) On-line training course--A training course developed by the Commission that is accessible on the Commission's website and may be taken at any time.

(2) On-site training course--A training course conducted by a Commission employee held at a specified date, time, and location.

(3) Primary training course--Comprehensive initial training required for all individuals who have never held a valid certificate of completion.

(4) Continuing education course--Refresher training for individuals who have held a valid certificate of completion.

(5) Certificate of completion--Documentation issued by the Commission certifying an individual's completion of the training program that is valid for two years.

(b) Training format. The training program is offered in two formats--on-site and on-line. Individuals may choose an on-site or on-line training course.

(c) Required training.

(1) At all times the bingo chairperson and a designated agent of a unit must have a valid certificate of completion for the training program unless the organization is a member of a unit that designates a unit manager under §2001.437 of the Bingo Enabling Act. A designated unit manager must have a valid certificate of completion for the training program.

(2) All individuals listed in paragraph (1) of this subsection who have not previously been issued a certificate of completion are required to take the primary training course.

(3) Subsequent training requirements may be met by taking either a primary or continuing education training course.

(4) As part of the terms of a Commission order, the Commission may direct one or more members of a licensed authorized organization to complete the primary or continuing education training course within a specified timeframe, regardless of whether or not the individual(s) has a valid certificate of completion.

(d) Optional training. Other individuals including operators, officers, directors, or members of a licensed authorized organization may take a training course.

(e) Content of the primary training course. The primary training course covers, at a minimum, the following areas:

(1) Overview of the Bingo Enabling Act and Charitable Bingo Administrative Rules;

(2) Conducting a bingo game;

(3) Record keeping requirements;

(4) Administration and operation of charitable bingo;

(5) Promotion of a bingo game;

(6) Bingo Advisory Committee; and

(7) General information about the license application process.

(f) On-site training course.

(1) Notice of the specified date, time and location of scheduled on-site training courses will be posted on the Commission's website.

(2) A person attending an on-site training course should pre-register by:

(A) completing an electronic submission form prescribed by the Commission located on the Commission's website; or

(B) telephoning the Commission's headquarters location and providing the information requested on the form prescribed by the Commission.

(3) To confirm attendance, each individual attending a training course must sign the attendance sheet provided by the Commission at the training course.

(4) A person must attend a complete course to receive a certificate of completion.

(5) The Commission instructor has discretionary authority to determine whether a person has attended a complete course in order to receive the certificate of completion.

(6) All reasonable and necessary expenses or costs of attendance by any member of the licensed authorized organization may be paid from the licensed authorized organization's bingo bank account. Expenses and costs are limited to travel, lodging, meals, and materials.

(7) In the event the Charitable Bingo Operations Division cancels the on-site training, reasonable effort will be made to notify persons who have pre-registered.

(g) On-line training course. Persons taking the on-line training course must:

(1) complete the training modules as specified on the Commission's website; and

(2) obtain a certificate of completion through the automated program on the website.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 344-5012



SUBCHAPTER B. CONDUCT OF BINGO

16 TAC §§402.200, 402.203, 402.205, 402.210

The following rule amendments are adopted under: (1) §2001.054 of the Occupations Code, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and (2) §467.102 of the Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

§402.200. General Restrictions on the Conduct of Bingo.

(a) A bingo occasion that is fairly conducted by a licensed authorized organization is one that is impartial, honest, and free from prejudice or favoritism. It is also conducted competitively, free of corrupt and criminal influences, and follows applicable provisions of the Bingo Enabling Act and Charitable Bingo Administrative Rules.

(b) Inspection and use of equipment.

(1) All bingo equipment is subject to inspection at any time by any representative of the Commission. No person may tamper with or modify or allow others to tamper with or modify any bingo equipment in any manner which would affect the randomness of numbers chosen or which changes the numbers or symbols appearing on the face of a bingo card. A licensed authorized organization has a continuing responsibility to ensure that all bingo equipment used by it is in proper working condition.

(2) A registered bingo worker must inspect the bingo balls prior to the first game of each bingo occasion, making sure all of the balls are present and not damaged or otherwise compromised.

(3) Bingo balls that are missing, damaged, or otherwise compromised shall be replaced in complete sets or individually if the bingo balls are of the same type and design.

(4) A registered bingo worker must inspect the bingo console and flashboard to ensure proper working order prior to the first game of each bingo occasion.

(5) The organization must establish and adhere to, and make available to the players upon request, a written procedure that addresses problems during a bingo occasion concerning:

- (A) bingo equipment malfunctions; and
- (B) improper bingo ball calls or placements.

(c) Location of bingo occasion. A bingo occasion may be conducted only on premises which are:

- (1) owned by a licensed authorized organization;
- (2) owned by a governmental agency when there is no charge to the licensed authorized organization for use of the premises;
- (3) leased, or used only by the holder of a temporary license; or
- (4) owned or leased by a licensed commercial lessor.

(d) All bingo games must be conducted and prizes awarded on the days and within the times specified on the license to conduct bingo. If a circumstance occurs that would cause a regular bingo game to continue past the time indicated on the license, the licensed authorized organization may complete the regular bingo game. A written record detailing the circumstance that caused the bingo game to continue past the time indicated on the license must be maintained by the organization for forty-eight (48) months.

(e) Pull-tab bingo event tickets may not be sold after the occurrence of the event used to determine the game's winner(s) unless the organization has a policy and procedure in their house rules addressing the sale and redemption of pull-tab bingo event tickets after the event has taken place.

(f) Merchandise prizes. Any merchandise or other non-cash prize, including bingo equipment, awarded as a bingo prize shall be valued at its current retail price. However, a non-cash prize awarded as a bingo prize may be valued at the price actually paid for that prize provided that the licensed authorized organization maintains a receipt or other documentation evidencing the actual price paid. Prize fees must be collected on merchandise and non-cash prizes.

(g) Donated bingo prizes. Only licensed authorized organizations holding a non-annual temporary license may accept or award donated bingo prizes. A donated bingo prize shall be valued at its current retail price.

(h) The licensed authorized organization is responsible for ensuring the following minimum requirements are met to conduct a bingo occasion in a manner that is fair:

(1) The licensed authorized organization must make the following information available to players prior to the selling of a pull-tab bingo event ticket game:

- (A) how the game will be played;
- (B) the prize to be awarded if not United States currency; and
- (C) how the winner(s) will be determined.

(2) Each licensed authorized organization shall conspicuously display during all bingo occasions a sign indicating the name(s) of the operator(s) authorized by the licensed authorized organization to be in charge of the occasion.

(A) The letters on the sign shall be no less than one inch tall.

(B) The sign shall inform the players that they should direct any questions or complaints regarding the conduct of the bingo occasion to an operator listed on the sign.

(C) The sign should further state that if the player is not satisfied with the response given by the operator that the player has the right to contact the Commission and file a formal complaint.

(3) Prior to the start of a bingo occasion, the licensed authorized organization shall make a written game schedule available to all patrons. The game schedule must contain the following information:

- (A) all regularly scheduled games to be played;
- (B) the order in which the games will be played;
- (C) the patterns needed to win;
- (D) the prize(s) to be paid for each game, including the value of any non-cash bingo prizes as set in subsections (f) and (g) of this section;
- (E) whether the prize payout is based on sales or attendance;
- (F) the entrance fee and the number of cards associated with the entrance fee, if any; and
- (G) the price of each type of bingo card offered for sale.

(4) The licensed authorized organization may amend the game schedule during the bingo occasion to correctly reflect any changes to game play during that occasion provided that the amendments are announced to the patrons and documented, in writing, on the game schedule. If not otherwise prohibited by law, the licensed authorized organization may conduct a bingo game that was not originally listed on the game schedule if the game and the prize(s) to be awarded for that game are announced to the patrons prior to the start of the game and documented, in writing, on the game schedule. Upon completion of the bingo occasion, the final game schedule must properly account for all games played during that occasion and the prizes awarded for those games. The final game schedule shall be maintained pursuant to §402.500(a) of this title.

(i) Reservation of bingo cards. No licensed authorized organization may reserve, or allow to be reserved, any bingo card or cards for use by a bingo player.

(j) Bingo worker requirements

(1) Bingo staff and employees may not play bingo during an occasion in which the bingo staff or employees are conducting or assisting in the conduct of the bingo occasion.

(2) A bingo worker shall not:

(A) communicate verbally, or in any other manner, to the caller the number(s) or symbol(s) needed by any player to win a bingo game;

(B) require anything of value from players, other than payment, for bingo cards, electronic card minding devices, pull-tab bingo tickets, and supplies; or

(C) deduct any cash or portion of a winning prize other than the prize fee without the player's permission.

(k) Caller requirements. The caller shall:

- (1) be located so that one or more players can:

(A) observe the drawing of the ball from the bingo receptacle; and

(B) gain the attention of the caller when the players bingo;

(2) be the only person to handle the bingo balls during each bingo game;

(3) call all numbers and make all announcements in a manner clear and audible to all of the playing areas of the bingo premises;

(4) announce:

(A) prior to the start of the regular bingo game, the pattern needed to win and the prize. If the prize amount is based on sales or attendance, the prize amount must be announced prior to the end of the game;

(B) that the game, or a specific part of a multiple-part game, is closed after asking at least two (2) times whether there are any other bingos and pausing to permit additional winners to identify themselves;

(C) whether the bingo is valid and if not, that there is no valid bingo and the game shall resume. The caller shall repeat the last number called before calling any more numbers; and

(D) the number of winners for the game.

(5) return the bingo balls to the bingo receptacle only upon the conclusion of the game; and

(6) not use cell phones, personal digital assistants (PDAs), computers, or other personal electronic devices to communicate any information that could affect the outcome of the bingo game with anyone during the bingo occasion.

(l) Verification.

(1) Winning cards. The numbers appearing on the winning card must be verified at the time the winner is determined and prior to prize(s) being awarded in order to insure that the numbers on the card in fact have been drawn from the receptacle.

(A) This verification shall be done either in the immediate presence of one or more players at a table or location other than the winner's, or displayed on a TV monitor visible by all of the players or by an electronic verifier system visible by all the players.

(B) After the caller closes the game, a winning disposable paper card or an electronic representation of the card for each game shall also be posted on the licensed premises where it may be viewed in detail by the players until at least 30 minutes after the completion of the last bingo game of that organization's occasion.

(2) Numbers drawn. Any player may request a verification of the numbers drawn at the time a winner is determined and a verification of the balls remaining in the receptacle and not drawn.

(A) Verification shall take place in the immediate presence of the operator, one or more players other than the winner, and player requesting the verification.

(B) Availability of this additional verification, done as a request from players, shall be made known either verbally prior to the bingo occasion, printed on the playing schedule, or included with the bingo house rules.

(m) Each licensed authorized organization must establish and adhere to written procedures that address disputes. Those procedures shall be made available to the players upon request.

(n) The total aggregate amount of prizes awarded for regular bingo games during a single bingo occasion may not exceed \$2500. This subsection does not apply to:

(1) a pull-tab bingo game; or

(2) a prize of \$50 or less that is actually awarded in an individual game of regular bingo.

(o) For purposes of §2001.419 of the Occupations Code, a bingo occasion will be considered to have occurred on the date on which the occasion began.

§402.203. *Unit Accounting.*

(a) The provisions of this rule relate only to the accounting, reporting and operation of units in accordance with the Bingo Enabling Act and this chapter. Nothing in this rule shall be construed as a grant of authority or waiver of responsibility under federal law, including tax law, and other state law.

(b) Definitions. In addition to the definitions provided in §402.100 of this chapter, and unless the context in this section otherwise requires, the following definitions apply:

(1) Default--The term used to describe the status of a licensed authorized organization that does not timely pay for the sale or lease of bingo supplies or equipment as provided in Occupations Code, §2001.218.

(2) Net proceeds--The unit's gross receipts from bingo and gross rental income, if applicable, less prizes awarded and authorized expenses.

(c) Each unit will be assigned an identification number by the Commission.

(d) If a unit dissolves and starts another unit with the same organizations, for all intent and purposes, it is the same unit and is responsible for all liabilities and distributions owed by the prior unit.

(e) Unit Representation.

(1) All units, with the exception of a unit with a Unit Manager, must name a designated agent who is responsible for providing the Commission access to all inventory and financial records of the unit on request by the Commission.

(2) It is the responsibility of the unit's designated agent to provide information to the Commission on:

(A) the unit agreement or trust agreement;

(B) submission of all required forms;

(C) unit Quarterly Report; and

(D) unit's bingo records.

(3) The designated agent will make available all unit accounting records to any member of a licensed authorized organization whose organization is a member of the accounting unit within thirty (30) calendar days of the request.

(4) The designated agent will provide a copy of all unit accounting records to the bingo chairperson of a licensed authorized organization whose organization was a member of the accounting unit within thirty (30) calendar days of the date of separation.

(f) Unit's Use of Proceeds.

(1) All distributions of net proceeds of the unit shall be paid from the unit's bingo account to the account designated by the unit member. Each unit member is required to maintain adequate records

establishing that the use of such net proceeds is in accordance with Occupations Code §2001.454.

(2) All prize fees collected in accordance with Occupation Code, §2001.502 must be deposited in the unit's bingo account and paid from the unit's bingo account.

(g) Unit Transactions.

(1) Upon prior written consent by the Commission:

(A) a licensed authorized organization may make a sale of bingo cards, pull-tab bingo tickets, or a used bingo flash board or blower to a unit;

(B) a unit may make a sale of bingo cards, pull-tab bingo tickets, or a used bingo flash board or blower to a licensed authorized organization; or

(C) a unit may make a sale of bingo cards, pull-tab bingo tickets, or a used bingo flash board or blower to another unit.

(D) Within thirty (30) calendar days of initially joining a unit, the licensed authorized organization shall notify the Commission of the bingo cards and pull-tab bingo tickets transferred to the unit.

(2) If a member of a unit is in default, a person may not sell or transfer bingo equipment or supplies to the unit on terms other than immediate payment on delivery.

(h) Unit Recordkeeping.

(1) Each unit must file a quarterly report and any required supplements on forms prescribed by the Commission and maintain records to substantiate the contents of the reports.

(2) The unit must adhere to all applicable recordkeeping requirements in the Bingo Enabling Act and Charitable Bingo Administrative Rules.

(3) A member of a unit which is also licensed as a commercial lessor must report its rental income on the unit quarterly report.

(4) Each unit must maintain a log for each bingo occasion indicating the following:

(A) date of the occasion;

(B) licensed authorized organization conducting the bingo occasion; and

(C) operator on duty.

(i) Unit Bingo Account.

(1) The unit must establish and maintain one checking account designated as the "bingo account." The unit must maintain the "bingo account" in compliance with the same provisions of the Bingo Enabling Act and Charitable Bingo Administrative Rules applicable to a licensed authorized organization.

(2) The face of the checks must list the name of the unit, the words "Bingo Account", and the unit's identification number.

(3) Only the following may be deposited into the unit's bingo account:

(A) proceeds from the conduct of bingo;

(B) rent payments received by a unit member that is also a licensed commercial lessor; and

(C) funds transferred by new members or funds transferred in accordance with §402.202 of this subchapter (relating to Transfer of Funds).

(4) A separate deposit must be made for each bingo occasion conducted. Additionally, all sales and prizes must be recorded on the records for the occasion on which they occurred.

(5) All prize fees must be paid from the unit bingo account.

(j) Transfer of Funds to the Unit Account by new Members.

(1) A licensed authorized organization joining a unit may transfer funds from its previous bingo account into the unit bingo account at the time:

(A) the unit is formed;

(B) within 60 days of joining an existing unit;

(2) Any additional funds transferred to the unit bingo account must comply with §402.202 of this subchapter.

(3) Funds previously reported on a bingo quarterly report as charitable distributions may not be transferred to the unit bingo account.

(4) All net proceeds remaining in the organization's former bingo account at the time it joins a unit must:

(A) be disbursed by the last day of the quarter following the date the organization joined the unit; or

(B) transferred to the unit bingo account in accordance with paragraph (1) of this subsection.

(5) At the time an organization joins a unit, all of its bingo expenses must be paid from the unit bingo account including outstanding bingo expenses and subsequent expenses. The total amount of outstanding bingo expenses should be included in the amount of funds transferred at the time the unit is formed or at the time of joining an existing unit.

(6) If a unit member does not have sufficient funds to cover outstanding bingo expenses or the amount required to join the unit, the unit member's portion of the charitable distribution may be reduced until these obligations have been satisfied. This business practice may be used provided that:

(A) the exact terms are reflected in the unit agreement;

(B) a copy of the unit agreement is provided to the Commission; and

(C) the unit meets the charitable distribution requirement.

(7) If the organization transferred funds from its previous bingo account into the unit bingo account, the funds must be reported on the unit's "Texas Bingo Quarterly Report" for the quarter they were transferred and on the last "Texas Bingo Quarterly Report" the organization filed as a non-unit member.

(8) An organization that is required to file a Texas Bingo Quarterly Report for a period prior to joining a unit must file a Final Disposition of Bingo Proceeds in Bank Account reporting the final disposition of all proceeds in its bingo account. The form must be submitted with the unit's "Texas Bingo Quarterly Report" for that quarter and would be subject to all "Texas Bingo Quarterly Report" filing deadlines, requirements and penalties.

(k) Distribution of Funds Upon Withdrawal or Dissolution.

(1) An organization receiving a distribution of funds from the unit's bingo account upon leaving the unit, must classify the distribution as a charitable distribution on the unit's "Texas Bingo Quarterly Report".

(2) Funds distributed as a charitable distribution must be used for the charitable purpose of the organization in accordance with the Bingo Enabling Act and Charitable Bingo Administrative Rules and may not be used to join another unit.

(3) A licensed authorized organization joining or withdrawing from a unit at any time other than at the beginning or ending of a reporting quarter is responsible for filing a separate quarterly report for bingo activities conducted apart from the unit.

(l) Responsibilities of Unit Members.

(1) Each unit member organization is responsible for administering its own bingo occasions and for any violations of the Bingo Enabling Act or Charitable Bingo Administrative Rules that may take place.

(2) Each unit member organization is responsible for maintaining and retaining the bingo records relating to all aspects of its occasions up to and including the point at which the deposit is made into the unit's bingo account.

(3) Each unit member organization is liable for any bingo cash shortages, inventory shortages, or missing or deficient occasion deposits occurring in association with its bingo occasion conducted.

(4) Each unit member organization is responsible for distributing the bingo proceeds received from the unit for its authorized charitable purposes.

§402.205. *Unit Agreements.*

(a) Definition. The following term, when used in this section, shall have the following meaning: Unit Agreement--A unit accounting agreement or a trust agreement forming a unit.

(b) A trust agreement forming a unit must contain all required elements of a unit accounting agreement as specified under §2001.431(3) of the Act.

(c) Prior to operating as a unit, the unit must submit to the Commission a Texas Notice of Unit Accounting form and a copy of the executed unit agreement.

(d) Organizations may not act as a unit until all member organizations are licensed.

(e) A designated agent or unit manager must submit a Texas Notice of Change for Accounting Unit form and an amended unit agreement to the Commission seven calendar days prior to the date of a change in unit management.

(f) A unit may appoint a designated agent who must be a natural person.

(1) A designated agent for a unit must be current in the training required under §2001.107 of the Act and §402.103 of this title (relating to Training Program).

(2) A bookkeeper may be a business contact for a commercial lessor and a designated agent for an accounting unit provided that the bookkeeper is not an employee of the commercial lessor.

(g) The original unit or trust agreement must contain the following information:

(1) the unit member's taxpayer name which is the name on the organization's organizing instrument or the name of the organization as stated on its license to conduct bingo;

(2) the eleven-digit taxpayer number on file with the Commission;

(3) the designated agent information;

(4) the trustee organization if a trust agreement;

(5) whether inventory was transferred to the unit;

(6) the street address where the records of a dissolved unit will be maintained for the required four year retention period unless the unit agreement specifies that each unit member will receive a copy of the unit records;

(7) the method by which net proceeds and charitable purpose disbursements will be apportioned among the members;

(8) the length of time allowed for the distribution of funds, records, and inventory and allocation of authorized expenses and liabilities on dissolution or withdrawal of a member of the unit;

(9) the method of determining the amount of payment for inventory or disposition of inventory for dissolution or withdrawal of a member of the unit; and

(10) a unit agreement must be signed by the unit member organization's bingo chairperson or other officer or director.

(h) An organization joining a unit and possessing inventory must provide to the Commission a complete list of the inventory it has transferred to the unit within thirty (30) calendar days of joining the unit. It is the responsibility of the organization to ensure that the Commission timely received the inventory list.

(i) A written inventory of bingo equipment and supplies must include the following:

Figure: 16 TAC §402.205(i)

(j) Amendment to a unit agreement must contain:

(1) name of the unit;

(2) effective date of the change;

(3) specific section of the unit agreement being changed;

(4) new terms of the agreement which are in compliance with the Act and the Rules;

(5) signature of the bingo chairperson or other officer or director for each of the current unit members; and

(6) statement which binds the amendment to the original unit agreement creating one document unless the entire unit agreement is re-stated.

(k) A unit must submit an amended unit agreement within thirty (30) calendar days of the effective date of any change to the Act or the Rules which would affect the agreement's compliance with the new Act or Rules.

(l) If a unit agreement or an amendment to a unit agreement is found not to be in compliance with the Act or the Rules, the unit will have thirty (30) calendar days after being notified by the Commission to provide a revised compliant unit agreement or compliant amendment to a unit agreement.

(m) At the time when only one unit member remains in the unit, the designated agent will dissolve the unit within thirty (30) calendar days or the Commission will dissolve the unit.

§402.210. *House Rules.*

(a) House rules are rules adopted by the licensed authorized organization that have been developed by its officers to inform players in detail of how the organization will conduct its bingo games.

(b) The licensed authorized organization shall develop house rules.

(c) The licensed authorized organization shall adhere to its house rules.

(d) The operator on duty is responsible for ensuring house rules are consistently applied.

(e) The house rules must be posted at a location within the bingo premises that is easily accessible to all patrons and made available to anyone upon request.

(f) House rules shall not conflict with the Bingo Enabling Act or the Charitable Bingo Administrative Rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. BINGO GAMES AND EQUIPMENT

16 TAC §§402.300, 402.301, 402.303, 402.324, 402.325

The following rule amendments are adopted under: (1) §2001.054 of the Occupations Code, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and (2) §467.102 of the Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

§402.300. *Pull-Tab Bingo.*

(a) Definitions. The following words and terms, shall have the following meanings, unless the context clearly indicates otherwise:

(1) **Bingo Ball Draw**--A pulling of a bingo ball(s) to determine the winner of an event ticket by either the number or color on the ball(s).

(2) **Deal**--A separate and specific game of pull-tab bingo tickets of the same serial number and form number.

(3) **Face**--The side of a pull-tab bingo ticket, which displays the artwork of a specific game.

(4) **Flare**--A poster or placard that must display:

(A) a form number of a specific pull-tab bingo game;

(B) the name of the pull-tab bingo game;

(C) the total card count of the pull-tab bingo game;

(D) the cost per pull-tab bingo ticket;

(E) the number of prizes to be awarded and the corresponding prize amounts of the pull-tab bingo game; and

(F) the name of the manufacturer or trademark.

(5) **Form Number**--The unique identification number assigned by the manufacturer to a specific pull-tab bingo game. A form

number may be numeric, alpha, or a combination of numeric and alpha characters.

(6) **High Tier**--The two highest paying prize amounts as designated on the pull-tab bingo ticket and on the game's flare.

(7) **Last Sale**--The purchaser of the last pull-tab bingo ticket(s) sold in a deal with this feature is awarded a prize or a registration for the opportunity to win a prize.

(8) **Merchandise**--Any non-cash item(s), including bingo equipment, provided to a licensed authorized organization that is used as a prize.

(9) **Wheels**--Devices that determine event ticket winner(s) by a spin of a wheel.

(10) **Pay-Out**--The total sum of all possible prize amounts in a pull-tab bingo game.

(11) **Payout Schedule**--A printed schedule prepared by the manufacturer that displays:

(A) the name of the pull-tab bingo game;

(B) the form number of the pull-tab bingo game;

(C) the total card count of the pull-tab bingo game;

(D) the cost per pull-tab bingo ticket;

(E) the number of prizes to be awarded and the corresponding prize amount or jackpot for each category of the pull-tab bingo game;

(F) the number of winners for each category of prize;

(G) the profit of the pull-tab bingo game;

(H) the percentage of payout or the percentage of profit of the pull-tab bingo game; and

(I) the payout(s) of the pull-tab bingo game.

(12) **Payout Structure**--The printed information that appears on a pull-tab bingo ticket that shows the winnable prize amounts, the winning patterns required to win a prize, and the number of winners for each category of prize.

(13) **Prize**--An award of collectible items, merchandise, cash, bonus pull-tabs, and additional pull-tab bingo tickets, individually or in any combination.

(14) **Prize Amount**--The value of cash and/or merchandise which is awarded as a prize, as valued under §402.200(f) of this chapter. A collectible item is considered merchandise for determining allowable prize amounts.

(15) **Serial Number**--The unique identification number assigned by the manufacturer identifying a specific deal of pull-tab bingo tickets. A serial number may be numeric, alpha, or a combination of numeric and alpha characters.

(16) **Subset**--A part of a deal that is played as a game to itself or combined with more subsets and played as a game. Each subset may be designed to have:

(A) a designated payout; or

(B) a series of designated payouts. Subsets must be of the same form and serial number to have a combined designated payout or a series of designated payouts.

(17) **Symbol**--A graphic representation of an object other than a numeric or alpha character.

(18) Video Confirmation--A graphic and dynamic representation of the outcome of a bingo event ticket that will have no effect on the result of the winning or losing event ticket.

(b) Approval of pull-tab bingo tickets.

(1) A pull-tab bingo ticket may not be sold in the state of Texas, nor furnished to any person in this state nor used for play in this state until that pull-tab bingo ticket has received approval for use within the state of Texas by the Commission. The manufacturer at its own expense must present their pull-tab bingo ticket to the Commission for approval.

(2) All pull-tab bingo ticket color artwork with a letter of introduction including style of play must be presented to the Commission's Austin, Texas location for review. The manufacturer must submit one complete color positive or hardcopy set of the color artwork for each pull-tab bingo ticket and its accompanying flare. The color artwork may be submitted in an electronic format prescribed by the Commission in lieu of the hardcopy submission. The submission must include the payout schedule. The submission must show both sides of a pull-tab bingo ticket and must be submitted on an 8 1/2" x 11" size sheet. The color artwork will show the actual size of the ticket and a 200% size of the ticket. The color artwork will clearly identify all winning and non-winning symbols. The color artwork will clearly identify the winnable patterns and combinations.

(3) The color artwork for each individual pull-tab bingo ticket must:

(A) display in no less than 26-point diameter circle, an impression of the Commission's seal with the words "Texas Lottery Commission" engraved around the margin and a five-pointed star in the center;

(B) contain the name of the game in a conspicuous location on the pull-tab bingo ticket;

(C) contain the form number assigned by the manufacturer in a conspicuous location on the pull-tab bingo ticket;

(D) contain the manufacturer's name or trademark in a conspicuous location on the pull-tab bingo ticket;

(E) disclose the prize amount and number of winners for each prize amount, the number of individual pull-tab bingo tickets contained in the deal, and the cost per pull-tab bingo ticket in a conspicuous location on the pull-tab bingo ticket;

(F) display the serial number where it will be printed in a conspicuous location on the pull-tab bingo ticket. The color artwork may display the word "sample" or number "000000" in lieu of the serial number;

(G) contain graphic symbols that preserve the integrity of the Commission. The Commission will not approve any pull-tab bingo ticket that displays images or text that could be interpreted as depicting violent acts, profane language, or provocative, explicit, or derogatory images or text, as determined by the Commission. All images or text are subject to final approval by the Commission; and

(H) be accompanied with the color artwork of the pull-tab bingo tickets along with a list of all other colors that will be printed with the game.

(4) Upon approval of the color artwork, the manufacturer will be notified by the Commission to submit a specified number of tickets for testing. The tickets must be submitted for testing to the Commission at the manufacturer's own expense. If necessary, the Commission may request that additional tickets or a deal be submitted for testing.

(5) If the color artwork is approved and the pull-tab bingo tickets pass the Commission's testing, the manufacturer will be notified of the approval. This approval only extends to the specific pull-tab bingo game and the specific form number cited in the Commission's approval letter. If the pull-tab bingo ticket is modified in any way, with the exception of the serial number, index color, or trademark(s), it must be resubmitted to the Commission for approval. Changes to symbols require only an artwork approval from the Commission.

(6) The Commission may require resubmission of an approved pull-tab bingo ticket at any time.

(c) Disapproval of pull-tab bingo tickets.

(1) Upon inspection of a pull-tab bingo ticket by the Commission and if it is deemed not to properly preserve the integrity or security of the Commission including compliance with the art work requirements of this rule, the Commission may disapprove a pull-tab bingo ticket. All pull-tab bingo tickets that are disapproved by the Commission will cease to be allowed for sale until such time as the manufacturer complies with the written instructions of the Commission, or until any discrepancies are resolved. Disapproval of and prohibition to use, purchase, sell or otherwise distribute such a pull-tab bingo ticket is effective immediately upon notice to the manufacturer by the Commission. Upon receipt of such notice, the manufacturer must immediately notify the distributor and the distributor must immediately notify affected licensed authorized organizations to cease all use, purchase, sale or other distribution of the disapproved pull-tab ticket. The distributor must provide to the Commission, within 15 days of the Commission's notice to the manufacturer, confirmation that the distributor has notified the licensed authorized organization that the pull-tab ticket has been disapproved and sale and use of the disapproved ticket must cease immediately.

(2) If modified by the manufacturer all disapproved pull-tab bingo tickets may be resubmitted to the Commission. No sale of disapproved tickets will be allowed until the resubmitted tickets have passed security testing by the Commission. At any time the manufacturer may withdraw any disapproved pull-tab bingo tickets from further consideration.

(3) The Commission may disapprove a pull-tab bingo game at any stage of review, which includes artwork review and security testing, or at any time in the duration of a pull-tab bingo game. The disapproval of a pull-tab bingo ticket is administratively final.

(d) Manufacturing requirements.

(1) Manufacturers of pull-tab bingo tickets must manufacture, assemble, and package each deal in such a manner that none of the winning pull-tab bingo tickets, nor the location, or approximate location of any winning pull-tab bingo ticket can be determined in advance of opening the deal by any means or device. Nor should the winning pull-tab bingo tickets, or the location or approximate location of any winning pull-tab bingo ticket be determined in advance of opening the deal by manufacture, printing, color variations, assembly, packaging markings, or by use of a light. Each manufacturer is subject to inspection by the Commission, its authorized representative, or designee.

(2) All winning pull-tab bingo tickets as identified on the payout schedule must be randomly distributed and mixed among all other pull-tab bingo tickets of the same serial number in a deal regardless of the number of packages, boxes, or other containers in which the deal is packaged. The position of any winning pull-tab bingo ticket of the same serial numbers must not demonstrate a pattern within the deal or within a portion of the deal. If a deal of pull-tabs is packed in more than one box or container, no individual container may indicate that it

includes a winner or contains a disproportionate share of winning or losing tickets.

(3) Each deal of pull-tab bingo tickets must contain a packing slip inside the deal. This packing slip must substantiate the name of the manufacturer, the serial number for the specific deal, the date the deal was packaged, and the name or other identification of the person who packaged the deal.

(4) Each deal's package, box, or other container shall be sealed at the manufacturer's factory with a seal including a warning to the purchaser that the deal may have been tampered with if the package, box, or other container was received by the purchaser with the seal broken.

(5) Each deal's serial number shall be clearly and legibly placed on the outside of the deal's package, box or other container or be able to be viewed from the outside of the package, box or container.

(6) A flare must accompany each deal.

(7) The information contained in subsection (a)(3)(A), (B), (C), (D), and (F) of this section shall be located on the outside of each deal's sealed package, box, or other container.

(8) Manufacturers must seal or tape, with tamper resistant seal or tape, every entry point into a package, box or container of pull-tab bingo tickets prior to shipment. The seal or tape must be of such construction as to guarantee that should the container be opened or tampered with, such tampering or opening would be easily discernible.

(9) All high tier winning instant pull-tab bingo tickets must utilize a secondary form of winner verification.

(10) Each individual pull-tab bingo ticket must be constructed so that, until opened by a player, it is substantially impossible, in the opinion of the Commission, to determine its concealed letter(s), number(s) or symbol(s).

(11) No manufacturer may sell or otherwise provide to a distributor and no distributor may sell or otherwise provide to a licensed authorized organization of this state or for use in this state any pull-tab bingo game that does not contain a minimum prize payout of 65% of total receipts if completely sold out.

(12) A manufacturer in selling or providing pull-tab bingo tickets to a distributor shall seal or shrink-wrap each package, box, or container of a deal completely in a clear wrapping material.

(13) Pull-tab bingo tickets must:

(A) be constructed of cardboard and glued or otherwise securely sealed along all four edges of the pull-tab bingo ticket and between the individual perforated break-open tab(s) on the ticket. The glue must be of sufficient strength and type so as to prevent the separation of the sides of a pull-tab bingo ticket;

(B) have letters, numbers or symbols that are concealed behind perforated window tab(s), and allow such letters, numbers or symbols to be revealed only after the player has physically removed the perforated window tab(s);

(C) prevent the determination of a winning or losing pull-tab bingo ticket by any means other than the physical removal of the perforated window tab(s) by the player;

(D) be designed so that the numbers and symbols are a minimum of 2/32 (4/64) inch from the dye-cut window perforations;

(E) be designed so that the lines or arrows that identify the winning symbol combinations will be a minimum of 5/32 inch from

the open edge farthest from the hinge of the dye-cut window perforations;

(F) be designed so that highlighted "pay-code" designations that identify the winning symbol combinations will be a minimum of 3.5/32 inch from the dye-cut window perforations;

(G) be designed so that secondary winner protection codes appear in the left margin of the ticket, unless the secondary winner protection codes are randomly generated serial number-type winner protection codes. Randomly generated serial number-type winner protection codes will be randomly located in either the left or middle column of symbols and will be designed so that the numbers are a minimum of 3.5/32 inch from the dye-cut window perforations. Any colored line or bar or background used to highlight the winner protection code will be a minimum 3.5/32 (7/64) inch from the dye-cut window perforations;

(H) have the Commission's seal placed on all pull-tab bingo tickets by only a licensed manufacturer; and

(I) be designed so that the name of the manufacturer or its distinctive logo, form number and serial number unique to the deal, name of the game, price of the ticket, and the payout structure remain when the letters, numbers, and symbols are revealed.

(14) Wheels must be submitted to the Commission for approval. As a part of the approval process, the following requirements must be demonstrated to the satisfaction of the Commission.

(A) wheels must be able to spin at least four times with reasonable effort;

(B) wheels must only contain the same number or symbols as represented on the event ticket; and

(C) locking mechanisms must be installed on wheel(s) to prevent play outside the licensed authorized organization's licensed time(s).

(15) A manufacturer must include with each pull-tab bingo ticket deal instructions for how the pull-tab bingo ticket can be played in a manner consistent with the Bingo Enabling Act and this chapter. The instructions are not required to cover every potential method of playing the pull-tab bingo ticket deal.

(e) Sales and redemption.

(1) Instant pull-tab bingo tickets from a single deal may be sold by a licensed authorized organization over multiple occasions. A winning instant pull-tab bingo ticket must be presented for payment during the licensed authorized organization's bingo occasion(s) at which the instant pull-tab bingo ticket is available for sale.

(2) Except as provided by paragraph (3) or (4) of this subsection, the event used to determine the winner(s) of an event pull-tab bingo ticket deal must occur during the same bingo occasion at which the first event pull-tab bingo ticket from that deal was sold. A winning event pull-tab ticket must be presented for payment during the same bingo occasion at which the event occurred.

(3) For a licensed authorized organization that conducts bingo through a unit created and operated under Texas Occupations Code, Subchapter I-1, any organization in the unit may sell or redeem event pull-tab tickets from a deal on the premises specified in their bingo licenses and during such licensed time on consecutive occasions within one 24-hour period.

(4) For a licensed authorized organization that conducts bingo on consecutive occasions within one 24-hour period, the organ-

ization may sell or redeem event pull-tab tickets from a deal during either occasion.

(5) Licensed authorized organizations may not display or sell any pull-tab bingo ticket which has in any manner been marked, defaced, tampered with, or which otherwise may deceive the public or affect a person's chances of winning.

(6) A licensed authorized organization may not withdraw a deal of instant pull-tab bingo tickets from play until the entire deal is completely sold out or all winning instant pull-tab bingo tickets of \$25.00 prize winnings or more have been redeemed, or the bingo occasion ends.

(7) A licensed authorized organization may not commingle different serial numbers of the same form number of pull-tab bingo tickets.

(8) A licensed authorized organization may bundle pull-tab bingo tickets of different form numbers and may sell these bundled pull-tab bingo tickets during their licensed times.

(9) The licensed authorized organization's gross receipts from the sale of pull-tab bingo tickets must be included in the reported total gross receipts for the organization. Each deal of pull-tab bingo tickets must be accounted for in sales, prizes or unsold cards.

(10) A licensed authorized organization may use video confirmation to display the results of an event ticket pull-tab bingo game(s). Video confirmation will have no effect on the play or results of any ticket or game.

(11) A licensed authorized organization must sell the pull-tab ticket for the price printed on the pull-tab ticket.

(12) Immediately upon payment of a winning pull-tab ticket of \$25.00 or more, the licensed authorized organization must punch a hole with a standard hole punch through or otherwise mark or deface that winning pull-tab bingo ticket.

(f) Inspection. The Commission, its authorized representative or designee may examine and inspect any individual pull-tab bingo ticket or deal of pull-tab bingo tickets and may pull all remaining pull-tab bingo tickets in an unsold deal.

(g) Records.

(1) Any licensed authorized organization selling pull-tab bingo tickets must maintain a purchase log showing the date of the purchase, the form number and corresponding serial number of the purchased pull-tab bingo tickets.

(2) Licensed authorized organizations must show the sale of pull-tab bingo tickets, prizes that were paid and the form number and serial number of the pull-tab bingo tickets on the occasion cash report. The aggregate total sales for the licensed authorized organization must be recorded on the cash register or point of sale station.

(3) Licensed authorized organizations must maintain a perpetual inventory of all pull-tab bingo games. They must account for all sold and unsold pull-tab bingo tickets and pull-tab bingo tickets designated for destruction. The licensed authorized organization will be responsible for the gross receipts, prizes and prize fee associated with the unaccounted for pull-tab bingo tickets.

(4) As long as a specific pull-tab bingo game serial number is in play, all records, reports, receipts and redeemed winning pull-tab bingo tickets of \$25.00 or more relating to this specific pull-tab bingo game serial number must be retained on the licensed premises for examination by the Commission.

(5) If a deal is removed from play and marked for destruction then all redeemed and unsold pull-tab bingo tickets of the deal must be retained by the licensed authorized organization for a period of four years from the date the deal is taken out of play or until the destruction of the deal is witnessed by the Commission, its authorized representative or designee.

(6) Manufacturers and distributors must provide the following information on each invoice and other document used in connection with a sale, return, or any type of transfer of pull-tab bingo tickets:

- (A) date of sale;
- (B) quantity sold;
- (C) cost per each deal of pull-tab bingo game sold;
- (D) form number and serial number of each pull-tab bingo game's deal;
- (E) name and address of the purchaser; and
- (F) Texas taxpayer number of the purchaser.

(7) All licensed organizations must retain these records for a period of four years.

(h) Style of Play. The following pull-tab bingo tickets are authorized by this rule. A last sale feature can be utilized on any pull-tab bingo ticket.

(1) Sign-up Board. A form of pull-tab bingo that is played with a sign-up board. Sign-up board tickets that contain a winning numeric, alpha or symbol instantly win the stated prize or qualify to advance to the sign-up board. The sign-up board that serves as the game flare is where identified winning sign-up board ticket holders may register for the opportunity to win the prize indicated on the sign-up board.

(2) Sign-up Board Ticket. A sign up board ticket is a form of pull-tab bingo played with a sign-up board. A single window or multiple windows sign-up board ticket reveals a winning (or losing) numeric, alpha or symbol that corresponds with the sign-up board.

(3) Tip Board. A form of pull-tab game where perforated tickets attached to a placard that have a predetermined winner under a seal.

(4) Coin Board. A placard that contains prizes consisting of coin(s). Coin boards can have a sign-up board as part of its placard.

(5) Coin Board Ticket. A form of pull-tab bingo that when opened reveals a winning number or symbol that corresponds with the coin board.

(6) Event Ticket. A form of pull-tab bingo that utilizes some subsequent action to determine the event ticket winner(s), such as a drawing of ball(s), spinning wheel, opening of a seal on a flare(s) or any other method approved by the Commission so long as that method has designated numbers, letters, or symbols that conform to the randomly selected numbers or symbols. When a flare is used to determine winning tickets, the flare shall have the same form number and serial number as the event tickets. Pull-tab bingo tickets used as event tickets must contain more than two instant winners.

(7) Instant Ticket. A form of pull-tab bingo that has predetermined winners and losers and has immediate recognition of the winners and losers.

(8) Multiple Part Event or Multiple Part Instant Ticket. A pull-tab bingo ticket that is broken apart and sold in sections by a licensed authorized organization. Each section of the ticket consists of a

separate deal with its own corresponding payout structure, form number, serial number, and winner verification.

(9) **Jackpot Pull-Tab Game.** A style of pull-tab game that has a stated prize and a chance at a jackpot prize(s). A portion of the stated payout is contributed to the jackpot prize(s). Each jackpot is continuous for the same form number and continues until a jackpot prize(s) is awarded; provided that any jackpot prize(s) must not exceed the statutory limits.

(10) **Video Confirmation** shall be subject to Commission approval.

§402.301. *Bingo Card/Paper.*

(a) **Definitions.** The following words and terms, shall have the following meanings unless the context clearly indicates otherwise:

(1) **Bingo card/paper.** A hard card, disposable bingo card/paper, shutter card, or any other bingo card/paper approved by the Commission.

(2) **Bingo hard card.** A device made of cardboard, plastic or other suitable material that is intended for repeated use of the bingo card at multiple bingo occasions.

(3) **Bonus number(s).** A type of bingo card/paper that has an identified number or numbers which when called could result in an additional prize awarded.

(4) **Braille bingo card.** A device that contains raised symbols that reflect numbers on a reusable card.

(5) **Break-open bingo.** A type of disposable bingo card/paper that is sealed, that conceals the bingo card/paper face, that may be folded, and where the bingo game or a portion of the bingo game has been pre-called.

(6) **Case.** A receptacle that contains bingo card/paper products.

(7) **Cut.** Indicates the direction in which a sheet of faces will be cut from the master sheet of disposable bingo card/paper. A cut can be square, horizontal or vertical. The sheet of disposable bingo card/paper printed by the manufacturer of a specific group of disposable bingo card/paper that can be subdivided vertically or horizontally into sheets.

(8) **Defective.** Bingo card/paper missing specifications as originally approved by the Commission.

(9) **Disposable bingo card/paper.** A sheet or sheets of paper that is designed or intended for use at a single bingo occasion.

(10) **Double numbers.** Bingo card/paper with two numbers in each of the 24 spaces on each face.

(11) **Face.** A specific configuration of numbers, symbols, or blank squares imprinted on paper, cardboard, or other materials, and designed to be used to conduct bingo games. The bingo card/paper normally consists of five rows of five columns that may bear 24 pre-printed numbers between 1 and 75, symbols, or blank squares, except for the center square which is a free space and have the letters B-I-N-G-O appear in order above the five columns, with the exception of bonus number(s) that may appear on the bingo card/paper.

(12) **Free space.** The center square on the face of a bingo card/paper.

(13) **Loteria.** A type of bingo that utilizes symbols or pictures. Normally playing cards are utilized instead of numbered balls.

(14) **Multi-part card/paper.** A type of disposable bingo card/paper where the player selects the numbers. The player retains

one part of the disposable bingo card/paper while the licensee for the purpose of verification retains the other part of the disposable bingo card/paper.

(15) **On.** The number of faces imprinted on a sheet of disposal bingo card/paper after it is cut. The number of bingo card/paper faces normally precedes this term.

(16) **Pre-marked.** A bingo card/paper where one or more of the numbers are already marked or identified prior to the start of the game.

(17) **Product line.** A specific type of bingo card/paper, identifiable by features or characteristics that are unique when compared to other bingo card/paper manufactured by the manufacturer.

(18) **Serial number.** The unique identification number assigned by the manufacturer to a specific product line of bingo card/paper.

(19) **Series number.** The specific number assigned by the manufacturer that identifies the unique configuration of numbers that appears on an individual bingo card/paper face.

(20) **Sheet.** A single piece of paper that contains one or more disposable bingo card/paper faces.

(21) **Shutter card.** A device made of cardboard or other suitable material with plastic "shutters" that cover a number to simulate the number being daubed.

(22) **UP.** The number of sheets of disposable bingo paper glued together by the manufacturer. The number of sheets normally precedes this term.

(23) **UPS pads.** A bound collection of disposable bingo card/paper where each sheet in the collection is used to play a separate bingo game during the occasion.

(b) **Approval of bingo card/paper.**

(1) Bingo card/paper shall not be sold in the state of Texas, nor furnished to any person in this state, nor used for play in this state until the manufacturer of the bingo card/paper has received written approval for use within the state of Texas by the Commission. The manufacturer at its own expense must present the bingo card/paper to the Commission for approval.

(2) A letter of introduction including the style of play must be presented to Commission headquarters for review. The manufacturer must submit one complete color positive or sample for each type of bingo card/paper. The color positive or sample may be submitted in an electronic format prescribed by the Commission in lieu of the hard-copy submission. The color positive or sample bingo card/paper must:

(A) bear on the face of every disposable bingo card/paper used, sold, or furnished in this state an impression of the State of Texas and a star of five points encircled by olive and live oak branches and the words "Texas Lottery Commission," in accordance with detailed specification, available on request from the Commission. The face of each disposable bingo card/paper must also have printed on it in a conspicuous location the name of the manufacturer or trademark, which has been filed with the Commission; and

(B) contain the serial and series numbers assigned by the manufacturer on the face of each of the bingo card/paper, except in the case of Break-open bingo, which may contain the serial number assigned by the manufacturer on the outside so as not to be concealed.

(3) The bingo card/paper may contain numbers or symbols so long as the numbers or symbols preserve the integrity of the Commission. The Commission will not approve any bingo paper that dis-

plays images or text that could be interpreted as depicting violent acts, profane language, or provocative, explicit, or derogatory images or text, as determined by the Commission. All images or text are subject to final approval by the Commission.

(4) If the bingo card/paper is approved the manufacturer will be notified of the approval. This approval only extends to the specific bingo card/paper submitted and will be cited in the Commission's approval letter. If the bingo card/paper is modified in any way, with the exception of the color, series number, and/or serial number it must be resubmitted to the Commission for approval.

(5) The Commission may require resubmission of an approved bingo card/paper at any time.

(6) If an approved bingo card/paper is discontinued or no longer manufactured for sale in Texas, the manufacturer must provide the Commission written notification within ten days of discontinuance or cessation of manufacturing for sale in Texas. The written notification may be sent to the Commission via facsimile, e-mail, delivery services or postal delivery.

(c) Disapproval of bingo card/paper.

(1) After inspection of the bingo card/paper by the Commission, if the bingo card/paper does not comply with the provisions of this rule and/or the Bingo Enabling Act, the Commission shall disapprove the bingo card/paper and shall notify the manufacturer of the disapproval. Any bingo card/paper that is disapproved by the Commission may not be displayed, purchased or sold in the state of Texas. Disapproval of and prohibition to use, purchase, sell or otherwise distribute, is effective immediately upon notice to the manufacturer by the Commission.

(2) A manufacturer shall not sell, or furnish unapproved bingo card/paper to anyone, including another manufacturer or distributor for use in this state. A manufacturer shall not sell, or furnish bingo card/paper not bearing the seal of the Commission on the face of the bingo card/paper and the manufacturer's name or trademark to distributors for use in this state. This requirement also applies to any manufacturer who assembles bingo card/paper for sale in Texas.

(3) A licensed authorized organization shall not purchase, obtain, or use disapproved bingo card/paper in this state.

(4) If the manufacturer modifies the bingo card/paper that was previously disapproved, the manufacturer may resubmit the modified bingo card/paper for Commission approval. At any time the manufacturer may withdraw any disapproved bingo card/paper from further consideration.

(5) The Commission may disapprove the bingo card/paper at any stage of review. The disapproval of the bingo card/paper is administratively final.

(d) Manufacturing requirements.

(1) Bingo card/paper must comply with the following construction standards.

(A) The disposable paper used shall be of sufficient weight and quality to allow for clearly readable numbers and to prevent ink from spreading or bleeding through an UPS pad thereby obscuring other numbers or bingo card/paper;

(B) series numbers may be displayed in the center square of the bingo card/paper;

(C) numbers printed on the bingo card/paper shall be randomly assigned; and

(D) a manufacturer shall not repeat a serial number on or in the same product line, series, and color of bingo card/paper within one year of the last printing of that serial number.

(2) UPS pad must comply with the following construction standards.

(A) Bingo card/paper in UPS pads must only be glued and not stapled; and

(B) the disposable bingo card/paper assembled into UPS pads shall not be separated, with the exception of the multi-part disposable bingo card/paper, nor shall single sheets already manufactured be cut for sale for special bingo games.

(3) Inspection. The Commission, its authorized representative or designee may examine and inspect any individual bingo card/paper or series of bingo card/paper and may pull all remaining bingo card/paper in the inventory if the Commission, its authorized representative or designee determines that the bingo card/paper is defective or has not been approved.

(4) Packaging.

(A) Bingo card/paper shall be sealed in shrink wrap and be designed so that if the shrink wrapped bingo card/paper, package, or case was opened or tampered with, it would be easily noticed.

(B) Barcodes may be included on each bingo card/paper, package, or case provided the barcode contains information required in subparagraph (C).

(C) A label shall be placed on, or be visible from, the exterior of each package or case of bingo card/paper listing the following information:

(i) Type of product;

(ii) Series number of the UPS pads and/or sheet(s);

(iii) Serial numbers of the top sheet of the UPS pads and/or sheet(s);

(iv) Number of package or cases; and

(v) Cut and color of paper.

(D) A packing slip shall be included with the package or case listing the following information:

(i) Type of product;

(ii) Number of UPS pads or sheets;

(iii) Series number of the UPS pads and/or sheet(s);

(iv) Serial numbers of the top sheet of the UPS pads and/or sheet(s);

(v) Number of package or cases; and

(vi) Cut and color of paper.

(e) Records.

(1) Manufacturers and distributors must provide the following information on each invoice and other documents used in connection with a sale, return or any other type of transfer of bingo card/paper:

(A) Date of sale;

(B) Quantity sold and number of faces per sheet;

(C) Serial and series number of each bingo card/paper sold;

- (D) Name and address of the purchaser; and
- (E) Texas taxpayer identification number of the purchaser.

(2) Manufacturers and distributors must maintain standard accounting records that include but are not limited to:

- (A) Sales invoice;
- (B) Credit memos;
- (C) Sales journal; and
- (D) Purchase records.

(3) Licensed authorized organization.

(A) A licensed authorized organization must maintain a disposable bingo card/paper sales summary showing the organization's name, taxpayer number, distributor's taxpayer number, invoice date, distributor's name, invoice number, serial number, and series number. Also, the disposable bingo card/paper sales summary must include the number of faces (ON), number of sheets (UP), and color of borders.

(B) A licensed authorized organization must show the date of the occasion on which the disposable bingo card/paper was sold, a beginning inventory, along with the number of disposable bingo card/paper sold.

(C) A licensed authorized organization must maintain a perpetual inventory of all disposable bingo card/paper.

(D) Disposable bingo card/paper marked for destruction cannot be destroyed until witnessed by the Commission, its authorized representative or designee. All destruction documentation must be retained by the licensed organization for a period of four years from the date of destruction.

(4) All records identified in this subsection must be retained for a period of four years from creation of the records.

(f) Braille cards. Visually impaired, legally blind, or persons with disabilities may use their own personal Braille cards when the authorized organization does not provide Braille Cards. Players using Braille cards shall pay the equivalent price to participate in the game. The authorized organization shall have the right to inspect, and to reject any personal Braille card(s). Braille cards are not required to be approved by the Commission. Braille cards are not considered bingo equipment as defined by Occupations Code, §2001.002(5).

(g) Loteria. The symbols or pictures may be identified with Spanish subtitles and each of the 54 cards contains a separate and distinct symbol or picture. The 54 individual cards may be shuffled by the caller and then randomly drawn and announced to the players. The player uses a loteria card, which contains a minimum of sixteen squares and each square has one of the 54 symbols or pictures. There are no duplicate symbols or pictures on the loteria card. Loteria cards are not considered bingo equipment as defined by Occupations Code, §2001.002(5).

(h) Style of play and minimum standards of play. Prizes awarded on any style of play must be in accordance with Occupations Code, §2001.420.

(1) Player pick ems. A game of bingo where a player selects his/her own numbers on a multi-part duplicated disposable bingo card/paper. One copy is retained by the player and used as a bingo card/paper while the other copy is provided to the organization for verification purposes.

(2) Progressive bingo. A game of bingo that either the established prize amount or number of bingo balls and/or objects may be

increased from one session to the next scheduled session. If no player completes the required pattern within the specified number of bingo balls or objects drawn, the established prize amount may be increased but shall not exceed the prize amount authorized by the Bingo Enabling Act.

(3) Warm-up or early bird. A bingo game conducted at the beginning of a bingo occasion during the authorized organization's license times, in which prizes are awarded based upon a percentage of the sum of money received from the sale of the warm-up/early bird bingo card/paper.

(4) Shaded/Images bingo. Bingo card/paper that incorporates images where one or more squares on a bingo card/paper face are shaded. Each shaded image conforms to a pattern that must be achieved to win a bingo game or each shaded square may be used as a free space or a pattern for a bingo game.

(5) Bingo bonus number(s). A bingo game that has additional identified number(s) in excess of the 24 numbers that appear on the bingo card/paper face that, when called, could result in an additional prize awarded. The first player who matches the numbers shown on the bonus number(s) line within the specified number(s) called wins the additional prize.

(6) Multi level or multi tier. Bingo card/paper that has one or more additional lines of number(s) aside from the normal five lines that when played could result in an additional prize. Therefore, a multi level or multi tiered game could be played on this bingo card/paper that provides more opportunities to win.

(7) Multi color bingo. A bingo game played on a bingo card/paper with a different color for each bingo card/paper face. Prizes are awarded based on the color on which the bingo card/paper face that had the bingo.

(8) Pre-called. A game of bingo where the numbers for the game have been pre-called and identified prior to the start of the game.

(9) Double number. A bingo game played on a bingo card/paper that has two numbers per square. A player has two chances to daub each square.

(10) Break-open bingo. A type of bingo game played on sealed disposable bingo card/paper, where the bingo card/paper face is concealed, that may be folded, and where the bingo game has been pre-called. The bingo game may not be pre-called prior to the authorized organization's license time.

(11) Regular bingo. A bingo game played on the standard card face of five rows by five columns with 24 pre-printed numbers between 1 and 75, symbols, or blank squares and a free space square where the winner is determined by a predetermined pattern.

(i) Promotional bingo. This rule shall not apply to bingo card/paper furnished for use in a promotional bingo game conducted in accordance the Occupations Code, §2001.551. The card/paper may not contain the Commission seal.

(j) Exempt organization. This rule shall not apply to bingo card/paper furnished for use by an organization receiving an exemption from bingo licensing in accordance with the Occupations Code, §§2001.551(b)(3)(A) and (B). The bingo card/paper may not contain the Commission seal.

(k) House rules. A licensed authorized organization playing a style of bingo other than regular bingo must develop house rules on how the game is played. The house rules must be made available to the public.

(l) Card-minding devices. This rule shall be applicable only to bingo card/paper made of paper, cardboard or similar material approved by the Commission and shall not be applicable to the manufacture or use of card-minding devices addressed in §§402.321 - 402.328 of this chapter, with the exception of style of play as defined by this rule and approved by the Commission.

§402.303. *Pull-tab or Instant Bingo Dispensers.*

(a) Approval of Pull-tab or Instant Bingo Dispensers.

(1) No pull-tab or instant bingo dispenser may be sold, leased, or otherwise furnished to any person in this state or used in the conduct of bingo for public play unless and until a dispenser which is identical to the dispenser intended to be sold, leased, or otherwise furnished has first been presented to the Commission by its manufacturer, at the manufacturer's expense, and has been approved by the Commission for use within the state.

(2) An identical dispenser to the dispenser intended to be sold, leased, or otherwise furnished must be presented to the Commission in Austin, Texas for review. If granted, approval extends only to the specific dispenser model approved. Any modification must be approved by the Commission.

(3) Once a dispenser has been approved, the Commission may keep the dispenser for further testing and evaluation for as long as the Commission deems necessary.

(b) Manufacturing requirements.

(1) Manufacturers of pull-tab or instant bingo dispensers must manufacture each dispenser in such a manner to ensure that the dispenser dispenses a break-open bingo ticket, an instant bingo ticket, a pull-tab bingo game or instant bingo card only after the player inserts money into the dispenser, and that such ticket, game or card is the sole thing of value which may be redeemed for cash.

(2) Manufacturers of dispensers must manufacture each dispenser in such a manner to ensure that the device neither displays nor has the capability to determine whether a break-open bingo ticket, an instant bingo ticket, or a pull-tab bingo game is a winning or non-winning ticket.

(3) Manufacturers of dispensers must manufacture each dispenser in such a manner that any visual animation does not simulate or display rolling or spinning reels.

(4) Manufacturers of dispensers must manufacture each dispenser in such a manner that any stacking column is adjustable for varying lengths of break-open bingo tickets, instant bingo tickets, or pull-tab bingo games. As an option, a dispenser may use replaceable stacking columns that accommodate varying lengths of break-open bingo tickets, instant bingo tickets, or pull-tab bingo games. The dispenser must be adjustable for varying thicknesses of break-open tickets, instant bingo tickets, or pull-tab bingo games.

(5) If the Commission detects or discovers any problem with the dispenser that affects the security and/or integrity of the break-open bingo ticket, an instant bingo ticket, or a pull-tab bingo game or dispenser, the Commission may direct the manufacturer, distributor, or conductor to cease the sale, lease, or use of the dispenser, as applicable. The Commission may require the manufacturer to correct the defect, malfunction, or problem or recall the dispenser immediately upon notification by the Commission to the manufacturer. If the manufacturer, distributor, or conductor detects or discovers any defect, malfunction, or problem with the dispenser, the manufacturer, distributor, or conductor, as applicable, shall immediately remove the dispenser from use or play and immediately notify the Commission of such action.

(c) Conductor requirements.

(1) A conductor who has purchased or leased a dispenser may not allow another conductor to use such dispenser unless and until the former conductor has removed its break-open bingo tickets, instant bingo tickets, pull-tab bingo games and instant bingo cards from the dispenser.

(2) Each conductor who uses a dispenser at its bingo occasion shall affix to the dispenser an identification label which displays the conductor's name and Texas taxpayer identification number.

(3) The keys to open the locked doors to the dispenser's ticket dispensing area and coin and/or cash box must be in the possession and control of the operator in charge of the occasion, or someone designated by the operator. The operator in charge or the person designated shall present the keys to a Commission representative immediately upon request. The operator in charge shall be responsible for ensuring that the person so designated shall have the keys available at all times during the occasion.

(4) All break-open bingo tickets, instant bingo tickets, pull-tab bingo games or instant bingo cards in any one column or sleeve must have the same serial number, color description, and must be of the same kind and type.

(d) Inspection. The Commission or the Commission's authorized representative(s) may examine and inspect any individual pull-tab or instant bingo dispenser. Such examination and inspection includes immediate access to the dispenser and unlimited inspection of all parts of the dispenser.

(e) Records.

(1) All records, reports, and receipts relating to the pull-tab or instant bingo dispenser sales, maintenance, and repairs must be retained by the conductor on the premises where the conductor is licensed to conduct bingo or at a location designated in writing by the conductor for a period of four years for examination by the Commission. Any change in the designated location must be submitted to the Commission in writing at least ten days prior to the change.

(2) Manufacturers and distributors must provide and maintain for a period of four years the following information on each invoice or other document used in connection with a sale or lease, as applicable:

- (A) date of sale or lease;
- (B) quantity sold or leased;
- (C) cost per dispenser;
- (D) model and serial number of each dispenser;
- (E) name and address of the purchaser or lessee; and
- (F) Texas taxpayer identification number of the purchaser or lessee.

(f) Restrictions. No licensee may display, use or otherwise furnish a dispenser which has in any manner been marked, defaced, tampered with, or which otherwise may deceive the public or affect a person's chances of winning.

§402.324. *Card-Minding Systems--Approval of Card-Minding Systems.*

(a) A card-minding system must not be sold, leased, or otherwise furnished to any person for use in the conduct of bingo until it has first been tested and certified as compliant with the standards in this subchapter by an independent testing facility or the Commission's own testing lab. The card-minding system shall be submitted for testing at the manufacturer's expense. The testing facility should be required to ensure that the card-minding system conforms to the restrictions and

conditions set forth in these standards. The approval process is set forth in subsections (b) - (f) of this section.

(b) Utilizing an Independent Testing Facility:

(1) Manufacturer submits system to lab with letter outlining the card-minding system to be tested for approval in Texas;

(2) Lab performs validation testing to ensure compliance with the Commission's requirements. Testing may include functional testing and/or modification testing, if applicable;

(3) Lab creates certification report which includes file verification methodology, software/firmware signatures (checksum) and testing results;

(4) Manufacturer submits approval request with certification report to the Commission;

(5) Once the Commission has received the certification report from the independent testing facility, the Commission may request a demonstration of the product; and

(6) The Commission shall either approve or disapprove the submission based on the test results and inform the manufacturer and lab of the results within thirty (30) calendar days of receipt of the test results.

(c) Utilizing the Commission's testing lab:

(1) Manufacturer has card-minding system ready for submission;

(2) Manufacturer submits system to Commission with letter outlining system specifics;

(3) Testing lab may request a demonstration of the system prior to testing;

(4) Lab performs validation testing to ensure compliance with Commission's requirements. This testing may include functional testing and/or modification testing, if applicable;

(5) Lab communicates with manufacturer on any questions arising from testing;

(6) Lab recommends approval or denial of the system within forty-five (45) calendar days from submission date; and

(7) The Commission issues an approval or denial letter to the manufacturer which includes software/firmware signatures (checksum).

(d) After the Commission approves a card-minding system, the manufacturer shall notify the Commission of the date, time and place of the first installation of the system so that a Commission representative may observe and review the card-minding system.

(e) Checksum or digital signatures will be obtained from the proprietary software submitted for testing to be used to verify that proprietary software at playing locations is the same as the software that was approved.

(f) The decision by the director to approve or disapprove any component of a card-minding system is administratively final.

(g) The manufacturer shall be responsible for the costs related to the testing of card-minding systems to include the fees charged by independent testing facilities or the Commission testing lab.

(h) The manufacturer shall be responsible for the travel costs incurred by the Commission to audit the initial installation of a card-minding system in the state of Texas.

(i) All card-minding system approvals issued by the Commission prior to the effective date of this section remain valid. Any subsequent changes or modifications to an approved system require compliance with this section.

§402.325. Card-Minding Systems--Licensed Authorized Organization Requirements.

(a) The licensed authorized organization must ensure the site system is accessible to the Commission via remote connection at all times.

(b) The licensed authorized organization must ensure that the receipts for its bingo occasion display the correct licensed authorized organization name, location name, time, and date.

(c) The licensed authorized organization must ensure that the occasion report displays the correct licensed authorized organization name, location name, date of the bingo occasion, and all other required information contained in §402.321(13) of this chapter.

(d) The licensed authorized organization must treat void transactions resulting in a cash refund in the following manner:

(1) The player must present the original receipt which was issued at the time of the purchase of the card-minding device before the purchase can be voided;

(2) The word "void" shall be clearly printed on the receipt issued once the void has occurred;

(3) The player must write his or her name, signature, and amount of refund on the back of the void receipt before a partial or full refund may be issued (unless the player refuses or is unable to provide the required information, in which case the licensed authorized organization shall so note on the back of the receipt); and

(4) All voided receipts must be attached to the bingo occasion report printed at the end of each bingo occasion and maintained with the records.

(e) If presales are made and the associated cards are not purchased, loaded, and enabled for play on a card-minding device, then those presales must be voided by the start of the second game of the occasion.

(f) Each licensed authorized organization must record all sales of electronic bingo cards and card-minding devices on the card-minding system point of sale station. Disposable cards, instant bingo pull-tab tickets and event bingo pull-tab tickets and all bingo prizes awarded, including both regular bingo and pull-tab bingo, may be recorded on the card-minding point of sale station. However, if a licensed authorized organization utilizes a customer account on a card-minding system, that organization must record all sales of disposable cards, instant bingo pull-tab tickets and event bingo pull-tab tickets and all bingo prizes awarded, including both regular bingo and pull-tab bingo, on the card-minding system point of sale. Disposable cards, instant bingo pull-tab tickets and event bingo pull-tab tickets sales and bingo prizes awarded may be recorded at the end of the occasion.

(g) Each licensed authorized organization purchasing, leasing, or otherwise utilizing a card-minding system must maintain a log or other records showing the following:

(1) the date the card-minding system was installed or removed; and

(2) the name and license number of the distributor from which the card-minding system was purchased, leased or otherwise obtained.

(h) If multiple licensed authorized organizations hold an interest in a card-minding system, a single record identifying each licensed authorized organization should be retained on the premises where the card-minding system is utilized.

(i) The licensed authorized organization must retain all records, reports, and receipts relating to the card-minding system's transactions, maintenance, and repairs for a period of 48 months for examination by the Commission. Such records shall be kept on the premises where the licensed authorized organization is licensed to conduct bingo, or at a location designated in writing to the Commission by the licensed authorized organization.

(j) All card-minding devices must be loaded or enabled for play on the premises where the game will be played.

(k) After the last game of the bingo occasion has been completed, the licensed authorized organization shall print an occasion report from the site system.

(l) The bingo player must be physically present during the game on the premises where the game is actually conducted.

(m) A licensed authorized organization may not add to or remove any software program related to the conduct of bingo to an approved card-minding system. If the Commission detects or discovers a card-minding system at a bingo premises that is using components or software that were not approved by the Commission as required, the card-minding system is deemed to have an unauthorized modification.

(n) No licensed authorized organization may display, use, or otherwise furnish a card-minding device which has in any manner been tampered with, or which otherwise may deceive the player or affect a player's chances of winning.

(o) At the time a player establishes a customer account, the licensed authorized organization must notify the player that any unclaimed balances in the customer account at the end of the occasion will be retained by the organization. Information regarding the retention by the licensed authorized organization of the unclaimed balances in a customer account at the end of an occasion must be included in the information the organization must provide to its players pursuant to §402.200 of this chapter. Any unclaimed balances retained by the organization under this subsection shall be considered to be funds derived from the conduct of bingo, deposited into the organization's bingo account, and reported as other income. However, any unclaimed balances deposited into the organization's bingo account are restricted to the organization's charitable purposes, as provided by Texas Occupations Code §2001.453(2) and §2001.454.

(1) For a licensed authorized organization that conducts bingo through a unit created and operated under Texas Occupations Code Chapter 2001, Subchapter I-1, any balances on a customer account may be used by the customer for any bingo occasion conducted on the same day of any of the organizations in the unit on the premises specified in their bingo licenses.

(2) For a licensed authorized organization that conducts bingo on consecutive occasions within one 24-hour period, any balances on a customer account may be used by the customer during either occasion.

(p) A licensed authorized organization must comply with the requirements in §402.200(b)(6) of this chapter regarding all bingo equipment malfunctions, including customer accounts on a card-minding system.

(q) Each licensed authorized organization must ensure that the card-minding system records the actual selling price of each card-minding device and electronic bingo card sold.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. LICENSING REQUIREMENTS

16 TAC §§402.400, 402.404, 402.407, 402.411, 402.420, 402.424, 402.451

The following rule amendments are adopted under: (1) §2001.054 of the Occupations Code, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and (2) §467.102 of the Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

§402.400. *General Licensing Provisions.*

(a) Any person who wants to engage in a bingo related activity shall apply to the Commission for a license. The application must be on a form prescribed by the Commission and all required information must be legible, correct and complete. An application is incomplete if the following information is not provided:

- (1) All information requested on the application form and applicable schedules;
- (2) All supplemental information requested during the pre-licensing investigation period;
- (3) The applicable license fee;
- (4) The required bond or other security, if applicable; and
- (5) Authorized signatures as required by the Commission.

(b) Information submitted by an applicant in the form of an applicable schedule shall be considered to be part of the application. Supplemental information should be submitted on a form prescribed by the Commission and all information required must be correct and complete.

(c) Information submitted by an applicant in a format other than an applicable schedule must be legible and must include the following:

- (1) the name and address of the organization as it appears on the application;
- (2) the Texas taxpayer identification number; or, if sole owner, the individual's social security number;
- (3) a statement identifying the information submitted;
- (4) the signature, printed name and telephone number of the person authorized to submit the information; and

(5) all supplemental information requested during the pre-licensing investigation period.

(d) Within 21 calendar days after the Commission has received an original application, the Commission will review the application and notify the applicant if additional information is required.

(e) If an application is incomplete, the Commission will notify the applicant. The applicant must provide the requested information within 21 calendar days of such notification. Failure to provide the requested information within the 21 calendar day time line may result in the denial of the license application.

(f) Prior to the issuance of a license, the Commission may require an applicant to attend a pre-licensing interview. The Commission will identify the person or persons for the applicant who must attend the pre-licensing interview. The pre-licensing interview will consist of, at a minimum, the following:

- (1) review of the Bingo Enabling Act;
- (2) review of the Charitable Bingo Administrative Rules;
- (3) licensee responsibilities;
- (4) process pertaining to the different types of license application;
- (5) bookkeeping and record keeping requirements as it involves bingo; and
- (6) a statement from the person or persons attending the pre-licensing interview that they are aware of and will comply with the provisions of the Bingo Enabling Act and Charitable Bingo Administrative Rules.

(g) The Commission may deny an application based on information obtained that indicates non-compliance with the provisions of the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules in connection with a pre-licensing interview and/or location inspection.

(h) Each licensed authorized organization and organization issued a temporary authorization is required to file timely and complete required reports, as applicable to the type of current license held.

(i) A license applicant may withdraw an application at any time prior to the approval or denial of the application. Once the written request for withdrawal is received by the Commission, all processing of the application will cease and the withdrawal is considered final. License fees submitted with an application that is subsequently withdrawn are not eligible for refund. If the organization wants to reapply for a license, a complete new application and new license fee are required.

(j) Voluntary surrender of a license.

(1) A licensee may surrender its license for cancellation provided it has completed and submitted to the Commission the prescribed form.

(2) If surrendering a license to conduct bingo, the prescribed form must be signed by the bingo chairperson.

(3) If surrendering any other type of license, the prescribed form must be signed by the sole owner, or by two officers, directors, limited liability corporation members, or partners of the organization.

(4) The cancellation of the license shall be final and effective upon receipt by the Charitable Bingo Operations Division of a copy of the resolution, or other authoritative statement of the licensee, requesting cancellation of the license and providing a requested effective date.

(A) The cancellation is effective as of the date identified in the letter provided that the date has not passed.

(B) If no date is identified in the letter, or the date has passed, the effective date shall be the date the Commission receives the letter.

(5) Notwithstanding cancellation of the license, the licensee must file all reports, returns and remittances required by law.

(6) The licensee shall surrender the license to the Commission on the effective date of the surrender.

(7) The Commission will send the licensee a letter confirming the surrender and resulting cancellation of the license.

(k) Administrative Hold. A licensed authorized organization or commercial lessor, other than an association of licensed authorized organizations, may request to place its regular license in administrative hold, but only at the time of license renewal, as provided in §402.411 of this Chapter.

(1) The placement of a license in administrative hold shall be effective on the first day of the license period for which the administrative hold is requested.

(2) The licensee shall submit the license in administrative hold, or a certified statement that the license is not available, to the Commission no later than seven (7) calendar days after the effective date of the placement of the license in administrative hold.

(3) Once the license has been placed in administrative hold, all bingo activity (i.e. leasing, conducting bingo) must cease until the licensee files an amendment and the amended license is issued by the Commission and received by the licensee. A licensed authorized organization with its regular license in administrative hold may not conduct bingo under a temporary license.

(4) Notwithstanding placement of the license in administrative hold, the licensee must file with the Commission:

(A) all applicable reports, returns and remittances required by law; and

(B) a timely and complete application for renewal of the license each time the license is ripe for renewal.

(5) If at the time of license renewal a licensed authorized organization does not have a designated playing location, that license will be placed in administrative hold.

(6) Except for licensed commercial lessors subject to §2001.152(b) of the Occupation Code, a license may not be in administrative hold for more than twelve (12) consecutive quarters.

(7) The fee for a license in administrative hold is set in §402.404(d)(3) of this Chapter.

(8) A license may be removed from administrative hold at any time during a license period. To remove a license from administrative hold, the licensee must file a license amendment application as provided in §2001.306 of the Occupations Code and §402.410 of this Chapter.

(1) Each person required to be named in an application for license under the Bingo Enabling Act other than a temporary license will have a criminal record history inquiry at state and/or national level conducted. Such inquiry may require submission of fingerprint card(s). FBI fingerprint cards are required for an individual listed in an application for a distributor or manufacturer's license and for an individual listed on an application who is not a Texas resident. A criminal record history inquiry at the state and/or national level may be conducted on

the operator and officer or director required to be named in an application for a non-annual temporary license under the Bingo Enabling Act.

(m) Representation; personal receipt of documents. For purposes of this subsection, an individual shall be recognized by the Commission as an applicant or licensee's authorized representative only if the applicant or licensee has filed with the Commission a form prescribed by the Commission identifying the individuals currently listed as directors, officers, or operators, or if they are identified on the completed Authorization of Representation for Bingo Licenses form. A person is not an authorized representative of the applicant or licensee unless specifically named on a form prescribed by the Commission as part of the application, or in the Authorization of Representation for Bingo Licenses form that is on file with the Commission. Only those persons specifically named on a form prescribed by the Commission or in the Authorization of Representation for Bingo Licenses form as an authorized representative shall be recognized by the Commission concerning any matter relating to the licensing process or license. Only the applicant or licensee or its authorized representative may receive from the Commission documents relating to the application or license without being required to submit a request under the Public Information Act.

(n) Eligibility determination pending identification of playing location, days, times, and starting date.

(1) An organization may submit an original application for a license to conduct bingo without including information on intended playing location, days, times, and starting date if requesting a determination of eligibility status.

(2) All other information requested on the application and the accompanying supplements must be complete and in compliance with all other requirements of the Act and Rules before the Commission determines eligibility status.

(3) An organization requesting a determination of eligibility status must submit with its application a non-refundable processing fee in an amount equal to a Class A regular license fee, which will be applied towards the organization's license fee should the organization become licensed.

(4) Upon a determination that the requirements in paragraph (2) and (3) of this subsection have been met, the Commission will provide to the authorized organization written notice of the eligibility status of the applicant.

(5) Within 180 calendar days of the date the Commission provides notice of the eligibility status of an applicant, the authorized organization must inform the Commission on a form prescribed by the Commission of the intended playing location, days, times, and starting date of the occasions. If the authorized organization fails to provide the information to the Commission within 180 calendar days, the Commission will proceed with denial of the application.

(6) After review of the applicant's submitted intended playing location, days, times, starting date, and upon request by the applicant, the Commission may issue temporary authorization to conduct bingo for a period of 60 calendar days if the Commission determines that the intended playing location, days, times, and starting date comply with the Bingo Enabling Act.

(7) In order to receive a regular license to conduct bingo, an authorized organization that has received an eligibility determination and informed the Commission of its intended playing location, days, times, and starting date of the occasions must also submit the required bond or security, any remainder of the appropriate license fee, a Texas Request for Licensure for Eligible Organization form, certified meeting minutes stating that the organization voted to conduct bingo at the

licensed location, and confirmation of the accuracy of information provided on the application to conduct bingo. The Commission will notify the applicant of the required license fee and bond amounts within 21 calendar days of receipt of the organization's intended playing location, days, times, and starting date.

§402.404. License and Registry Fees.

(a) Definitions.

(1) Escrow Account--An account established with the Commission by an authorized organization in which funds may be deposited for the advance payment of temporary licenses and license amendments.

(2) License period--For purposes of Texas Occupations Code §2001.104 and §2001.158, the term "license period" means the four full calendar quarters immediately preceding the license end date.

(3) Regular License Fee Amount:

(A) The annual fee for a license to conduct bingo shall be as follows:

(i) Class A (annual gross receipts of \$25,000 or less) - \$132;

(ii) Class B (annual gross receipts of more than \$25,000 but not more than \$50,000) - \$264;

(iii) Class C (annual gross receipts of more than \$50,000 but not more than \$75,000) - \$396;

(iv) Class D (annual gross receipts of more than \$75,000 but not more than \$100,000) - \$528;

(v) Class E (annual gross receipts of more than \$100,000 but not more than \$150,000) - \$792;

(vi) Class F (annual gross receipts of more than \$150,000 but not more than \$200,000) - \$1,188;

(vii) Class G (annual gross receipts of more than \$200,000 but not more than \$250,000) - \$1,584;

(viii) Class H (annual gross receipts of more than \$250,000 but not more than \$300,000) - \$1,980;

(ix) Class I (annual gross receipts of more than \$300,000 but not more than \$400,000) - \$2,640;

(x) Class J (annual gross receipts of more than \$400,000) - \$3,300.

(B) The annual fee for a commercial lessor license shall be as follows:

(i) Class A (annual gross rentals from licensed organizations of not more than \$12,000) - \$132;

(ii) Class B (annual gross rentals from licensed organizations of more than \$12,000 but not more than \$20,000) - \$264;

(iii) Class C (annual gross rentals from licensed organizations of more than \$20,000 but not more than \$30,000) - \$396;

(iv) Class D (annual gross rentals from licensed organizations of more than \$30,000 but not more than \$40,000) - \$528;

(v) Class E (annual gross rentals from licensed organizations of more than \$40,000 but not more than \$50,000) - \$792;

(vi) Class F (annual gross rentals from licensed organizations of more than \$50,000 but not more than \$60,000) - \$1,188;

(vii) Class G (annual gross rentals from licensed organizations of more than \$60,000 but not more than \$70,000) - \$1,584;

(viii) Class H (annual gross rentals from licensed organizations of more than \$70,000 but not more than \$80,000) - \$1,980;

(ix) Class I (annual gross rentals from licensed organizations of more than \$80,000 but not more than \$90,000) - \$2,640;

(x) Class J (annual gross rentals from licensed organizations of more than \$90,000) - \$3,300.

(C) Manufacturer's License. The annual fee for a manufacturer's license shall be \$3,000.

(D) Distributor's License. The annual fee for a distributor's license shall be \$1,000.

(b) Original License Application.

(1) License to Conduct Charitable Bingo.

(A) An initial license fee for an original license to conduct charitable bingo or an original license to lease bingo premises submitted by an authorized organization that does not have a license issued under the Bingo Enabling Act, must be paid from the organization's general fund bank account.

(B) An applicant may be required to submit additional license fees if the estimated gross receipts used to calculate the license fee are not reasonable when compared to gross receipts of other organizations with the same number of occasions conducting bingo at the same bingo premises. If no such organizations exist, the Charitable Bingo Operations Division may use gross receipts amounts from organizations with the same number of occasions conducting bingo at similarly situated bingo premises. These amounts are used to establish the gross receipts amount upon which the applicant's license fee is based and must be submitted.

(2) Commercial License to Lease Bingo Premises.

(A) License fees for an original license to lease bingo premises submitted by an authorized organization licensed to conduct bingo must be paid from the organization's bingo bank account.

(B) An applicant may be required to submit additional license fees if the estimated gross rental income used to calculate the license fee is not reasonable when compared to the gross rental income at similarly situated bingo premises. These comparative amounts are used to establish the gross rental income amount upon which the applicant's license fee is based and must be submitted.

(3) Understating the anticipated gross receipts or rental income from a licensed activity for any purpose by an applicant or licensed entity may be grounds for administrative disciplinary action against the licensee.

(c) Changes Within Six Months of a Licensed Authorized Organization's License Term.

(1) An organization shall re-estimate its annual gross receipts and submit any balance due in license fee amount if there is an increase in the number of bingo occasions conducted within six months of the issuance of the original license to conduct bingo.

(2) An organization shall re-estimate its annual gross rental income and submit any balance due in license fee amount if there is an increase within six months of the issuance of the original lessor license in:

(A) the number of organizations conducting bingo at a licensed location; and

(B) the number of bingo occasions conducted at the licensed location.

(d) License Renewal Fee.

(1) The amount of license fee to be paid upon renewal of a license to conduct bingo or license to lease bingo premises is the recalculated license fee amount calculated for the preceding license period.

(2) If the recalculation of the license fee amount for the previous license period reflects an underpayment of the license fee amount for that license period, the incremental difference must be submitted by the organization within 30 days of the license expiration date and before the license may be renewed.

(3) Upon written request by an organization to renew its license to conduct bingo or license to lease bingo premises that is in or going in administrative hold, the organization shall pay a Class A license renewal fee, plus any amount due under paragraph (2) of this subsection, in lieu of the recalculated fee amount from the preceding license period.

(4) The Commission may require an amount of license fee in addition to the recalculated fee at renewal if there is a change in:

(A) playing location;

(B) rental amount per occasion; or

(C) increase in the number of occasions bingo is conducted.

(5) If an organization requests its license be placed in administrative hold upon the renewal of the license and submits the requisite fee as set in paragraph (3) of this subsection, the Commission may require an organization to submit an additional license fee when it files an application to amend a license to conduct charitable bingo if the organization amends its license to begin conducting bingo within the first six months of the license term.

(6) If a commercial lessor or a licensed authorized organization which leases bingo premises requests its license be placed in administrative hold upon the renewal of its lessor license and submits the requisite fee as set in paragraph (3) of this subsection, the Commission may require the commercial lessor or licensed authorized organization to submit an additional license fee when it files the application to amend a commercial license to lease bingo premises if the commercial lessor or licensed authorized organization amends its license to begin leasing bingo premises within the first six months of the license term.

(e) Two-Year License Fee Payments. An applicant for a license issued under the Bingo Enabling Act that is effective for two years must pay an amount equal to two times the amount of the annual license fee, as set in §402.404(a)(3).

(f) Regular License Fee Recalculation.

(1) For the purpose of determining the license fee recalculation for a license to conduct bingo or license to lease bingo premises, the annual gross receipts or gross rental income, as applicable, shall be based on the four consecutive quarterly returns due immediately prior to the license expiration date.

(2) For the purposes of determining the license fee recalculation for a two year license to conduct bingo or license to lease bingo premises, each year of the license period shall be recalculated separately. The final recalculated fee will be the total of the yearly license fees. The annual gross receipts or gross rental income, as applicable, shall be based on the four consecutive quarterly returns due immediately prior to the first year period and the four consecutive quarterly returns due immediately prior to the license expiration date of the second year period.

(3) For accounting units, gross receipts used to recalculate the license fee apportioned to a unit member will be calculated by dividing the unit's gross receipts by the total number of members during the quarter unless the accounting unit bases its distribution of proceeds on the number of occasions.

(4) For accounting units who base their distribution of proceeds on the number of occasions a member conducts, the gross receipts used to recalculate the license fee apportioned to a unit member will be calculated by dividing the unit's gross receipts by the total number of occasions conducted by all unit members and then multiplying by the number of occasions reported by the unit member.

(5) If a quarterly return is due less than 50 days prior to a license expiration, the gross receipts or gross rental income reported on that return will not be available to be used to calculate the annual gross receipts or gross rental income. Instead, the gross receipts or gross rental income reported on the four immediately preceding quarterly returns, as applicable, will be used to recalculate the organization's license fee.

(6) If an organization fails to file a report for one or more quarter(s) of the license period, or if there are not four quarters available for any other reason, the Commission shall average the quarterly gross receipts or gross rental income for the quarter(s) reported to determine the organization's license fee.

(7) License no longer exists.

(A) Notwithstanding the fact that an organization conducted bingo under a license that ceased to exist for whatever reason, the organization must submit the recalculated license fee for the period that the organization conducted bingo and collected gross receipts.

(B) Notwithstanding the fact that an organization which leased bingo premises under a license that ceased to exist for whatever reason, the organization must submit the recalculated license fee for the period that the organization leased the premises and collected gross rental income.

(C) If an organization ceases to be licensed for whatever reason, all gross receipts or gross rental income collected (from the period after the last quarterly return used to recalculate the license fee for the prior year) is used to recalculate the final license fee due. If the organization fails to file a return for any required period(s), an estimated return will be used. The organization shall submit any balance due after license fee recalculation.

(8) The Commission may recalculate license fees for up to four consecutive immediately preceding license periods if a change in an organization's reported gross receipts or gross rental income occurs as a result of an audit, or if the original recalculation was determined by using estimated gross receipts or gross rental income.

(9) If there is a change in an organization's reported gross receipts or gross rental income, the organization may submit a written request to the Charitable Bingo Operations Division to recalculate its license fees for up to four immediately preceding license periods.

(10) If an organization issued a license that is effective for two years ceases to be licensed prior to conducting bingo in a quarter used to calculate the second year fee, a Class A license fee will apply for the second year of the license for the purposes of recalculating the license fee.

(g) Overpayment of License Fee.

(1) An overpayment of a bingo conductor's or commercial lessor's annual license fee may occur either through a recalculation of the license fee pursuant to subsection (f) of this section, or if a licensee

or accounting unit mistakenly submits more money than is actually required for the license fee(s). An overpayment of a manufacturer's or distributor's annual license fee occurs if a licensee mistakenly submits more money than is actually required for the license fee(s). The Commission will determine whether an overpayment has occurred on a case by case basis.

(2) Upon a determination that an overpayment of an annual license fee has occurred, the Charitable Bingo Operations Division shall credit the overpayment to the licensee. Overpayments credited to a licensee may be used for the licensee's outstanding bingo liabilities, including subsequent license fees, but the credits must be used within four years of the latest date on which the annual license fee was due. Overpayments credited to a licensee remain eligible for refund under subsection (h) of this section until the credits are used or the four year refund period expires, whichever comes first.

(3) Overpayments of annual license fees must either be used as credit or claimed for refund within four years of the latest date on which the annual license fees were due. If a licensee fails to use the credits or request a refund within this time period, the overpayments will be retained by the Commission.

(4) All regular license fee overpayments submitted by an accounting unit for a unit member are only eligible to be credited or refunded to that unit member.

(h) Refunds.

(1) Except as provided by this subsection, regular license fees submitted to the Commission are not eligible for refund.

(2) A current or former licensee that submits an overpayment of a regular license fee may be eligible to receive a refund of that overpayment, provided that the licensee or former licensee:

(A) submits a complete written request for a refund to the Commission within four years of the latest date the regular license fees were due;

(B) does not have any other outstanding bingo liabilities to the State; and

(C) if applicable, files all necessary quarterly reports.

(3) Upon the receipt and review of a timely and sufficient refund request, the Commission may either deny the refund request or certify to the Comptroller of Public Accounts that a refund is warranted. Pursuant to Government Code §403.077, if the Commission certifies to the Comptroller of Public Accounts that a refund is warranted, the ultimate decision on whether to grant the refund will still be made by the Comptroller of Public Accounts.

(i) Transfer of Commercial License to Lease Bingo Premises.

(1) All gross rental income collected in connection with a license to lease bingo premises that has been transferred during the term of the license shall be used to recalculate the license fee.

(2) A license fee credit in connection with a license to lease bingo premises that was transferred during the term of the license shall be credited to the current license holder at the time of license renewal.

(3) A license fee balance due for a license to lease bingo premises that was transferred during the term of the license shall be the liability of the current license holder at the time of license renewal.

(j) Escrow Accounts.

(1) An authorized organization may submit funds to the Commission to be placed in an escrow account and used for future temporary license fees or license amendment fees. However, any funds

placed in, or otherwise credited to, an escrow account are not eligible for refund and must be used by the end of the licensee's subsequent license period. If a licensed authorized organization fails to use escrow account funds within this time period, the funds will be retained by the Commission.

(2) An accounting unit may submit funds to be placed in a unit member's escrow account and used for that member's future temporary license fees or license amendment fees. At the time of submission of the funds, the accounting unit must designate in writing the unit member's escrow account in which the funds will be placed. Funds placed in a unit member's escrow account are not eligible for refund and may not be transferred to another unit member's escrow account or otherwise credited to another unit member.

(k) Temporary Authorization to Conduct Bingo.

(1) The amount of gross receipts collected in connection with a temporary authorization is used to recalculate the regular license fee.

(2) An organization conducting bingo pursuant to a temporary authorization must comply with the same statutory and administrative rule requirements, annual gross receipts fee schedule, and quarterly return filing requirements as an organization which has a regular license to conduct bingo.

(3) If an organization conducting bingo pursuant to a temporary authorization does not become licensed to conduct bingo, the fee for the temporary authorization will be determined by the fee schedule for a license to conduct bingo set out in subsection (a)(3)(A) of this section.

(l) Registry of Approved Bingo Workers.

(1) A fee of \$25 must accompany each Texas Application for Registry of Approved Bingo Workers, and each application to renew listing on the registry, submitted to the Commission. The Commission will not consider or act upon an application until the requisite fee is paid.

(2) Except as authorized by the Charitable Bingo Operations Director, or their designee, an application to renew listing on the registry received by the Commission more than 60 days prior to the expiration date of the current registry listing will be returned unprocessed by the Commission to the sender.

§402.407. Unit Manager.

(a) Notification.

(1) An individual shall not provide services as a unit manager to licensed authorized organizations that have formed a unit until the following occurs:

(A) the Commission receives the unit accounting agreement executed by all members of the unit with the name of the unit manager designated therein;

(B) the individual holds a unit manager license issued by the Commission;

(C) the individual posts a bond or security, for each unit, as prescribed by §402.603 of this chapter; and

(D) the individual provides information to the Commission relating to the location where the unit manager services will be performed and where the records will be maintained.

(2) A unit manager shall provide written notification to the Commission of any change in the information in the unit manager's most recent application for a unit manager license or renewal. The unit

manager shall notify the Commission of the change in the information not later than the 15th day after the date of the change.

(b) Annual License Fee for a Unit Manager. The non refundable annual license fee for a unit manager may not exceed \$250.00.

§402.411. License Renewal.

(a) Any license issued under the Bingo Enabling Act expires one calendar year or two calendar years from the first date of the license period, as specified on the license.

(b) In order to renew a license issued under the Bingo Enabling Act, a licensee must timely file an application for renewal with the Commission. The renewal application must be on a form prescribed by the Commission. The Commission will not approve a renewal application until the application is complete and the licensee submits the requisite fee pursuant to §402.404 of this title (relating to License and Registry Fees). A licensee is solely responsible for the timely filing of an application for renewal of its regular license.

(c) The Commission may notify licensees regarding the expiration of their license(s) and the potential for renewal. Failure of the licensee to receive the renewal notice(s) mailed by the Commission is not a mitigating circumstance for untimely filing of a renewal application.

(d) To be timely filed:

(1) the renewal application and payment of the estimated license fee must be received by the Commission no later than the license expiration date; or

(2) the renewal application's envelope postmarked date must clearly show a date that is no later than the license expiration date, unless the expiration date is a Saturday, Sunday, or legal holiday, in which event the application is due the next day which is not a Saturday, Sunday, or legal holiday; or

(3) an application bearing no legible postmark, postal meter date, or date of delivery to the common carrier shall be considered to have been sent seven calendar days before receipt by the Agency, or on the date of the document if the document date is less than seven days earlier than the date of receipt.

(e) Notwithstanding subsection (b) of this section, if a renewal application is not timely filed, a licensee may renew their license by filing a complete application for renewal with the Commission and submitting the requisite license fee and late license renewal fee. The late license renewal fee is based on the estimated license fee for the renewal period. Penalty amounts are calculated as follows:
Figure: 16 TAC §402.411(e)

(f) The late license renewal fee is due within 14 calendar days of the date of the written notification by the Commission of the amount due.

(g) The Commission will not issue a temporary license to a licensed authorized organization that files its renewal application late until the Commission receives the late license renewal fee.

(h) The Commission will not issue an amended license to a licensed authorized organization or licensed commercial lessor that files its renewal application late until the Commission receives the late license renewal fee.

(i) A late license renewal fee is not refundable.

(j) License renewal applications received more than 60 days after the license expiration date will be returned unprocessed by the Commission to the sender.

(k) To be complete, an application for renewal must contain all information that is required to be provided in or with the initial license application, as well as any other information required by the Commission.

(1) All information submitted to the Commission must be legible, correct, and complete.

(2) If any information previously submitted to the Commission with the licensee's initial license application or a previous renewal application has not changed since the information was last submitted to the Commission, the renewal applicant need not provide that information again. The applicant must certify on the renewal application that no changes have been made to the specific information since it was last submitted to the Commission.

(l) Unless otherwise provided by law or rule, the general licensing provisions in §402.400 of this title (relating to General Licensing Provisions) shall govern the license renewal process, including the submission and review of the renewal application, as if the renewal application was an initial license application.

(m) Except as authorized by the Charitable Bingo Operations Director, or their designee, license renewal applications received by the Commission more than 60 days prior to the current license expiration date will be returned unprocessed by the Commission to the sender.

§402.420. *Qualifications and Requirements for Conductor's License.* An applicant must provide with its application documentation demonstrating that it meets all qualifications and requirements for a license to conduct bingo based on the type of organization it is. The qualifications, requirements, and necessary documentation for different types of organizations are shown in the chart below.
Figure: 16 TAC §402.420

§402.424. *Amendment of a License by Electronic Mail, Telephone or Facsimile.*

(a) The term "effective date," when used in this section, shall mean the first day that the changes to the day(s) or time(s) bingo is conducted by the organization are to begin.

(b) A licensed authorized organization may change the day(s) or time(s) it conducts bingo by electronic mail, telephone or facsimile provided the organization has sufficient amendment license fee credit. The request should be received no later than noon the business day before the requested effective date of the amended license.

(1) To change by telephone the day(s) or time(s) the organization conducts bingo, an authorized requestor must speak directly to a License and Permit Specialist in the Licensing Services Department of the Charitable Bingo Operations Division, who will verify the caller's authority to request an amendment.

(2) To change by facsimile the day(s) or time(s) the organization conducts bingo, the Commission must receive a complete application at the facsimile number provided on the prescribed application form.

(3) To change by electronic mail the day(s) or time(s) the organization conducts bingo, the Commission must receive a complete application at the bingo service electronic mail address provided on the prescribed application form.

§402.451. *Operating Capital.*

(a) Definitions. The following words or terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Average unit member operating capital--An amount equal to the allowable retained operating capital of the unit divided by the number of unit members.

(2) Bingo account--The bingo checking account, bingo savings account, and petty cash if bingo funds, of a licensed authorized organization or unit.

(3) Quarterly report--The Texas Bingo Quarterly Report.

(4) Retained operating capital limit--The maximum amount of funds that may be retained in the bingo account of a licensed authorized organization or unit, which is equal to the organization's or unit's actual quarterly average bingo expenses, excluding prizes paid, for the preceding license period but does not exceed \$50,000 per organization.

(b) The bingo account balance of a licensed authorized organization, reconciled to include outstanding checks and deposits in transit, on the last day of each calendar quarter may not exceed the total of:

(1) the organization's or unit's retained operating capital limit;

(2) prize fees held in the bingo account to be paid to the Commission; and

(3) net proceeds from the conduct of bingo for the current quarter.

(c) Bingo account funds may be transferred between the bingo checking account, bingo savings account, and petty cash, where applicable. All funds from the bingo checking account, bingo savings account, and petty cash shall be included in the bingo account balance reported on the quarterly report on the last day of each calendar quarter, including funds in transit between the various accounts.

(d) Licensed Authorized Organization's Calculations.

(1) The retained operating capital limit for a licensed authorized organization with a one year license will be calculated based on the quarterly reports for the four (4) calendar quarters immediately preceding the license start date.

(2) The retained operating capital limit for a licensed authorized organization with a two year license will be calculated for each 12-month period of the license.

(3) The retained operating capital limit for a licensed authorized organization submitting the first renewal of its license to conduct bingo will be calculated based on the quarterly reports for the three (3) calendar quarters immediately preceding the license start date.

(4) The retained operating capital limit is effective for the four (4) calendar quarters beginning on the first day of the calendar quarter immediately following the license start date.

(e) Accounting Unit's Calculations.

(1) The retained operating capital limit for an accounting unit will be calculated based on the quarterly reports for the four (4) quarter period beginning October 1 through September 30 of each year.

(2) The retained operating capital limit for an accounting unit is effective from January 1 through December 31 of each year.

(f) A licensed authorized organization's or unit's most recent quarterly report information at the time of the calculation will be used to calculate its retained operating capital limit.

(g) Retained Operating Capital Limits.

(1) The retained operating capital in the bingo account of a licensed authorized organization may not exceed a total of \$50,000 for the first year of licensure.

(2) The retained operating capital in the bingo account of a newly formed unit may not exceed the total of the retained operating capital limits of all the licensed authorized organizations forming the unit.

(3) If a licensed authorized organization joins a unit, the retained operating capital in the unit's bingo account may be increased by an amount that is equal to the average unit member operating capital, not to exceed a total of \$50,000.

(4) If a licensed authorized organization withdraws from a unit and will no longer utilize unit accounting, its retained operating capital limit will be equal to the average unit member operating capital of the unit prior to withdrawal, not to exceed a total of \$50,000.

(5) Upon withdrawal of a unit member, the retained operating capital in the bingo account of a unit must be decreased by an amount that is equal to the average unit member operating capital by the last day of the calendar quarter immediately following the unit member's withdrawal date.

(h) Recalculation of Operating Capital.

(1) A licensed authorized organization or unit that files an original or amended quarterly report for a period used to calculate its retained operating capital limit may submit a written request to the Commission to re-calculate the limit.

(2) A request to re-calculate a retained operating capital limit must include:

(A) the reason for the request identifying the specific quarter that the original or amended quarterly report was filed; and

(B) the signature of the bingo chairperson if the request is submitted by a licensed authorized organization, the unit manager if the unit is managed by a unit manager, or the designated agent if the unit is not managed by a unit manager.

(i) A licensed authorized organization or unit may apply for an increase in its retained operating capital limit.

(j) The failure of a licensed authorized organization or unit to receive notification from the Commission of its retained operating capital limit by the effective date does not relieve the organization or unit from complying with the retained operating capital limit.

(k) All net proceeds in excess of the retained operating capital limit must be disbursed in accordance with the Act and Rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. BOOKS AND RECORDS

16 TAC §§402.500, 402.504, 402.506, 402.511, 402.514

The following rule amendments are adopted under: (1) §2001.054 of the Occupations Code, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and (2) §467.102 of the Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

§402.500. General Records Requirements.

(a) Licensees shall retain for four years all information and records required to be maintained by the Bingo Enabling Act (Texas Occupations Code, Chapter 2001) or the Charitable Bingo Administrative Rules.

(b) Unless otherwise prescribed by Commission rule, a licensee may maintain information in a form determined by the licensee as long as that form includes the information required by the Bingo Enabling Act and the Charitable Bingo Administrative Rules.

(c) Upon request of the Commission, a licensee shall provide any information required to be maintained by the Bingo Enabling Act and the Charitable Bingo Administrative Rules. Except in cases of emergency, the Commission shall provide reasonable advance notice of the specific information and records needed and the time and location at which they must be made available.

§402.504. Debit Card Transactions.

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

(1) ATM card--An automated teller machine card which allows the holder to withdraw money directly from the holder's bank account. An ATM card is ordinarily utilized in conjunction with a PIN selected by the holder.

(2) Check card--Another name for a debit card, a check card may display the logo of the banking institution where the funds supporting the card are held in account.

(3) Debit card--A card which may be used as a means of payment under arrangements which do not provide for the extension of credit to the cardholder. The use of a debit card results in a deduction of the transaction amount directly from the cardholder's bank account maintained at the authorizing banking institution. Debit cards come in two forms commonly known as ATM cards and check cards.

(4) PIN--A personal identification number which is used as a secure or protected password used in conjunction with a debit card. A PIN may sometimes be used as an electronic signature in transactions involving a debit card.

(5) PIN pad--Equipment which may be leased from a vendor and used to identify debit card holders by verifying the authorized PIN submitted during a debit card transaction.

(b) A debit card may be accepted only in place of United States currency or a check drawn on a funded bank account.

(c) Records.

(1) Upon request, a debit card transaction sales receipt must be provided to the purchaser that uses a debit card to buy or use bingo paper/cards, electronic bingo devices or pull tabs. An electronic or hard copy of the debit card transaction sales receipt must be kept by the licensed authorized organization or Unit in order to substantiate compliance with the Bingo Enabling Act and the Charitable Bingo Administrative Rules.

(2) Each licensed authorized organization or unit which accepts payment by debit card must maintain records to substantiate:

(A) the timely deposit of funds derived from debit card transactions into the organization's or unit's bingo account; and

(B) the fees and expenses related to debit card transactions during the calendar quarter in which the debit card transactions occurred.

(3) All debit card transactions must be reported on the quarterly reports covering the time period in which the transactions occurred.

(4) All records relating to debit card transactions must be kept for four years.

§402.506. Disbursement Records Requirements.

(a) The licensed authorized organization or unit shall maintain records to substantiate bingo expenses. Bank statements, cancelled checks and cancelled check images may not be adequate to substantiate bingo expenses.

(b) Examples of records that are acceptable to substantiate bingo expenses for each type of expense are:

(1) Invoices, itemized billing statements, sales receipts, or similar documents that have information about the items purchased or services provided and contain the following details:

(A) the name and contact information of the person or entity selling the goods or providing the service;

(B) an adequate description of goods or services purchased;

(C) the quantity of each product purchased or service received;

(D) the price of each product purchased or service received which may include the pricing information for services provided pursuant to a service agreement;

(E) the total dollar amount billed; and

(F) the date of the transaction.

(2) Written lease agreement between the commercial lessor and the licensed authorized organization or unit stating the amount of rent charged for the use of bingo premises. If there is no written agreement, the organization must support the rental payments with an invoice from the lessor stating location, rental dates, and rental amounts by occasion.

(3) Rent forgiveness letter or lease amendment signed by the commercial lessor stating the amount of any rent forgiven or permanently or temporarily reduced.

(4) Payroll records that include a listing for each employee showing:

(A) primary position worked;

(B) date and occasion number worked (if more than one occasion held on a single day);

(C) total number of hours worked per occasion (if paid hourly);

(D) rate and criteria (hourly, per occasion, etc.);

(E) gross wages;

(F) all taxes and payroll deduction amounts; and

(G) net payroll amount.

(5) Federal and state payroll tax returns, including related deposit slips and receipts or other documentation that the deposits were accepted.

(6) Documentation of the payment of other federal, state, and local taxes, which may include tax returns, 1099's and property tax paid.

(7) Actual or imaged bank statements, deposit slips and cancelled checks or cancelled check images, to the extent available from the financial institution.

(8) Debit card transactions reports.

(9) The purpose, amount and payee for each electronic transfer from the organization's bingo checking account.

(10) A licensed authorized organization or unit shall maintain records to document any expenses, including incidental expenses, for promotions or door prizes, including any advertisements, flyers, game schedules, or documents reflecting any special pricing structures.

(c) The licensed authorized organization or unit shall maintain records to document the allocation method for bingo expenses which are shared by organizations in a hall.

(d) The licensed authorized organization or unit shall maintain records to document the allocation method for expenses that are divided between bingo and non-bingo operations of the organization and the allocation of the expenditure between bingo expense and charitable distribution.

(e) All expenses from the bingo checking account must be listed on a Cash Disbursements Journal on forms provided by the Commission or in another format that shows the information for each check written, electronic fund transfers, bank fees, and cash shortages or overages. If any licensed authorized organized organization maintains its records on a commercially available accounting software package (e.g. Quicken), use of the standard accounting features of the package shall meet the requirements of this section.

(1) A Cash Disbursements Journal shall be maintained on a cash basis and include information for checks written, electronic fund transfers, bank fees and cash shortages or overages that are dated during the calendar quarter.

(2) Cash Disbursement Journal Required Information:

(A) date of check, withdrawal or electronic funds transfer transaction;

(B) check number, transaction number or confirmation number;

(C) name of payee;

(D) amount of expense;

(E) expense category--each expense item shall correspond to the category on the Texas Bingo Quarterly Report; and

(F) totals--Each expense category shall be totaled quarterly and match the information reported to the Commission on the Texas Bingo Quarterly Report. Any changes made on the Texas Bingo Quarterly Report shall be documented on the Cash Disbursements Journal.

(f) A licensed authorized organization or unit shall maintain sufficient funds in the bingo checking account to cover all checks written and electronic fund transfers. Bank fees incurred because the organization fails to maintain sufficient funds in its account to cover expenditures from the bingo account may not be considered a reasonable or necessary expense.

(g) All disbursement records must be complete, accurate, legible, and maintained for four (4) years by the licensed authorized organization.

§402.511. *Required Inventory Records.*

(a) A licensed authorized organization or unit shall maintain a perpetual inventory of:

(1) disposable bingo cards described in subsection (d) of this section; and

(2) pull-tab bingo tickets described in subsection (e) of this section.

(b) Each perpetual inventory shall account for all sold and unsold disposable bingo cards and pull-tab bingo tickets, as well as inventory items designated for destruction.

(c) The licensed authorized organization may be held responsible for the gross receipts, prizes and prize fees associated with missing or unaccounted for disposable bingo cards and pull-tab bingo tickets.

(d) The perpetual inventory of disposable bingo cards shall contain:

(1) organization's or unit's name and taxpayer number;

(2) serial and series number and the color of the paper or border (For UPS pad, use the top sheet for obtaining color, serial and series numbers.);

(3) number of faces (ON) and number of sheets (UP);

(4) number of sheets or UPS pads for each serial and series number remaining after each occasion;

(5) occasion date(s) the paper was used;

(6) number of sheets or packs sold, missing or damaged by date; and

(7) initials of person entering the information per occasion.

(e) The perpetual inventory of pull-tab bingo tickets shall contain:

(1) organization's or unit's name and taxpayer number;

(2) form number;

(3) serial number;

(4) number of tickets per deal;

(5) number of tickets sold, missing, or damaged by occasion date;

(6) number of pull-tab tickets remaining if the deal is closed; and

(7) occasion date(s) the pull-tab tickets were sold.

§402.514. *Electronic Fund Transfers.*

(a) Electronic Fund Transfers. Electronic fund transfers (EFT) refers to the transfer of funds using a computer system, electronic terminal, telephone, mobile phone, or other non-paper based method that may be used for both credit transfers, such as deposits into an account, and debit transfers, such as deposits into an account, and debit transfers, such as payments from an account.

(b) Controls Over Electronic Fund Transfers.

(1) Licensed authorized organizations or units shall use for all EFT transactions the same financial policies, procedures, and controls that govern disbursement by check and the receipt of funds into

the bingo bank account. (See §2001.452 of the Bingo Enabling Act and §402.505 of this chapter (relating to Permissible Expense) and §402.506 of this chapter (relating to Disbursement Records Requirements)).

(2) The licensed authorized organization or unit shall implement the following controls for EFT transactions.

(A) Only authorized person(s) shall be allowed to execute an EFT transaction on behalf of the organization or unit.

(B) The licensed authorized organization or unit shall maintain documentation of approval of changes in the person(s) authorized to execute electronic funds transfers. Documentation may include but is not limited to: meeting minutes, bank account signature cards, or copies of applications to the financial institution to authorize individuals access to perform on-line banking in association with the bingo bank account or unit bank account.

(3) The bingo chairperson, or in the case of an accounting unit, the individual authorized in writing by each unit member's bingo chairperson, and bookkeeper shall review accounting records and bank statements to ensure that only authorized EFTs are executed. Each EFT shall be accounted for when completing monthly bank reconciliations.

(c) Recordkeeping for Electronic Funds Transfers.

(1) EFT receipts into the bingo bank account shall be recorded in the accounting records. At a minimum the organization or unit must record the following information regarding EFT receipts:

(A) payer name;

(B) amount paid;

(C) date paid;

(D) purpose of the funds received; and

(E) the EFT confirmation receipt, if provided.

(2) The organization or unit shall maintain in its accounting records a copy of each EFT payment transaction together with the invoice or billing statement. The following information must be maintained supporting the payment:

(A) payee name;

(B) amount paid;

(C) date paid;

(D) account number from which the transfer is made;

(E) nature of payment;

(F) the name of the person executing the EFT transaction on behalf of the organization or unit; and

(G) the EFT confirmation receipt, if provided.

(3) All records relating to electronic fund transfers into or out of the bingo checking account of a licensed authorized organization or unit must be retained for a period of not less than four years.

(d) Discrepancies or Misapplication of Electronic Fund Transfers. The bingo chairperson or other person authorized to sign on the bingo bank account shall notify the organization's financial institution immediately to report problems or if it is suspected that someone has access to the bingo bank account without authorization.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. PAYMENT OF TAXES, PRIZE FEES AND BONDS

16 TAC §§402.600, 402.602, 402.603

The following rule amendments are adopted under: (1) §2001.054 of the Occupations Code, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and (2) §467.102 of the Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

§402.600. *Bingo Reports and Payments.*

(a) On or before the 25th of the month prior to the end of the calendar quarter, the Commission will mail the "Texas Bingo Conductor's Quarterly Reports", "Texas Lessor Quarterly Reports", and "Manufacturer/Distributor Quarterly Reports and Supplements" to its licensees.

(b) Quarterly reports, supplements, and payments due to be submitted on a date occurring on a Saturday, Sunday, or legal holiday will be due the next business day. The report will be deemed filed when deposited with the United States Postal Service or private mail service, postage or delivery charges paid and the postmark or shipping date indicated on the envelope is the date of filing. For quarterly reports and supplements submitted electronically, the report will be deemed filed as of the date and time sent from the specified e-mail address.

(c) Signature provisions.

(1) For the valid filing of paper quarterly reports and supplements, the bingo chairperson, an officer, director, or bookkeeper must sign the report. By signing a report, the bingo chairperson, officer, director, or bookkeeper declares that the information in the report is true and correct to the best of their knowledge and belief.

(2) For the valid filing of electronic quarterly reports and supplements, the signature will be the email address of the person sending the quarterly report.

(d) Quarterly Report for information relating to the conduct of bingo games.

(1) An authorized organization holding an annual license, temporary license, or a temporary authorization to conduct bingo must file on a form prescribed by the Commission or in an electronic format prescribed by the Commission a quarterly report for financial and statistical information relating to the conduct of bingo games. The report and supplements must be filed with the Commission on or before the 25th day of the month following the end of the calendar quarter even if there were no games conducted during that quarter. Failure to file a required report or supplement by the due date may result in an administrative penalty.

(2) The report and supplements must be filed under oath attesting to the information being true and correct. Each officer and

director is responsible for knowing the contents of the report and supplements. The person signing the report must promptly provide a copy of the report and supplements to such officer and director upon his/her request.

(3) The Commission may deny a renewal application of an authorized organization holding an annual license or revoke a license of an authorized organization holding an annual license if the licensee remits to the Commission two insufficient checks for prize fees within four quarters.

(e) Quarterly report for information relating to the lease of bingo premises.

(1) A commercial lessor holding a license to lease bingo premises must file on a form prescribed by the Commission or in an electronic format prescribed by the Commission a quarterly report stating the rental income received. The report shall also include information regarding property taxes, insurance premiums, and utility expenses which are paid by the lessor, and reimbursed by an authorized organization or unit to the lessor. The report and supplements must be filed with the Commission on or before the 25th day of the month following the end of the calendar quarter regardless of whether income was received. Failure to file a required report or supplement by the due date may result in an administrative penalty.

(2) The report and supplements must be filed under oath attesting to the information being true and correct. Each officer and director is responsible for knowing the contents of the report and supplements. The person signing the report must promptly provide a copy of the report and supplements to such officer and director upon his/her request.

(f) Quarterly report for information relating to a manufacturer or distributor license.

(1) A manufacturer of distributor shall file a report on a form prescribed by the Commission or in an electronic format prescribed by the Commission, reflecting each sale or lease of bingo equipment, and the total sales of cards, sheets, pads and instant bingo to a person or organization in this state or for use in this state.

(2) The report and supplements shall be filed with regard to each calendar quarter and is due on or before the last day of the month following the end of the quarter.

(3) The report and supplements must be filed under oath attesting to the information being true and correct.

(4) The Commission will deny a renewal application or revoke a license of a manufacturer or distributor where the licensee has failed to timely file with the Commission the required reports or supplements three times within four consecutive quarters.

(5) Failure to file a required report or supplement by the due date may result in an administrative penalty.

(g) A manufacturer or distributor shall use the eleven digit taxpayer number on file with the Commission when submitting information relating to the sale or lease of bingo equipment, sales of cards, sheets, pads and instant bingo. If six or more taxpayer numbers are incorrect on the report, the Commission will return the report to the manufacturer or distributor for correction. The licensee has thirty (30) calendar days to correct the taxpayer numbers and return the corrected report to the Commission. If five or less taxpayer numbers are incorrect, the Commission will notify the licensee of the taxpayer numbers that were changed and the correct numbers to be used in the future.

(h) Failure to receive forms. The failure of a licensee to receive forms from the Commission does not relieve the licensee from

the requirement of filing reports and remitting prize fees as applicable on a timely basis.

(i) Incorrect calculation of "Texas Bingo Conductor's Quarterly Report". If the total receipts and total expenses do not total correctly, the Commission will mail the conductor a letter, with a copy of the adjusted report, stating an adjustment has been made to the quarterly report. If the adjusted quarterly report is correct, the licensee will maintain the copy in its file and no further action is required. If the licensee does not agree with the adjusted quarterly report, an amended quarterly report reflecting the correct data must be submitted to the Commission by the licensee.

(j) The licensed authorized organization must resolve or correct quarterly report exceptions within thirty (30) calendar days from the date of notice.

(k) The Commission will deny a renewal application for a license to conduct bingo or a license to lease bingo premises or revoke a license to conduct bingo or a license to lease bingo premises if the licensee has failed to pay timely the prize fee due three times within four consecutive quarters and a final jeopardy determination has been made by the Commission for three of the four consecutive quarters in accordance with Occupations Code §2001.510 and §2001.511.

(l) Extensions.

(1) Filing extension because of natural disaster.

(A) The Director will grant to a licensee who has been identified as a victim of a natural disaster an extension of not more than 90 days to file a quarterly report and supplements or pay prize fees provided the licensee has filed a timely request for an extension. In determining the natural disaster victims, the Commission shall recognize the counties that have been identified by the Office of the Governor or the Comptroller of Public Accounts.

(B) The person owing the quarterly report, supplements, or prize fees must file a written request for an extension at any time before the expiration of five working days after the original due date in order to obtain an extension.

(C) If an extension under this paragraph is granted, interest on the unpaid prize fee does not begin to accrue until the day after the day on which the extension expires, and prize fees and penalties are assessed and determined as though the last day of the extension were the original due date.

(2) Filing extension for reasons other than natural disaster.

(A) The Director may grant an extension of not more than thirty (30) days for the filing of a quarterly report and supplements. Before a request for extension may be granted, a written request setting out the reasons or grounds for an extension and 90% of the prize fees estimated to be due must be received by the Commission postmarked on or before the due date of the quarterly report.

(B) The granting of a request is within the discretion of the Director and the licensee will be notified in five working days of the request of the decision of the Director.

(C) If the request is denied, there will be no penalty assessed if the return is filed and remaining prize fee is paid not later than ten days from the date of the denial of the request of the extension.

(3) A request postmarked after the due date for the filing of a request will not be considered.

(m) Rounding. Quarterly report entries must be rounded to whole dollar amounts, where indicated. To round off amounts to the nearest whole dollar, drop amounts under 50 cents and increase

amounts from 50 - 99 cents to the next dollar. A quarterly report will not be considered inaccurate based on rounding numbers provided that such rounding does not result in more than a \$5.00 variance when all entries are summed up.

§402.602. *Waiver of Penalty, Settlement of Prize Fees, Rental Tax, Penalty and/or Interest.*

(a) The Charitable Bingo Operations Director, for good cause shown, may waive a penalty if a licensee holding a license to conduct bingo or license to lease bingo premises exercised reasonable diligence to comply with Occupations Code, §2001.504. The Charitable Bingo Operations Division will not consider a request for a penalty or interest waiver until the principal related to the specific request is paid in full. To be considered, a written request stating the reason(s) penalty should be waived must be sent to the Charitable Bingo Operations Division within 14 days of the date the quarterly report and prize fees and rental taxes were due.

(1) The Charitable Bingo Operations Division will inform the licensee in writing within three days of the Charitable Bingo Operations Division's decision regarding the penalty waiver request after considering:

(A) Whether the licensee is current in the filing of all reports;

(B) Whether the licensee is current in the payment of all taxes or prize fees due for the last eight consecutive quarters;

(C) Whether a penalty has been waived within the last eight consecutive quarters;

(D) Whether the licensee has a good record of timely filing and paying past returns; and

(E) Whether the licensee has taken the necessary steps to correct the problem for future reporting.

(2) If a licensee has had a penalty waived within the last eight consecutive quarters, the current request will be denied.

(b) If a prize fee or rental tax is owed for an inactive account, the Charitable Bingo Operations Division will not consider a request for a penalty or interest waiver until the principal is paid in full. The Division will notify the inactive account that a prize fee or rental tax is owed and provide the inactive account with any existing documents that support the delinquency determination. The Division may provide such notice and documentation to any officer, director, or business contact listed in the inactive account's most recent filing with the Commission.

(c) Settlement of rental tax, gross receipts tax, prize fee, penalty or interest on an inactive account. The Commission may settle a claim for rental tax, gross receipts tax, prize fee, penalty, or interest if the total cost of collection, as determined by the Commission, would exceed the total amount due.

§402.603. *Bond or Other Security.*

(a) Bond or Other Security Required.

(1) An applicant for a regular license to conduct charitable bingo must submit security consistent with the provisions of this section. A licensed authorized organization must maintain the security until the organization ceases to conduct bingo and the license is relinquished or revoked.

(A) Except as otherwise provided in this section, the security amount for a regular license to conduct charitable bingo is based on the license class. The security amount is:

(i) Class A - \$125.00.

- (ii) Class B - \$325.00.
- (iii) Class C - \$600.00.
- (iv) Class D - \$825.00.
- (v) Class E - \$1,225.00.
- (vi) Class F - \$1,800.00.
- (vii) Class G - \$2,125.00.
- (viii) Class H - \$2,675.00.
- (ix) Class I - \$3,275.00.
- (x) Class J - \$7,000.00

(B) If at any time a licensed authorized organization fails to fully pay its requisite prize fees by the due date and a jeopardy determination becomes final, then the organization's security amount may be calculated at three times its highest quarterly prize fee for the four most recent quarters or for the highest quarter filed if less than four.

(C) If a licensed authorized organization has fully paid all prize fees and associated penalties, if any, prior to a final jeopardy determination for eight (8) consecutive quarters, the amount of the requisite security will be reduced to \$100.00. If at any time an organization paying the reduced security amount fails to fully pay its requisite prize fees and any associated penalties and interest by the due date and a jeopardy determination becomes final, then the Commission may calculate the organization's security amount in accordance with §402.603(a)(1)(A) or (B) of this chapter.

(2) An applicant for a manufacturer's license must submit a cash bond or bond in the amount of \$10,000 issued by a surety company chartered or authorized to do business in this state. A licensed manufacturer must maintain the bond until the license is relinquished or revoked.

(3) An applicant for a unit manager license must submit security consistent with the provisions of this section. A licensed unit manager must maintain the security until the license is relinquished or revoked.

(A) Except as otherwise provided in this section, the unit manager's security amount shall be the aggregate of each unit member organization's security amount, as set in §402.603(a)(1) of this chapter.

(B) If at any time a unit manager fails to fully pay the unit's requisite prize fees by the due date and a jeopardy determination becomes final, the security amount may be calculated at three times the unit's highest quarterly prize fee liability for the four most recent quarters or for the highest quarter filed if less than four. If the unit manager changes, the new unit manager must file security.

(C) Members of an accounting unit with a licensed unit manager are not required to submit security until the member withdraws or is removed from the unit.

(4) Accounting Units.

(A) An accounting unit may submit and maintain one bond or other security to cover each of the unit's member organizations. Except as otherwise provided in this section, the amount of the security shall be the aggregate of each unit member organization's security amount, as set in §402.603(a)(1) of this chapter. If a unit member organization subsequently withdraws or is removed from the unit, that organization is responsible for obtaining and maintaining the requisite security.

(B) If at any time an accounting unit fails to fully pay its requisite prize fees by the due date and a jeopardy determination becomes final, the unit's security amount may be calculated at three times the unit's highest quarterly prize fee liability for the four most recent quarters or for the highest quarter filed if less than four. The financial obligation for such security shall be divided equally among the organizations that were in the unit at the time of the prize fee delinquency. If a unit member organization withdraws or is removed from such a unit, that organization's security amount shall be equivalent to its share of the unit's security amount, and the unit's security amount may be reduced by an amount equivalent to the exiting organization's share. If another organization subsequently joins such a unit, the unit's security amount will increase by the amount of the newly-joined organization's security amount.

(b) Types of bonds or other security. The Commission will accept only the following types of bonds or other security as security for the payment of prize fees:

(1) Cash or check made payable to the state comptroller. Cash security will not earn interest for the licensee.

(2) Irrevocable assignments of accounts, including certificates of deposit or certificates of savings, in banks, savings and loan institutions, and credit unions, whose deposits are insured by an agency of the United States government. This security must be executed on an assignment form approved by the Commission.

(3) Letters of credit from financial institutions.

(4) United States Treasury bonds, readily convertible to cash.

(5) Surety bonds executed on a form approved by the Commission and issued only by a surety company chartered or authorized to do business in the State of Texas. The appointing instrument must be properly notarized and physically attached to the bond.

(c) Forfeiture.

(1) If a licensed authorized organization, accounting unit, or unit manager pays less than the total amount of prize fee due, the Commission shall notify the licensed authorized organization, accounting unit, or unit manager of the delinquency via the "Texas Notice of Fee Due and Jeopardy Determination" for the quarter in which the liability exists.

(2) If the licensed authorized organization, accounting unit, or unit manager does not make the required payment by the date stated in the notice provided under subsection (c)(1), the Commission will demand the bond or other security or any part of the bond or other security from the holder of the bond or other security necessary to pay the amount of prize fee due.

(3) The Commission will notify the licensed authorized organization, accounting unit, or unit manager and demand that a new or additional bond or other security for the specified amount be furnished within 20 days of the date of such notice. Failure to comply with the requirements of the notice within the 20 day period will result in the denial of an application for renewal or revocation of the license.

(d) Release of Bond or Other Security. The Commission will release a bond or other security upon the relinquishment or revocation of the license for which the security was furnished, provided that the Commission determines that no prize fee, penalty, or interest remains due and payable. The Commission will notify the former licensee in writing that the security has been released. If an accounting unit maintains one bond or other security for its member organizations, and one or more of the unit member's licenses are relinquished or revoked, then the Commission will notify the accounting unit in writing that its se-

curity amount may be reduced to an amount sufficient to cover only current unit members.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Lottery Commission

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For further information, please call: (512) 344-5012



SUBCHAPTER G. COMPLIANCE AND ENFORCEMENT

16 TAC §§402.703, 402.706 - 402.708

The following rule amendments are adopted under: (1) §2001.054 of the Occupations Code, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and (2) §467.102 of the Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

§402.703. *Audit Policy.*

(a) Definitions.

(1) **Audit**--The formal examination of a licensee's accounts, records, and/or business activities by designated employees or representatives of the Commission.

(2) **Audit fieldwork**--Includes, but is not limited to, the physical inspection of bingo premises, the observation of a bingo game, the inquiry of management and staff, the review of financial accounts, records or business processes, the assessment of the adequacy of any internal controls, or any other activity necessary to meet audit objectives.

(3) **Licensee**--Includes any individual, partnership, corporation, group, or entity licensed under the Bingo Enabling Act and any group of licensed authorized organizations operating under a unit agreement.

(b) Audit Determination.

(1) The purpose of an audit is to determine whether a licensee is, has been, and/or will remain in compliance with the Bingo Enabling Act and the Charitable Bingo Administrative Rules.

(2) Those licensees who are most at risk of violating the Bingo Enabling Act or the Charitable Bingo Administrative Rules will be identified for audit based on risk factors established by the Commission. Risk factors may be based on, among other things, a licensee's gross receipts, gross rentals, bingo expenses, net proceeds, and/or charitable distributions. An audit must commence by the fourth anniversary of the date a licensee is identified for audit.

(3) Notwithstanding paragraph (2) of this subsection, the Commission may audit any licensee if the Commission reasonably believes the licensee may violate, or may have violated, the Bingo Enabling Act or the Charitable Bingo Administrative Rules.

(c) Notification.

(1) If a licensee is selected for an audit pursuant to subsection (b) of this section, a Commission auditor will so notify that licensee's bingo chairperson, director, business contact, officer, unit manager, or designated agent in writing. The written notification constitutes the beginning of the audit.

(2) The written notification will identify the time period to be audited and any records or other information that must be made available for Commission review. Various forms, including questionnaires and physical inventory requests, may be included with the written notification. Licensees must complete any forms in the manner, and in the time period, specified by the Commission.

(d) Entrance Conference.

(1) Within ten (10) calendar days of sending the written notification under subsection (c) of this section, an auditor will attempt to contact the selected licensee's bingo chairperson, director, business contact, officer, unit manager, or designated agent to schedule an audit entrance conference. Unless otherwise provided by the Commission, the audit entrance conference will be held within fourteen (14) calendar days from the auditor's contact with the licensee. The licensee may submit a written request to the Commission to delay the audit entrance conference. The written request must include the reasons for the requested delay. After reviewing a properly submitted written request to delay, the Commission may either approve or deny the request or notify the licensee that additional information is needed before a decision is made. If the Commission and licensee are unable to agree on the date, time, and place of the audit entrance conference, or if the Commission auditor is unable to contact the licensee's bingo chairperson, director, business contact, officer, unit manager, or designated agent, the auditor shall schedule the audit entrance conference and send the licensee written notice of that fact at least ten (10) calendar days prior to the scheduled audit entrance conference.

(2) The purpose of an audit entrance conference is to allow the auditor(s) to meet with the selected licensee's bingo chairperson, director, business contact, officer, unit manager, or designated agent to collect any records or other information identified in the written notification under subsection (c) of this section, to discuss the audit process, and to answer any questions the licensee may have regarding the audit. There is no standard timeline by which an audit will be completed, but an audit must be completed within two years from the date of the entrance conference unless the Director extends the time period and notifies the licensee of the extension.

(3) The Commission may request the attendance at the audit entrance conference of any person familiar with the licensee's operations. In addition to any attendees requested by the Commission, the licensee may allow any other individuals to attend the audit entrance conference.

(e) **Audit Fieldwork.** Any time after the conclusion of the audit entrance conference, the auditor(s) may initiate and conduct the audit fieldwork at the licensee's business office, bingo premises, bookkeeper's office, or accountant's office; or, a location designated by the auditor(s). When conducting audit fieldwork, the auditor(s), at their discretion, may use a detailed auditing procedure or a sample and projection auditing method. A sample and projection auditing method may include, but is not limited to, manual sampling techniques, computer-assisted audit techniques, analytical procedures, financial projections, and auditor recompilation from reliable independent sources.

(f) Exit Conference.

(1) Any time after the completion of the audit fieldwork, an auditor will attempt to contact the selected licensee's bingo chair-

person, director, business contact, officer, unit manager, or designated agent to schedule an audit exit conference. If the auditor and licensee are unable to agree on the date, time, and place of the audit exit conference, or if the auditor is unable to contact the licensee's bingo chairperson, director, business contact, officer, unit manager, or designated agent, the auditor shall schedule the audit exit conference and send the licensee written notice of that fact at least ten (10) calendar days prior to the scheduled audit exit conference.

(2) The purpose of an audit exit conference is to allow the auditor(s) to meet with the selected licensee's bingo chairperson, director, business contact, officer, unit manager, or designated agent to discuss the results of the audit and the draft audit report.

(3) The Commission may request the attendance at the audit exit conference of any person familiar with the licensee's operations. In addition to any attendees requested by the Commission, the licensee may allow any other individuals to attend the audit exit conference.

(g) Audit Report.

(1) Upon completion of the audit, the auditor(s) will prepare a draft audit report containing their findings and conclusions. A copy of the draft audit report will be provided to the licensee at the audit exit conference. At least three (3) business days before the audit exit conference, but only to the extent it is practicable, the Commission will also send a copy of the draft audit report to one e-mail address or facsimile number associated with the licensee. The licensee must notify the Commission of the designated e-mail address or facsimile number by the end of the audit entrance conference if the licensee is to receive a copy of the draft audit report prior to the audit exit conference.

(2) A licensee may, but is not required to, respond to the draft audit report by providing written comments and any supporting documentation to the auditor(s) within twenty (20) calendar days of receiving the draft audit report. Written comments should include a statement of agreement or disagreement with the draft audit report findings and, if applicable, a list of any corrective measures that will be taken to ensure compliance with the Bingo Enabling Act and Charitable Bingo Administrative Rules. Any properly submitted comments and supporting documents will be reviewed by the auditor(s) and placed in the final audit report. The auditor(s) may revise the draft audit report in response to any properly submitted comments or supporting documents.

(3) Any time after the twenty (20) calendar day deadline, the auditor(s) may issue the final audit report. A copy of the report will be provided to the licensee.

§402.706. Schedule of Sanctions.

(a) The purpose of this section is to provide guidance for administering sanctions to licensees and other persons that violate the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules. The Schedule of Sanctions attached to §402.706(c) provides a list of the most common violations and the sanctions generally assessed for those violations, though the Commission may deviate from the schedule if it has a reasonable basis to do so. The objectives for applying sanctions are to protect the public, encourage compliance with the Bingo Enabling Act and the Charitable Bingo Administrative Rules, deter future violations, offer opportunities for rehabilitation as appropriate, punish violators, and deter others from committing violations. This section is intended to promote consistent sanctions for similar violations, facilitate timely resolution of cases and encourage settlements.

(b) The Commission, through the Director of the Charitable Bingo Operations Division or their designee, may offer settlements to persons charged with violating the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules.

(c) Unless otherwise provided by this subchapter, the terms and conditions of a settlement agreement between the Commission and a person charged with violating the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules will be based on the Schedule of Sanctions incorporated into this section.

Figure: 16 TAC §402.706(c)

(d) The following words and terms, when used in this section and §402.707, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Bingo Enabling Act--Occupations Code, Chapter 2001.

(2) Charitable Bingo Administrative Rules--Texas Administrative Code, Title 16, Part 9, Chapter 402.

(3) Licensee--a person issued a license under Occupations Code, Chapter 2001, or a Unit.

(4) Organization--a licensee, an applicant for a license, or a person required to obtain a bingo license.

(5) Respondent--a person responsible for answering a charge of violating the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules.

(6) Sanctions--revocation and suspension of a license, denial or an original or renewal application, denial of a bingo worker registry application, removal from the registry of bingo workers, administrative penalty, and warning letter.

(e) The Commission shall render the final decision in a contested case and has the responsibility to assess sanctions against licensees who are found to have violated the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules. The Commission welcomes any recommendation of an administrative law judge as to the appropriate sanctions imposed, but the Commission is not necessarily bound by such recommendations. A determination of the appropriate sanction is reserved to the Commission consistent with the Bingo Enabling Act.

(f) Additional remedies may be imposed along with or in lieu of sanctions, which may include: a redeposit of funds to the bingo account; a removal of funds from the bingo account; or a disbursement of net proceeds in order to comply with the charitable distribution requirement.

(g) A settlement agreed to under this section shall be in the form of a written Memorandum of Agreement and Consent Order prepared by the Commission that must be signed by both parties. A Memorandum of Agreement and Consent Order shall contain findings of fact and conclusions of law. The conditions of the settlement, including the imposition of sanctions, shall be completed within the time frame provided for in the settlement. Failure to comply with the conditions of the settlement may subject the respondent to further administrative action.

(h) The list of violations in the Schedule of Sanctions is not an exclusive list of violations of the Bingo Enabling Act or the Charitable Bingo Administrative Rules.

(i) If a person is charged with a repeat violation within 36 months (3 years) of a previous violation, then the sanction for a repeat violation will be imposed according to the Schedule of Sanctions for repeat violations.

(j) The sanction(s) imposed will be determined by considering the following factors, as applicable:

(1) seriousness of the violation which includes the nature, circumstances, extent and gravity of the prohibited acts;

(2) history of previous violations which includes:

- (A) the number of previous violations; and
- (B) the number of repeated violations;
- (3) the action(s) necessary to deter future violations;
- (4) efforts to correct the violation after awareness of the violation through personal knowledge or notification by the commission;
- (5) any other matter that justice may require, including:
 - (A) whether the violation was intentional, inadvertent, simple negligence, gross negligence, or the unavoidable result of a related violation;
 - (B) cooperation with the Commission during its examination, audit, or investigation of the person;
 - (C) length of time the licensee has held a license;
 - (D) risk to the public or state;
 - (E) whether the organization or person has acknowledged a violation and agreed to comply with the terms and conditions of remedial action through an agreed settlement with the Commission; and
 - (F) the cost of the investigation, examination or audit associated with the violation.

(k) If the Director or the Director's designee and the authorized representative for the respondent agree, the two parties may utilize §402.707, Expedited Administrative Penalty Guideline as alternative guidance related to this subsection.

(l) The Commission may impose lesser sanctions than those listed in the Schedule of Sanctions for a particular violation if mitigating circumstances exist, including mitigating circumstances described in §402.706(j)(5)(A) - (E).

§402.707. Expedited Administrative Penalty Guideline.

(a) The purpose of this subchapter is to provide an alternative disciplinary procedure for certain violations of the Bingo Enabling Act (Act) and the Charitable Bingo Administrative Rules (Rules) in which the Director of the Charitable Bingo Operations Division seeks to facilitate expeditious resolution of cases and encourage settlements.

(b) The list of statutory violations in the Expedited Administrative Penalty Chart is not an exclusive list of violations that may be expedited. The scope of this guideline will be limited to violations of the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules that are identified by the Director or their designee.

(c) Upon completion of an examination, inspection, audit, or investigation, and after which both parties have agreed that an alleged violation of the Bingo Enabling Act or the Charitable Bingo Administrative Rules can be resolved expeditiously, the Director or their designee may cause a Notice of Administrative Violation and Settlement Agreement (NAVSA) to be issued to an authorized representative for the respondent.

- (d) The NAVSA shall include the following information:
- (1) date of the notice;
 - (2) names and addresses of both parties;
 - (3) a brief summary of the alleged violation;
 - (4) the dollar amount of the administrative penalty recommended by the Director or his designee;
 - (5) a brief explanation of the additional conditions required to ensure future compliance with the Act or Rules alleged to be violated;

(6) notice that an investigation, including an examination or audit, was conducted which alleges a violation was committed;

(7) a statement signed by an authorized representative for the respondent indicating the respondent agrees to the terms of the settlement being offered;

(8) notice that if the person does not accept the settlement offered, they may request an informal dispute resolution conference in accordance with §402.708 of this chapter or a hearing on the occurrence of the violation, the amount of the penalty or both; and

(9) notice that if the person does not accept the settlement offered or request a hearing, the Commission may seek the maximum penalty authorized for the violation under the Bingo Enabling Act and the Charitable Bingo Administrative Rules, which may include revocation, suspension or denial of the person's license or worker registration, or application for a license or worker registration as applicable.

(e) The respondent shall have 20 calendar days from the date the respondent receives the NAVSA to accept the recommendation of the Director, including the recommended administrative penalty; or make a written request for a hearing on the determination. The respondent shall have 10 calendar days from the date the respondent receives the NAVSA to request an informal dispute resolution conference, which must occur within 20 calendar days of the respondent's receipt of the NAVSA. If notification of acceptance or the written request for a hearing is not made within 20 days, or if an informal dispute resolution conference does not resolve the dispute, the Director shall cause a hearing to be set and give notice of the hearing to the respondent. The opportunity for an agreement in accordance with this subsection will expire.

(f) After the NAVSA is accepted and returned to the Commission, the NAVSA will be forwarded to the Director for final approval and a copy will be forwarded to the respondent along with the Order. The respondent will have 60 days from the date of the Order to pay the recommended administrative penalty. Failure to comply with the terms of this Agreement may result in the imposition of a more severe degree of penalty which may include the revocation, suspension, denial of the license or worker registration, or removal from the worker registry as applicable.

(g) If a person is charged with a repeat violation that may be expedited within 36 months (3 years) of the first violation, then the penalty for a repeat violation will be imposed according to the Expedited Administrative Penalty Chart for repeat violations. Figure: 16 TAC §402.707(g)

§402.708. Dispute Resolution.

(a) What are the definitions for the terms used in this rule?

(1) Determination letter--A notice issued by the director stating the basis for the conclusion that a violation occurred, recommending that an administrative penalty be imposed on the person alleged to have committed the violation, and recommending the amount of the proposed penalty. The notice must include a brief summary of the alleged violation; include the amount of the administrative penalty recommended; and inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(2) Dispute resolution--An informal process available to licensees to resolve regulatory disputes in a fair, competent, and consistent manner.

(3) Dispute resolution conference--An informal meeting to resolve a disputed issue(s) related to a Notice of Administrative Violation and Settlement Agreement (NAVSA), an audit finding(s) contained

within a final audit report, a determination letter or a notice of opportunity to show compliance letter.

(4) Dispute resolution officer--The Director or his designee who will facilitate or manage the dispute resolution conference and guide and assist the participants.

(b) Who may request a dispute resolution conference? A licensee that does not agree with the findings in its NAVSA, final audit report, determination letter or the information in a notice of opportunity to show compliance letter may request a dispute resolution conference.

(c) How do I request a dispute resolution conference?

(1) You may request a dispute resolution conference by completing and submitting a Request for Informal Dispute Resolution to the Director.

(2) Disputed issues must be identified on the request.

(3) The request must be signed by:

Figure: 16 TAC §402.708(c)(3)

(4) A request for a dispute resolution conference related to a NAVSA must be submitted in accordance with §402.707(e). All other requests for a dispute resolution conference must be submitted no later than 15 working days from the latest date of receipt of a determination letter, the final audit report, or notice of opportunity to show compliance letter.

(5) You may provide supporting documentation related to your position with your request.

(d) Under what circumstances will the Director deny a request for a dispute resolution conference? The Director will not grant a request for a dispute resolution conference if:

(1) You are not a licensee that disputes the findings in the NAVSA, final audit report, determination letter or the information in a notice of opportunity to show compliance letter;

(2) You fail to timely submit the completed Request for Informal Dispute Resolution as required in subsection (c)(4) of this section or §402.707(e) of this chapter; or

(3) A dispute resolution conference has been held previously on the disputed issue(s).

(e) When and where will the Dispute Resolution Conference be held?

(1) Charitable Bingo Operations Division staff will contact you within 15 calendar days from the date we receive a Request for Informal Dispute Resolution, in order to schedule a mutually agreeable date, time, and location for the dispute resolution conference. However, for conferences related to a NAVSA, the Division will contact the respondent in sufficient time to schedule the conference within 20 days of the respondent's receipt of the NAVSA, as required under §402.707(e).

(2) The dispute resolution conference may be held in person, by video conference, or by telephone conference call. The date, time, and location of the conference must be agreeable to all parties.

(3) You must contact the Commission at least 24 hours prior to the scheduled conference time to reschedule a dispute resolution conference. However, in the event of unforeseen events, upon agreement of the parties, a dispute resolution conference may be rescheduled.

(f) What happens if I don't attend or reschedule a Dispute Resolution Conference? The dispute resolution process will end. The ad-

ministrative process will continue and a formal hearing may proceed. We will notify you of the date of the administrative hearing.

(g) Who attends the Dispute Resolution Conference? Depending on your regulatory classification, certain individuals from your organization must attend the dispute resolution conference. You must notify the Director at least 24 hours before the scheduled dispute resolution conference of who is attending.

Figure: 16 TAC §402.708(g)

(h) Who will represent the Charitable Bingo Operations Division at a Dispute Resolution Conference?

(1) Appropriate Commission staff from the Charitable Bingo Operations Division, Legal Services Division, and/or Enforcement Division will attend and participate in the dispute resolution conference to provide relevant information and documentation regarding the disputed issues and to attempt to reach a resolution of the dispute.

(2) The dispute resolution officer and dispute resolution support staff will facilitate the dispute resolution process but will not advocate on behalf of any party.

(i) What happens at the Dispute Resolution Conference?

(1) Each party states their position related to the disputed issues and presents appropriate documentation to substantiate their position on all disputed issues.

(2) The dispute resolution officer works with the parties to reach a settlement.

(3) Any resolution reached as a result of the dispute resolution conference will be through voluntary agreement of the parties.

(j) Do I need to provide any information prior to the Dispute Resolution Conference? If the Dispute Resolution Conference is conducted via telephone or video conferencing, you must provide to the Director a copy of any documentation you plan to present at least 48 hours prior to the conference. If the basis of the dispute involves an audit finding, the Director will provide the dispute resolution officer with the information submitted by the organization, the final audit report, and the determination letter. If the basis of the dispute is other than an audit finding, the Director will provide the dispute resolution officer the notice of opportunity to show compliance letter and the underlying report that is the basis for the notice of opportunity to show compliance letter. The dispute resolution officer may contact both parties and request additional information be submitted to him prior to the dispute resolution conference.

(k) What happens if an agreement is reached at the dispute resolution conference?

(1) If the parties agree to a resolution of disputed issues, the dispute resolution officer will prepare a Dispute Resolution Settlement Agreement for review, approval, and signature by both parties at the dispute resolution conference.

(2) The Agreement will include:

(A) the violation(s);

(B) the resolution of the disputed issues(s); and

(C) corrective action you must take.

(3) The Agreement must be signed by an officer, director, or bingo chairperson and the primary operator.

(l) What happens if an agreement is not reached at the dispute resolution conference? The matter may proceed to a formal administrative hearing.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 12, 2016.

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Bob Biard

General Counsel

Texas Lottery Commission

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For further information, please call: (512) 344-5012



SUBCHAPTER D. LICENSING REQUIREMENTS

16 TAC §402.413

The Texas Lottery Commission (Commission) adopts new 16 TAC §402.413 (Military Service Members, Military Veterans, and Military Spouses) without changes to the proposed text as published in the April 29, 2016, issue of the *Texas Register* (41 TexReg 3067). The purpose of the new rule is to implement Occupations Code Chapter 55, which requires state agencies that issue occupational licenses to adopt rules and policies pertaining to the licensing of active duty military personnel, their spouses, and military veterans. Among other things, Chapter 55 requires agencies to: (1) exempt active duty military personnel from late license renewal fees/penalties under certain circumstances; (2) quickly process applications and issue licenses for active duty military personnel, their spouses, and military veterans; and (3) waive license fees for active duty military personnel, their spouses, and military veterans in certain circumstances. The new rule §402.413 is intended to satisfy the Commission's obligations under Chapter 55.

A public comment hearing was held on Wednesday, May 11, 2016, at 10:00 a.m., at 611 E. 6th Street, Austin, Texas 78701. The following persons provided oral comments at the hearing: Kimberly L. Kiplin for Department of Texas, Veterans of Foreign Wars (VFW); and Steve Bresnen for the Bingo Interest Group (BIG). The Commission also received written comments from the VFW and Stephen Fenoglio for Texas Charity Advocates (TCA).

COMMENT SUMMARY: The VFW supports the proposed new rule. The TCA has no objection to the proposed new rule.

COMMISSION RESPONSE: No changes will be made in response to these comments.

COMMENT SUMMARY: The BIG commented they would like the Commission to expand the application of the proposed rules to any corporation that is wholly owned by an individual(s) who is specifically covered by Chapter 55.

COMMISSION RESPONSE: No changes will be made in response to this comment. The Commission appreciates the BIG's desire to expand the scope of the rule to corporations that are wholly owned by individuals to whom Chapter 55 expressly applies. The provisions of Chapter 55 apply to "a person who is on active duty" (definition of "military service member"), "a person who is married to a military service member" (definition of "military spouse"), and "a person who has served on active duty and who was discharged or released from active duty" (definition of

"military veteran"). The Texas Code Construction Act (at Government Code §311.005(2)) provides that a "person" includes a corporation unless the statute or context in which the term "person" is used requires a different definition. Under Chapter 55, a "person" could not include a corporation because a corporation could not satisfy the active duty or marriage requirement, and the Commission has no authority to expand the Chapter 55 definitions. A state agency, such as the Commission, may not "exercise what is effectively a new power, or a power contradictory to statute, on the theory that such a power is expedient for administrative purposes." *Pub. Util Comm'n of Tex. v. City Pub. Serv. Bd. of San Antonio*, 53 S.W.3d 310, 316 (Tex. 2001). Accordingly, it would be up to the Legislature, not the Commission, to expand the scope of Chapter 55 to include corporations or other legal entities.

The new rule is adopted under: (1) Chapter 55 of the Occupations Code (specifically §§55.002, 55.004, 55.007, and 55.008), which requires state agencies to adopt rules related to the issuance of licenses to active duty military personnel, their spouses, and military veterans; (2) §2001.054 of the Occupations Code, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and (3) §467.102 of the Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of Chapter 467 and the laws under the Commission's jurisdiction. The new rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

This adoption implements Chapters 55 and 2001 of the Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 12, 2016.

TRD-201603459

Bob Biard

General Counsel

Texas Lottery Commission

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Proposal publication date: April 29, 2016

For further information, please call: (512) 344-5012



TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 102. FEES

22 TAC §102.1

The Texas State Board of Dental Examiners adopts amendments to §102.1, relating to the fee schedule. This rule is adopted without changes to the proposed text as published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2056).

Amendments to rule §102.1 provide guidance in the interpretation of Tex. Occ. Code §260.001.

The Board received no written comments regarding this amendment.

Amendments to rule §102.1 are adopted under Texas Occupations Code §254.001(a). The Board interprets §254.001(a) to give the Board authority to adopt rules necessary to perform its duties and ensure compliance with state law relating to the practice of dentistry to protect the public health and safety. No other statutes, articles, or codes are affected by the rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 18, 2016.

TRD-201603539

Kelly Parker

Executive Director

State Board of Dental Examiners

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Proposal publication date: March 18, 2016

For further information, please call: (512) 475-0989



CHAPTER 108. PROFESSIONAL CONDUCT

SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

22 TAC §108.12

The Texas State Board of Dental Examiners adopts amendments to §108.12, relating to the dental treatment of sleep disorders. This rule is adopted without changes to the proposed text as published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2066).

Amendments to rule §108.12 provide guidance in the interpretation of Tex. Occ. Code §260.001.

The Board received six written comments regarding this amendment.

The Texas Medical Association and Texas Neurological Society submitted a joint written comment in opposition to the proposed rule on the basis that the treatment of sleep disorders is the practice of medicine and exceeds the scope of the practice of dentistry in Texas. Throughout the comment, the board is urged to expand the rule to address other sleep disorders and medical conditions. The comment also provides suggested language. The comment states that subsection (a) of the rule should be modified to (1) strike the word "independently"; (2) encompass the treatment of other sleep disorders and conditions; (3) include an express prohibition on dental screening for sleep conditions/disorders; and (4) include an express prohibition on a dentist's independent treatment or monitoring of a patient for a sleep condition or disorder. The comment urges broadening the rule to address dentist/physician collaboration in the treatment of any sleep disorder through oral appliance therapy. The comment expresses concern relating to the division of responsibilities between the dentist and physician as to monitoring and maintenance of the oral appliance and monitoring of the patient's medical condition. The comment suggests additional education. The board believes the education required by the rule is sufficient to equip dentists to fabricate oral appliances for the treatment of obstructive sleep apnea, pursuant to a physician's diagnosis and prescription. With respect to subsections (c) and (d), the comment urges expansion of the rule to include the treatment of other sleep conditions and disorders and elaboration of specific

recordkeeping requirements. Again, the board finds that the revision adequately addresses its concerns related to OSA. The board further finds that compliance with its recordkeeping rules, as set out in the revision, is sufficient to ensure patient safety without further elaboration. The comment objects to the deletion of paragraphs 108.12(c)(1) and 108.12(c)(2). The comment contends that the deletion of the language will create confusion. The board finds that the rule is sufficient to address the board's intent in revision of the rule: to address the treatment of OSA by dentists in collaboration with physicians.

The board disagrees. (1) The board finds that the word "independently" does not grant diagnostic authority to dentists; it emphasizes that dentists may only treat obstructive sleep apnea (OSA) pursuant to a physician's diagnosis of OSA. (2) Prior to the development of the various forms of rule 108.12, no rule existed to address the treatment of sleep disorders and other conditions. The board finds that the present revision adequately addresses its concerns related to dentists' treatment of OSA. (3) Dentists order tests for many purposes. The board finds its complaint investigation and complaint referral processes adequate to evaluate whether a dentist has exceeded the scope of practice of dentistry by ordering of tests for screening or diagnosis of non-dental conditions in a given case under investigation by the board. (4) The board finds that the present revision adequately addresses its concerns related to dentists' treatment of OSA. Subsection (a) makes clear that the dentist is responsible for monitoring and maintaining an oral appliance created to treat OSA, while the physician is responsible for monitoring the medical condition of OSA. With respect to broadening the rule, the board notes that prior to the development of the various forms of rule 108.12, no rule existed to address the treatment of sleep disorders and other conditions. The board finds that the present revision adequately addresses its concerns related to dentists' treatment of OSA through oral appliance therapy in collaboration with a physician. The board finds that the revision makes clear that the board does not intend for a dentist to monitor a patient's medical condition. Dentists are responsible for monitoring and maintaining the oral appliance fabricated to treat OSA in collaboration with a physician. The rule states that the collaborating physician "should be responsible for monitoring the patient's medical condition" because the board cannot enforce such a requirement against a physician. The board believes the rule accurately reflects the dentist's scope of practice related to the treatment of obstructive sleep apnea by prohibiting a dentist from independently diagnosing a patient with obstructive sleep apnea and requiring any dental treatment of obstructive sleep apnea be accomplished in collaboration with and pursuant to a medical doctor's diagnosis.

The American Academy of Dental Sleep Medicine submitted a written comment requesting additional language be incorporated to clarify that a dentist may not order a test for the purpose of screening or diagnosis and may fabricate an oral appliance to treat obstructive sleep apnea only after referral by a Texas licensed physician. The comment further requests additional education requirements for dentists treating obstructive sleep apnea that reflect the continuing education recommendation in the guidelines published by AADSM. It also requests additional language that reflects their organization's guidelines related to follow-up care. The board disagrees. The board's revision eliminates language authorizing dentists to screen for obstructive sleep apnea using screening tools, including sleep studies. Dentists order tests for many purposes. The board finds its complaint investigation and complaint referral processes adequate

to evaluate whether a dentist has exceeded the scope of practice of dentistry by ordering of tests for screening or diagnosis of non-dental conditions in a given case under investigation by the board. The board further finds that the rule appropriately prohibits a dentist from diagnosing obstructive sleep apnea without need for further clarification of that directive. Finally, the board holds that 12 hours of yearly continuing education is adequate to train and maintain competency in current treatment and procedures.

The American Academy of Sleep Medicine submitted a written comment requesting additional language be incorporated to clarify that a dentist may not order a test for the purpose of screening or diagnosis and may fabricate an oral appliance to treat obstructive sleep apnea only after referral by a Texas licensed physician. The comment further requests additional education requirements for dentists treating obstructive sleep apnea that reflect the continuing education recommendation in the guidelines published by AASM. It also requests additional language that reflects the organization's guidelines related to follow-up care. The board disagrees. The board's revision eliminates language authorizing dentists to screen for obstructive sleep apnea using screening tools, including sleep studies. Dentists order tests for many purposes. The board finds its complaint investigation and complaint referral processes adequate to evaluate whether a dentist has exceeded the scope of practice of dentistry by ordering tests for screening or diagnosis of non-dental conditions in a given case under investigation by the board. The board further finds that its revision appropriately prohibits a dentist from diagnosing obstructive sleep apnea without need for further clarification of that directive. Finally, the board holds that 12 hours of yearly continuing education is adequate to train and maintain competency in current treatment and procedures.

The board received a written comment from W. Keith Thornton, DDS, in support of the proposed rule. The board received a written comment from William H. Gerlach, DDS, in support of the proposed rule. The board received a written comment from the Texas Dental Association in support of the proposed rule.

Amendments to rule §108.12 are adopted under Texas Occupations Code §254.001(a). The Board interprets §254.001(a) to give the Board authority to adopt rules necessary to perform its duties and ensure compliance with state law relating to the practice of dentistry to protect the public health and safety.

No other statutes, articles, or codes are affected by the rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kelly Parker

Executive Director

State Board of Dental Examiners

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For further information, please call: (512) 475-0989



PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §501.51

The Texas State Board of Public Accountancy adopts an amendment to §501.51, concerning Preamble and General Principles, without changes to the proposed text as published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3821). The rule will not be republished.

The amendment to §501.51 deletes the word "insure" and replaces it with "ensure" and moves the word "adequately" to precede the word "serving" in subsection (c).

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Jerry Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



22 TAC §501.52

The Texas State Board of Public Accountancy adopts an amendment to §501.52, concerning Definitions, without changes to the proposed text as published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3822). The rule will not be republished.

The amendment to §501.52 revises a paragraph reference in paragraph (17) and revises the definition of Good Standing in paragraph (13) to include compliance with Peer Review.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Jerry Hill
General Counsel
Texas State Board of Public Accountancy
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SUBCHAPTER B. PROFESSIONAL STANDARDS

22 TAC §501.60

The Texas State Board of Public Accountancy adopts an amendment to §501.60, concerning Auditing Standards, without changes to the proposed text as published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3824). The rule will not be republished.

The amendment to §501.60 reformats the rule to recognize several of the sources of GAAS.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Jerry Hill
General Counsel
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For further information, please call: (512) 305-7842



22 TAC §501.62

The Texas State Board of Public Accountancy adopts an amendment to §501.62, concerning Other Professional Standards, without changes to the proposed text as published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3825). The rule will not be republished.

The amendment to §501.62 adds additional professional standards which must be following in the performance of accounting services.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §501.75

The Texas State Board of Public Accountancy adopts an amendment to §501.75, concerning Confidential Client Communications, without changes to the proposed text as published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3826). The rule will not be republished.

The amendment to §501.75 recognizes Peer Review communications and the review of the financials related to the prospective purchase, sale or merger of a CPA firm will not be subject to confidentiality.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. RESPONSIBILITIES TO THE BOARD/PROFESSION

22 TAC §501.94

The Texas State Board of Public Accountancy adopts an amendment to §501.94, concerning Mandatory Continuing Professional Education, without changes to the proposed text as published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3828). The rule will not be republished.

The amendment to §501.94 corrects a rule reference.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Jerry Hill

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Texas State Board of Public Accountancy

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CHAPTER 518. UNAUTHORIZED PRACTICE OF PUBLIC ACCOUNTANCY

22 TAC §518.3

The Texas State Board of Public Accountancy adopts an amendment to §518.3, concerning Violation of a Cease and Desist Order, without changes to the proposed text as published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3829). The rule will not be republished.

The amendment to §518.3 corrects a rule reference.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Jerry Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



22 TAC §518.4

The Texas State Board of Public Accountancy adopts the repeal of §518.4, concerning Administrative Penalty Guidelines for Vio-

lations of Cease and Desist Orders, without changes to the proposed text as published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3830). The rule will not be republished.

The repeal of §518.4 will allow a new rule regarding Injunctive Relief to be placed more appropriately within the Chapter 518 rules.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Jerry Hill

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



22 TAC §518.4

The Texas State Board of Public Accountancy adopts new rule §518.4, concerning Injunctive Relief and Penalties, without changes to the proposed text as published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3830). The rule will not be republished.

New rule §518.4 establishes the process for seeking injunctive relief.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Jerry Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



22 TAC §518.6

The Texas State Board of Public Accountancy adopts new rule §518.6, concerning Administrative Penalty Guidelines for the Unauthorized Practice of Public Accountancy, without changes to the proposed text as published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3831). The rule will not be republished.

New rule §518.6 is former §518.4, which is being repealed, and includes proposed revisions to the administrative penalty guidelines to address repeat offenders.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Jerry Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



CHAPTER 527. PEER REVIEW

22 TAC §527.2

The Texas State Board of Public Accountancy adopts an amendment to §527.2, concerning Definitions, with changes to the proposed text as published in the April 8, 2016, issue of the *Texas Register* (41 TexReg 2573). The rule will be republished.

The amendment to §527.2 is in agreement with the comments received by the AICPA and the changes are in accordance with those agreements, and the word "deficiency(ies)" is changed to "deficiencies" in paragraph (4) which is a non-substantive change.

The American Institute of CPAs (AICPA) Peer Review program commented on the proposed revisions to Board Rule 527.2, suggesting:

1) the deletion of "special reports" in paragraph (4), believing it unnecessary since the definition of attest includes all engagements in the scope of peer review;

2) deleting "final paragraph of" and inserting "peer" before "review report" in paragraph (6) (renumbered as paragraph (5)) because the Peer Review Board has the ability to change the location of the rating in the report;

3) deleting the sentence "It is the end date of the review process, not the beginning." in proposed new paragraph (7) (renumbered as paragraph (6)) because the Standards for Performing and Reporting on Peer Reviews provide review due dates based on the review year;

4) deleting the reference to "AICPA or TSCPA" in proposed amended paragraphs (8) and (9) (renumbered as paragraphs (7) and (8)) because out-of-state firms licensed in Texas, with no AICPA members, may be enrolled in a peer review program where the sponsoring organization is another CPA society recognized in Rule §527.3(b) and they would not meet the requirements as currently written;

5) adding the language "or other firms that voluntarily" in proposed amended paragraph (10) (renumbered as paragraph (9)) because the AICPA Public file is now available for firms who are not members of the AICPA's Audit Quality Centers or Private Companies Practice Section to have their peer review results posted to the public file; and

6) adding the language "a secure website accessible to" and deleting "limited access web site" in proposed amended paragraph (11) (renumbered as paragraph (10)) to clarify that the FSBA is a secure website that is accessible only to the state board which better articulates the restricted use of the website provided by AICPA.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

§527.2. Definitions.

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

(1) "Review" or "review program" means the review conducted under the peer review program.

(2) "Review year" means the one-year (twelve-month) period covered by the review. Engagements selected for review normally would have periods ending during the year under review.

(3) "Sponsoring organization" means an entity that meets the standards specified by the board for administering the review. The board shall periodically publish a list of sponsoring organizations, which have been approved by the board.

(4) "Firm inspection program" means the process of firm inspection administered by the PCAOB.

(5) "Rating" of a peer review refers to the type of report issued. The three types of reports are pass, pass with deficiencies, or fail. The peer review rating is clearly indicated in the peer review report. A peer review report with a rating of pass with deficiencies or fail is considered a deficient review.

(6) "Assigned review date" is the reporting due date to the board of an accepted peer review report.

(7) "Acceptance date" of a peer review is the date that the sponsoring organization's peer review report committee (PRRC), referred to in §527.9(a)(1) of this chapter (relating to Procedures for a Sponsoring Organization), is presented the peer review report on a review with the rating of pass and the PRRC approves the review. The acceptance date and in this case the completion date of the peer review are the same date and is noted in a letter from the administering entity to the reviewed firm. The PRRC will be presented with the peer review report and the firm's letter of response on reviews with a rating of pass with deficiencies or fail. Ordinarily, the PRRC will require the reviewed firm to take corrective action(s) and those actions will be communicated in a letter to the firm from the administering entity. In this circumstance, the "acceptance date" is defined as the date that the

reviewed firm signs the letter from the administering entity agreeing to perform the required corrective action(s).

(8) "Completion date" of a peer review is the date that the sponsoring organization's PRRC, referred to in §527.9(a)(1) of this chapter, is presented the corrective action and the committee decides that the reviewed firm has performed the agreed-to corrective action(s) to the committee's satisfaction and the committee requires no additional corrective action(s) by the firm. The date is noted in a final letter from the administering entity to the reviewed firm.

(9) "AICPA Public File" is the file for firms that are members of AICPA's Employee Benefit Plan Audit Quality Center, Governmental Audit Quality Center, Private Companies Practice Section, or other firms that voluntarily post their review information to this public file on AICPA's web site as a membership requirement. Information in the public file includes the firm's most recently accepted peer review report and the firm's response thereto, if any.

(10) "Facilitated State Board Access (FSBA)" is a secure website accessible only to the state board that provides the most recently accepted peer review report, the firm's letter of response (LOR), the corrective action letter (CAL), and the final letter of acceptance (FLOA).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201603522

Jerry Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



22 TAC §527.3

The Texas State Board of Public Accountancy adopts an amendment to §527.3, concerning Standards for Peer Reviews and Sponsoring Organizations, with changes to the proposed text as published in the April 8, 2016, issue of the *Texas Register* (41 TexReg 2575). The rule will be republished.

The amendment to §527.3 is in agreement with the comments received by the AICPA and the changes are in accordance with those agreements and "standards" is replaced by "permanent inspections" in subsection (a) and "TSCPA's" is replaced in subsection (b), both non-substantive changes provided for clarity.

One comment was received by the Board.

The American Institute of CPAs Peer Review program commented on the proposed revisions to Board Rule §527.3, suggesting the deletion of "the firm inspection standards required under the Sarbanes Oxley Act of 2002 (SOX)" and replacing it with "PCAOB standards" in subsection (a). The commenter also suggested the deletion of "Peer Review Program" in two places in subsection (b) to recognize the organizations that administer the program, not the program itself.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the

agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

§527.3. *Standards for Peer Reviews and Sponsoring Organizations.*

(a) The board adopts Standards for Performing and Reporting on Peer Reviews (the Standards) promulgated by AICPA and for public company audit firms, PCAOB permanent inspections as its minimum standards for review of firms.

(b) Qualified sponsoring organizations shall be the AICPA, the TSCPA and state CPA societies fully involved in the administration of the AICPA Peer Review Program, the PCAOB, and such other entities which are approved by the board.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Jerry Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



22 TAC §527.4

The Texas State Board of Public Accountancy adopts an amendment to §527.4, concerning Enrollment and Participation, with changes to the proposed text as published in the April 8, 2016, issue of the *Texas Register* (41 TexReg 2575). The rule will be republished.

The amendment to §527.4 is in agreement with the comments received by the AICPA and the changes are in accordance with those agreements. A non-substantive change in subsection (h) deletes language for clarity.

One comment was received by the Board.

The American Institute of CPAs Peer Review program commented on the proposed revisions to Board Rule §527.4, suggesting the deletion of proposed language, "the firm shall schedule and begin an additional review within three years of the preview review's due date, or earlier as may be required by the sponsoring organization, a committee of the board or the board's executive director", and replacing it with, "a firm's subsequent review is due three years and six months after the year end of the preview peer review" in subsection (c) to coincide with the Standards.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

§527.4. *Enrollment and Participation.*

(a) Participation in the program is required of each firm licensed or registered with the board that performs any attest services as defined in §901.002 of the Act (relating to General Definitions)

and §501.52(4), (11) and (23) of this title (relating to Definitions). A firm whose highest level of service is preparation engagements under SSARS is not required to participate in the program.

(b) A firm that does not perform attest services as set out in subsection (a) of this section shall annually submit a request for the exemption in writing to the board with an explanation of the services offered by the firm. A firm which begins providing attest services as set out in subsection (a) of this section shall notify the board of the change in status within 30 days of the change in status, provide the board with enrollment information within 90 days of the date the services were first provided and have a peer review performed within 18 months of the date the services were first provided.

(c) Each firm required to participate under subsection (a) of this section shall enroll in the applicable programs of an approved sponsoring organization within 30 days from its initial licensing date or the performance of services that require a review. The firm shall adopt the review due date assigned by the sponsoring organization, and must notify the board of the peer review due date within 30 days of its assignment. In addition, a firm's subsequent review is due three years and six months after the year end of the previous peer review, or earlier as may be required by the sponsoring organization, a committee of the board or the board's executive director. It is the responsibility of the firm to anticipate its needs for review services in sufficient time to enable the reviewer to complete the review by the assigned review due date.

(d) In the event that a firm is merged, otherwise combined, dissolved, or separated, the sponsoring organization shall determine which firm is considered the successor firm. The successor firm shall retain its peer review status and the review due date.

(e) The board will accept extensions granted by the sponsoring organization to complete a review, provided the board is notified by the firm within 15 days of the date that an extension is granted.

(f) A firm that has been rejected by a sponsoring organization for any reason must make a request in writing to the board for authorization to enroll in a program of another sponsoring organization. Such request shall be made within 30 days of notification by the sponsoring organization.

(g) A firm choosing to change to another sponsoring organization may do so provided that the firm authorizes the previous sponsoring organization to communicate to the succeeding sponsoring organization any outstanding corrective actions related to the firm's most recent review. Any outstanding actions must be cleared and outstanding fees paid prior to transfer between sponsoring organizations.

(h) An out-of-state firm practicing in this state pursuant to a practice privilege provided for in §901.461 of the Act (relating to Practice by Certain Out-of-State Firms) and §517.1 and §517.2 of this title (relating to Practice by Certain Out of State Firms and Practice by Certain Out of State Individuals) must comply with the peer review program of the state in which the firm is licensed.

(i) An out-of-state firm practicing in this state pursuant to a practice privilege from a state without a peer review program must comply with §901.159 of the Act (relating to Peer Review) and Chapter 517 of this title (relating to Practice by Certain Out-of-State Firms and Individuals).

(j) An out-of-state firm practicing in this state pursuant to a practice privilege must submit its peer review (or equivalent) documentation upon request of the board.

(k) Interpretive Comment. If a firm is subject to inspections pursuant to PCAOB and also performs attest work not subject to such inspections, the firm must enroll in a peer review program for review

of its non-public company attest work in addition to the firm inspection program required by the PCAOB.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Jerry Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



22 TAC §527.5

The Texas State Board of Public Accountancy adopts an amendment to §527.5, concerning Successive Deficient Reviews, without changes to the proposed text as published in the April 8, 2016, issue of the *Texas Register* (41 TexReg 2577). The rule will not be republished.

The amendment to §527.5 will make it clearer that the Board has the authority to take action after only one deficient peer review. The Board action could include an accelerated review but could also include removing attest services from the firm's practice in addition to imposing a sanction. If, however, a firm fails two consecutive peer reviews the proposed changes would not allow the firm to provide attest services except to complete the services it had already begun and then only after a pre-issuance review by a third party of the firm's work. The amendment also states that a firm that has been taken out of attest work, but allowed to complete work it had already begun, be given up to 60 days as opposed to 30 days as proposed, to close out the engagement.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Jerry Hill

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



22 TAC §527.6

The Texas State Board of Public Accountancy adopts an amendment to §527.6, concerning Reporting to the Board, with

changes to the proposed text as published in the April 8, 2016, issue of the *Texas Register* (41 TexReg 2578). The rule will be republished.

The amendment to §527.6 is in agreement with the comments received by the AICPA and the changes are in accordance with those agreements, and "enrolled in" has been replaced by "subject to" and the word "permanent" has been added to subsection (c)(3), both non-substantive changes provided for clarity.

The American Institute of CPAs (AICPA) Peer Review program commented on the proposed revisions to Board Rule 527.6, suggesting adding the following language in subsection (c)(2), "and state CPA societies fully involved in the administration of the AICPA Peer Review Program)" to recognize those firms whose reviews are administered by other state CPA societies, other than TSCPA.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

§527.6. Reporting to the Board.

(a) A firm must submit to the board:

(1) a copy of the peer review report and the FLOA from the sponsoring organization, if such report has a rating of pass;

(2) a copy of the peer review report, the firm's LOR, the CAL, and FLOA if the report has a rating of pass with deficiencies or fail; or

(3) a copy of any final report resulting from any inspection by the PCAOB firm inspection program together with documentation of any significant deficiencies and findings and the firm's response.

(b) Any report or document submitted to the board under this section is confidential pursuant to the Act.

(c) Any report or document (collectively referred to as "documents") required to be submitted under subsection (a) of this section shall be filed with the board as provided below:

(1) Peer review documents will be made available by the TSCPA for firms enrolled in the AICPA and TSCPA Peer Review Programs and administered by the TSCPA. Peer review documents will be made available by the TSCPA by posting such documents within 30 days of issuing its notice of acceptance to such firms on the FSBA web site. The reviewed firm must, within 10 days of receipt of the notice of completion from the TSCPA, complete the board's Peer Review Compliance Reporting form and submit it to the board along with the required documents.

(2) Firms otherwise enrolled in the AICPA peer review program (including those whose peer reviews are administered by the NPRC, and state CPA societies fully involved in the administration of the AICPA Peer Review Program) must, within 10 days of receipt of the notice of completion from the sponsoring organization, complete the board's Peer Review Compliance Reporting form and submit it to the board along with the required documents. However, this requirement may be met by allowing the firm's peer review documents to be posted on the FSBA web site, with access granted to the board within 30 days of issuing its notice of acceptance to such firms on the FSBA web site.

(3) Firms subject to the PCAOB permanent firm inspection program must, within 10 days of receipt of the notice of completion from the PCAOB, complete the board's Peer Review Compliance

Reporting form and submit it to the board along with the required documents.

(d) The information required under subsection (c) of this section must be filed with the board either by mail or electronically such as by fax, email, or FSBA web site.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Jerry Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



22 TAC §527.7

The Texas State Board of Public Accountancy adopts an amendment to §527.7, concerning Peer Review Oversight Board, with changes to the proposed text as published in the April 8, 2016, issue of the *Texas Register* (41 TexReg 2579). The rule will be republished.

The amendment to §527.7 is in agreement with the comments received by the AICPA and the changes are in accordance with those agreements, and non-substantive changes in subsections (c) and (d)(1) were made for clarity purposes.

One comment was received by the Board.

The American Institute of CPAs Peer Review program commented on the proposed revisions to Board Rule §527.7, suggesting adding the word "oversight" in subsection (d)(1).

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

§527.7. Peer Review Oversight Board.

(a) The board shall retain the Peer Review Oversight Board (PROB) for the purpose of:

(1) monitoring sponsoring organizations to provide reasonable assurance that peer reviews are being conducted and reported in accordance with the Standards promulgated by the AICPA Peer Review Board;

(2) reviewing the policies and procedures of sponsoring organization applicants as to their conformity with the peer review standards; and

(3) reporting to the board on the conclusions and recommendations reached as a result of performing the functions in paragraphs (1) and (2) of this subsection.

(b) Information concerning a specific firm or reviewer obtained by the PROB during oversight activities shall be confidential, and the firm's or reviewer's identity shall not be reported to the board. Reports submitted to the board will not contain information concerning specific firms or reviewers. Members of the PROB will be required

to execute a confidentiality statement for the sponsoring organization which they oversee.

(c) The PROB shall consist of three members who are active licensed Texas CPAs. No member of the PROB shall be a current member of the board or one of its committees, the TSCPA's Peer Review or Professional Conduct Committee, or the AICPA Professional Ethics Executive Committees (including subcommittees). The members should have extensive experience in accounting and auditing and currently be in the practice of public accountancy at the partner (or equivalent) level, and shall be members of the TSCPA or the AICPA. The member's firm must have received a report with a rating of pass or an unmodified opinion from its last peer review. Compensation of PROB members shall be set by the board.

(d) The PROB shall make an annual recommendation to the board as to the qualifications of an approved sponsoring organization to continue as an approved sponsoring organization on the basis of the results of the following procedures:

(1) Where the sponsoring organization is the AICPA/NPRC, state CPA societies other than Texas that are fully involved in the administering AICPA Peer Review Program, or the PCAOB, PROB shall review the published oversight reports of those entities or successors, to determine that there is an acceptable level of oversight;

(2) Where the sponsoring organization is other than those listed in paragraph (1) of this subsection, PROB shall perform the following functions:

(A) At least one member of the PROB shall attend all meetings of each sponsoring organization's PRRC. Certain PRRC meetings may be conducted via telephone. In those instances, the PROB may join the conference call.

(B) During such visits, the PROB shall:

(i) meet with the organization's peer review committee during the committee's consideration of peer review documents;

(ii) evaluate the organization's procedures for administering the peer review program;

(iii) examine, on the basis of a random selection or other criteria adopted by PROB, a number of reviews performed by the organization to include, at a minimum, a review of the report on the peer review, the firm's response to the matters discussed, the sponsoring organization's FLOA outlining any additional corrective or monitoring procedures, and the required technical documentation maintained by the sponsoring organization on the selected reviews; and

(iv) expand the examination of peer review documents if significant deficiencies, problems, or inconsistencies are encountered during the analysis of the materials.

(e) In the evaluation of policies and procedures of sponsoring organization applicants, the PROB shall:

(1) examine the policies as drafted by the applicant to determine that they will provide reasonable assurance of conforming with the standards for peer reviews;

(2) evaluate the procedures proposed by the applicant to determine that:

(A) assigned reviewers are appropriately qualified to perform the review for the specific firm;

(B) reviewers are provided with appropriate materials;

(C) the applicant has provided for consulting with the reviewers on problems arising during the review and that specified occurrences requiring consultation are outlined;

(D) the applicant has provided for the assessment of the results of the review; and

(E) the applicant has provided for an independent report acceptance body that considers and accepts the reports of the review and requires corrective actions by firms with significant deficiencies;

(3) make recommendations to the board as to approval of the applicant as a sponsoring organization.

(f) Annually the PROB shall provide the board's Peer Review Committee with a report on the continued reliance of sponsoring organizations' peer reviews. The PROB report shall provide reasonable assurance that peer reviews are being conducted and reported on consistently and in accordance with the Standards promulgated by the AICPA Peer Review Board. A summary of oversight visits shall be included with the annual report.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Jerry Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



22 TAC §527.10

The Texas State Board of Public Accountancy adopts an amendment to §527.10, concerning Peer Review Report Committee, without changes to the proposed text as published in the April 8, 2016, issue of the *Texas Register* (41 TexReg 2580). The rule will not be republished.

The amendment to §527.10 deletes the word "accounting" in paragraph (1) and replaces it with "assurance," deletes the phrase "or an unmodified report" in the same paragraph, and deletes language concerning AICPA standards to more closely follow the language found in §527.3.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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22 TAC §527.11

The Texas State Board of Public Accountancy adopts an amendment to §527.11, concerning Responsibilities of Peer Review Report Committee, with changes to the proposed text as published in the April 8, 2016, issue of the *Texas Register* (41 TexReg 2581). The rule will be republished.

The amendment to §527.11 is in agreement with the comments received by the AICPA and the changes are in accordance with those agreements.

One comment was received by the Board.

The American Institute of CPAs Peer Review program commented on the proposed revisions to Board Rule §527.11, suggesting deleting the proposed word "ensuring" and replacing it with "providing reasonable assurance" to indicate a level of assurance that can be met as opposed to language indicating and absolute which is relatively impossible.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

§527.11. *Responsibilities of Peer Review Report Committee.*

The PRRC shall:

- (1) establish and administer the sponsoring organization's peer review program in accordance with the AICPA Standards;
- (2) prescribe actions designed to assure correction of the deficiencies in the reviewed firm's system of quality control policies and procedures;
- (3) monitor the prescribed remedial and corrective actions to determine compliance by the reviewed firm;
- (4) resolve instances in which there is a lack of cooperation and agreement between the committee and review teams or reviewed firms in accordance with the sponsoring organization's adjudication process;
- (5) act upon requests from firms for changes in the timetable of their reviews;
- (6) appoint members to subcommittees and task forces as necessary to carry out its functions;
- (7) establish and perform procedures providing reasonable assurance that reviews are performed and reported on in accordance with the AICPA Standards for Performing and Reporting on Peer Reviews;
- (8) establish a report acceptance process, which facilitates the exchange of viewpoints among committee members;
- (9) communicate to the governing body of the sponsoring organization on a recurring basis:

(A) problems experienced by the enrolled firms in their systems of quality control as noted in the peer reviews conducted by the sponsoring organization;

(B) problems experienced in the implementation of the peer review program; and

(C) a summary of the historical results of the peer review program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 25. HEALTH SERVICES

PART 6. STATEWIDE HEALTH COORDINATING COUNCIL

CHAPTER 571. HEALTH PLANNING AND RESOURCE DEVELOPMENT

The Statewide Health Coordinating Council (council) adopts an amendment to §571.1 and the repeal of §§571.11 - 571.13, concerning the general provisions, state health plan and plan implementation, and the Health Information Technology Advisory Committee (advisory committee).

The amendment to §571.1 is adopted without changes to the proposed text as published in the May 20, 2016, issue of the *Texas Register* (41 TexReg 3616) and, therefore, the section will not be republished.

The repeals of §§571.11 - 571.13 are adopted without changes to the proposed text as published in the May 20, 2016, issue of the *Texas Register* (41 TexReg 3617) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The council issues directives for and provides guidance on the development of the state health plan, submits the plan to the Health and Human Services Commission for review and comment, and approves the plan for submission to the governor. The Department of State Health Services (department), in accordance with rules adopted by the council, prepares and reviews a proposed state health plan every six years and revises and updates the plan biennially. The department submits the proposed plan to the council. The rules proposed for amendment, re-adoption, and repeal implement Health and Safety Code, Chapter 104, Statewide Health Coordinating Council and State Health Plan, and outline the development and implementation of the state health plan.

The council formed the advisory committee in 2006 pursuant to Health and Safety Code, §104.0156 and developed a long-range

plan for health care information technology, including the use of electronic medical records, computerized clinical support systems, computerized physician order entry, regional data sharing interchanges for health care information, and other methods of incorporating information technology in pursuit of greater cost-effectiveness and better patient outcomes in health care. The rules proposed for repeal implemented the advisory committee.

The amendment to §571.1 and the readoption of §571.2 are necessary to comply with Health and Safety Code, §104.012. Section 571.2 is readopted without changes to the rule.

The repeal of §§571.11 - 571.13 for the advisory committee is necessary as the council's reasons for initially adopting the rules no longer exist, given the completion of the long-range plan mandated by Health and Safety Code, §104.0156.

Government Code, §2001.039, governs an agency's review of rules, and generally requires that a state agency review a rule no later than the fourth anniversary of the date on which the rule takes effect and every four years after that date. A state agency's review of a rule must include an assessment of whether the reasons for adopting each rule continue to exist.

SECTION-BY-SECTION SUMMARY

The amendment to §571.1 replaces the "Texas Department of Health" with the "Texas Department of State Health Services" to reflect House Bill 2292, 78th Legislature, Regular Session, 2003, which abolished the Texas Department of Health and created the department.

COMMENTS

The council did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

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

SUBCHAPTER A. STATEWIDE HEALTH COORDINATING COUNCIL

25 TAC §571.1

STATUTORY AUTHORITY

The amendment will be adopted under Health and Safety Code, §104.012, which authorizes the council to adopt rules governing the development and implementation of the state health plan. The review of the rules implements Government Code, §2001.039.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 12, 2016.

TRD-201603476

Matt Turner, PhD, MPH

Health Professions Resource Center

Statewide Health Coordinating Council

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Proposal publication date: May 20, 2016

For further information, please call: (512) 776-6972



SUBCHAPTER B. HEALTH INFORMATION TECHNOLOGY ADVISORY COMMITTEE

25 TAC §§571.11 - 571.13

STATUTORY AUTHORITY

The repeals are authorized by Health and Safety Code, §104.012, which authorizes the council to adopt rules governing the development and implementation of the state health plan. The review of the rules implements Government Code, §2001.039.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Matt Turner, PhD, MPH

Health Professions Resource Center

Statewide Health Coordinating Council

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For further information, please call: (512) 776-6972



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 17. STATE PENSION REVIEW BOARD

CHAPTER 607. PUBLIC RETIREMENT SYSTEM MINIMUM EDUCATIONAL TRAINING PROGRAM

The State Pension Review Board (the "Board"), adopts amendments to 40 TAC Chapter 607, Subchapter B, §607.110, concerning Minimum Educational Training Requirements; Subchapter C, §607.120, concerning Program Standards for All Sponsors; and Subchapter D, §607.140, concerning Public Retirement System Reporting, without changes to the proposed text as published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2146). The rules will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE AMENDMENTS

In accordance with Government Code, §801.211, the Board established an educational training program for trustees and system administrators of Texas public retirement systems under Chapter 607. Since the original adoption of the rules, the Board has received comments and questions from public retirement systems and education providers (sponsors) regarding the applicability of certain requirements. The purpose of the adopted amendments is to address the comments received by the Board.

The amendments to §§607.110, 607.120, and 607.140 are intended to make the following changes:

§607.110 allows flexibility for first year of service training completed under the Minimum Educational Training (MET) requirements. Under the prior rules, the Board received comments from public retirement systems citing scenarios in which

a trustee may want to attend an MET activity in core content areas prior to officially assuming position on the system's board. In response to these comments, the Board added the new subsection §607.110(c), which allows the Board to accept a trustee or system administrator's successfully completed MET activity up to six months prior to beginning service on a system's board or the system administrator's hiring date.

§607.120 lends clarity to program standards for sponsors providing online or electronically-delivered training. For MET activities to be more accessible, MET rules allow for electronically-delivered training. Under previous rules, the Board received questions regarding standards for online training completion and attendance verification. To address the questions, and upon consideration of various options, the Board determined a completion code would offer the best minimum standard for tracking attendance and completion of an electronically-delivered MET activity without being onerous for program participants and educational sponsors.

§607.140 updates and clarifies compliance reporting requirements. The PRB determined that the prior MET reporting schedule would not allow sufficient time for public retirement systems to submit the required training reports. The amended rule extends the submission deadlines by one month.

SECTION-BY-SECTION SUMMARY

The adopted amendment to §607.110 allows flexibility for Minimum Educational Training (MET) completion by trustees and system administrators prior to beginning the first year of service.

The adopted amendment to §607.120 clarifies online or electronically-delivered training standards for MET activities offered by sponsors.

The adopted amendment to §607.140 cleans up outdated language and clarifies dates for the MET reporting periods.

PUBLIC COMMENTS

No comments were received on the rule proposal.

SUBCHAPTER B. MINIMUM EDUCATIONAL TRAINING REQUIREMENTS FOR TRUSTEES AND SYSTEM ADMINISTRATORS

40 TAC §607.110

STATUTORY AUTHORITY

The adopted amendments are authorized by the Texas Government Code, §801.201(a), which grants specific authority to the Board to adopt rules for the conduct of its business; and §801.211(e), which allows the Board to adopt rules to administer and provide educational training programs under §801.211.

CROSS REFERENCE

The adopted amendments affect the Texas Government Code Chapter 801.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201603477

Anumeha
Executive Director
State Pension Review Board
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For further information, please call: (512) 463-1736

SUBCHAPTER C. MINIMUM EDUCATIONAL TRAINING PROGRAM SPONSORS

40 TAC §607.120

STATUTORY AUTHORITY

The adopted amendments are authorized by the Texas Government Code, §801.201(a), which grants specific authority to the Board to adopt rules for the conduct of its business; and §801.211(e), which allows the Board to adopt rules to administer and provide educational training programs under §801.211.

CROSS REFERENCE

The adopted amendments affect the Texas Government Code Chapter 801.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Anumeha
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State Pension Review Board
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For further information, please call: (512) 463-1736

SUBCHAPTER D. COMPLIANCE WITH THE MINIMUM TRAINING REQUIREMENTS

40 TAC §607.140

STATUTORY AUTHORITY

The adopted amendments are authorized by the Texas Government Code, §801.201(a), which grants specific authority to the Board to adopt rules for the conduct of its business; and §801.211(e), which allows the Board to adopt rules to administer and provide educational training programs under §801.211.

CROSS REFERENCE

The adopted amendments affect the Texas Government Code Chapter 801.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 463-1736



PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 819. TEXAS WORKFORCE COMMISSION CIVIL RIGHTS DIVISION

The Texas Workforce Commission (Commission) adopts the following new section to Chapter 819, relating to the Texas Workforce Commission Civil Rights Division, *without changes*, as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3271):

Subchapter H. Discriminatory Housing Practices, §819.136

The Commission adopts amendments to the following sections of Chapter 819, relating to the Texas Workforce Commission Civil Rights Division, *without changes*, as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3271):

Subchapter A. General Provisions, §§819.1 - 819.3

Subchapter B. Equal Employment Opportunity Provisions, §819.11 and §819.12

Subchapter C. Equal Employment Opportunity Reports, Training, and Reviews, §§819.23 - 819.25

Subchapter D. Equal Employment Opportunity Complaints and Appeals Process, §§819.46, 819.47, 819.50, and 819.52

Subchapter E. Equal Employment Opportunity Deferrals, §819.72

Subchapter G. Texas Fair Housing Act Provisions, §819.112

Subchapter H. Discriminatory Housing Practices, §819.122

Subchapter I. Texas Fair Housing Act Complaints and Appeals Process, §§819.151, 819.153, and 819.156

Subchapter J. Fair Housing Deferral to Municipalities, §819.171

Subchapter L. Fair Housing Fund, §819.221

The Commission adopts the repeal of the following sections of Chapter 819, relating to the Texas Workforce Commission Civil Rights Division, as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3271):

Subchapter C. Equal Employment Opportunity Reports, Training, and Reviews, §819.22

Subchapter J. Fair Housing Deferral to Municipalities, §819.172

The Commission adopts the repeal of the following subchapter of Chapter 819, relating to the Texas Workforce Commission Civil Rights Division, in its entirety, as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3271):

Subchapter K. Fair Housing Administrative Hearings and Judicial Review, §§819.191 - 819.201

The Commission adopts the following new subchapter to Chapter 819, relating to the Texas Workforce Commission Civil Rights

Division, *without changes*, as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3271):

Subchapter K. Fair Housing Administrative Hearings and Judicial Review, §§819.191 - 819.201

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The 84th Texas Legislature, Regular Session (2015), enacted the following changes, requiring amendments to Chapter 819, the Texas Workforce Commission Civil Rights Division rules:

--Senate Bill (SB) 208, relating to the continuing functions of the Texas Workforce Commission (Agency), which abolishes the Commission on Human Rights and transfers its duties to the Agency, in addition to streamlining and clarifying several CRD functions, including review of other state agencies and reporting requirements to the legislature.

--SB 1267, relating to contested cases conducted under the Administrative Procedure Act (APA);

--House Bill (HB) 2154, relating to the functions and operation of the State Office of Administrative Hearings, resulting in changes to Texas Government Code, Chapter 2001, APA;

--HB 577, relating to pay, benefits, and requirements for state active duty service members; and

--SB 652, relating to excluding a franchisor as an employer of a franchisee or a franchisee's employees, which impacts the definition of "Employer" in §819.11.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

The Commission adopts the following amendments to Subchapter A:

§819.1. Purpose

Section 819.1 adds a reference to Texas Government Code §437.204 and Subchapter I and removes the reference to Texas Government Code, Chapter 419, Subchapter F (relating to the review of fire department tests) to clarify that the Agency enforces discrimination claims by state military members against employers other than the Texas Military Forces due to deployment for training or active duty, and to implement SB 208 and HB 577.

§819.2. Definitions

Section 819.2(1) and (2) are amended to remove the definition of "Commission on Human Rights" and add the definitions of "Agency" and "Commission" to implement SB 208.

Section 819.2(4), the definition of CRD director, is amended to implement SB 208 by:

--removing Texas Labor Code reference §301.154 and adding the reference to §301.009(a); and

--adding that the CRD director is the Agency's authorized designee to implement SB 208.

Certain paragraphs have been renumbered to reflect additions.

§819.3. Roles and Responsibilities of Commission on Human Rights, CRD, and CRD Director

Section 819.3 is amended by renaming the section title as "Roles and Responsibilities of the Texas Workforce Commission and CRD" to implement SB 208.

Section 819.3(a) is amended by replacing "Commission on Human Rights" with "Agency" to implement SB 208.

Section 819.3(a)(2) is amended by adding that the Agency's executive director will appoint the CRD director in order to implement SB 208.

Section 819.3(a)(3) is amended to add that the Agency's executive director will supervise its CRD director in administering the activities of CRD.

Section 819.3(b)(1) is amended to add the reference to Texas Government Code §437.204 and Subchapter I and remove the reference to Texas Government Code, Chapter 419, Subchapter F (relating to the review of fire department tests) and Chapter 437 to clarify that the Agency enforces discrimination claims by state military members against employers other than the Texas Military Forces due to deployment for training or active duty, and to implement SB 208 and HB 577.

Section 819.3(c), Agency Personnel Policies Applicable to CRD Director, is removed to implement SB 208.

SUBCHAPTER B. EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

The Commission adopts the following amendments to Subchapter B:

§819.11. Definitions

Section 819.11(6) is amended to clarify the definition of "Employer" to implement:

--HB 577, which excludes the Texas Military Forces from being considered employers; and

--SB 652, which excludes franchisors from being considered employers.

Section 819.11(8) is amended by clarifying that "Mediation" is an "alternative dispute resolution" process intended to "resolve" a dispute and removing "prior to reasonable cause determination or dismissal of a perfected complaint." This change aligns the definition with Agency practice.

§819.12. Unlawful Employment Practices

Section 819.12(g) is amended to replace "Commission on Human Rights" with "Agency" and to update section language to implement SB 208.

Certain paragraphs and subparagraphs have been renumbered and relettered to reflect revisions.

SUBCHAPTER C. EQUAL EMPLOYMENT OPPORTUNITY REPORTS, TRAINING, AND REVIEWS

The Commission adopts the following amendments to Subchapter C:

§819.22. Review of Firefighter Tests

Section 819.22, "Review of Firefighter Tests," is repealed to implement SB 208.

§819.23. Review of State Agency Policies and Procedures

Section 819.23(a) and new (b) update procedures in reviewing other state agencies' personnel policies and procedures systems (PPPS), which allows reviews of state agencies' PPPS more frequently than every six years, using risk assessment with the implementation of SB 208.

Certain subsections have been relettered to reflect additions.

§819.24. Standard Employment Discrimination Training

Section 819.24(a) is amended to:

--remove the requirement that a preapproved list of standard and compliance training be maintained; and

--add that the Agency shall develop materials for use by state agencies in providing standard employment discrimination training.

§819.25. Compliance Employment Discrimination Training

Section 819.25(b):

--removes the requirement that preapproved list of standard and compliance training be maintained by CRD; and

--adds that compliance training may be provided by the Agency or by another entity or person approved by the Agency.

SUBCHAPTER D. EQUAL EMPLOYMENT OPPORTUNITY COMPLAINTS AND APPEALS PROCESS

The Commission adopts the following amendments to Subchapter D:

§819.46. Dismissal of Complaint

Section 819.46(b) is amended to align with Texas Labor Code §21.208 on the legal communication method to the complainant, respondent, and any applicable federal enforcement agency.

§819.47. Cause Determination

Section 819.47(b) is amended to replace "Commission on Human Rights" with "Commission members" to implement SB 208.

§819.50. Right to File a Civil Action

Section 819.50(a)(2) is amended to replace "shall" with "may" to align with Texas Labor Code §21.252(c).

§819.52. Judicial Enforcement

Section 819.52(a) is amended to add "On a majority vote of the Commission" to implement SB 208.

Section 819.52(b) is amended to specify that the Commission makes the determination to bring a civil action and that CRD shall notify the complainant by certified mail to implement SB 208.

Section 819.52(c) is amended to replace "Commission on Human Rights" with "Commission" to implement SB 208.

SUBCHAPTER E. EQUAL EMPLOYMENT OPPORTUNITY DEFERRALS

The Commission adopts the following amendments to Subchapter E:

§819.72. Requirements for a Local Commission

Section 819.72 is amended to reflect current operations by specifying that the local commission must be currently certified by EEOC as a Fair Employment Practices Agency (FEPA).

Certain paragraphs in this section have been renumbered to accommodate revisions.

SUBCHAPTER G. TEXAS FAIR HOUSING ACT PROVISIONS

The Commission adopts the following amendments to Subchapter G:

§819.112. Definitions

Section 819.112(8)(A)(ii) is amended to replace "mental retardation" with "intellectual disability," in accordance with rule changes that were previously approved in June 2014.

SUBCHAPTER H. DISCRIMINATORY HOUSING PRACTICES

The Commission adopts the following amendments to Subchapter H:

§819.122. Exemptions Based on Familial Status

The heading to §819.122 is amended to add "Three" to emphasize that there are three distinct exemptions.

Section 819.122(a) is amended by adding language in reference to a federal or state program for clarification.

Section 819.122(b) is amended to add language clarifying that discrimination prohibitions under the Texas Fair Housing Act based on familial status do not apply to housing intended for and solely occupied by individuals 62 years of age or older.

Section 819.122(c) is amended to add language clarifying that discrimination prohibitions under the Texas Fair Housing Act based on familial status do not apply to housing intended and operated for occupancy by individuals 55 years of age or older, given specific criteria.

New §819.136. Prohibited Interference, Coercion, Intimidation, or Retaliation

New §819.136, "Prohibited Interference, Coercion, Intimidation, or Retaliation," retains the provisions of §819.201 of Subchapter K of this chapter, concurrently proposed for repeal.

SUBCHAPTER I. TEXAS FAIR HOUSING ACT COMPLAINTS AND APPEALS PROCESS

The Commission adopts the following amendments to Subchapter I:

§819.151. Filing a Complaint

Section 819.151(h) is amended to replace "Commission on Human Rights" with "Commission" and to specify that if a majority of the Commission does not approve the complaint, the complaint shall be withdrawn by CRD to implement SB 208.

§819.153. Investigation of a Complaint

Section 819.153(a) is amended to add language further clarifying CRD internal practice.

Section 819.153(d) is amended to remove the phrase "within 10 days of identification" to align with Texas Property Code §301.084 and §301.081(f)(3).

Section 819.153(k) is amended to add "unless it is impracticable to do so" to align with federal Fair Housing Act §810(a)(1)(C).

§819.156. Reasonable Cause Determination and Issuance of a Charge

Section 819.156(a) is amended to replace "Commission on Human Rights" with "Agency" to implement SB 208. Additionally, "and" is changed to "or" to clarify that reasonable cause determination shall be based solely on the facts concerning the al-

leged discriminatory housing practice, provided by complainant and respondent, or otherwise disclosed during the investigation.

Section 819.156(e) is amended to add "trial of" to align with Texas Property Code §301.092 and federal Fair Housing Act §810(g)(4) and to reflect that a charge may not be issued upon commencement of a trial of a civil action rather than commencement of the civil action itself.

SUBCHAPTER J. FAIR HOUSING DEFERRAL TO MUNICIPALITIES

The Commission adopts the following amendments to Subchapter J:

§819.171. Deferral

Section 819.171 is amended to reflect that CRD may defer proceedings and refer complaints to a municipality that is currently certified by the U.S. Department of Housing and Urban Development (HUD) by adding the phrase "as a Fair Housing Assistance Program (FHAP) to investigate fair housing complaints and enforce violations" to (a) and removing subsections (b) and (c).

§819.172. Memoranda of Understanding

Section 819.172 is repealed in order to eliminate the requirement of memoranda of understanding, thereby streamlining fair housing deferrals to municipalities.

SUBCHAPTER K. FAIR HOUSING ADMINISTRATIVE HEARINGS AND JUDICIAL REVIEW

The Commission adopts the repeal of Subchapter K in its entirety:

§819.191. Administrative Hearings

§819.192. Ex Parte Communications

§819.193. Proposal for Decision and Hearing Officer's Report

§819.194. Countersignature by the CRD Director

§819.195. Oral Argument before the Commission on Human Rights

§819.196. Pleading Before Order

§819.197. Form and Content of the Order

§819.198. Final Order

§819.199. Rehearing

§819.200. Judicial Review

§819.201. Prohibited Interference, Coercion, Intimidation, or Retaliation

SUBCHAPTER K. FAIR HOUSING ADMINISTRATIVE HEARINGS AND JUDICIAL REVIEW

The Commission adopts new Subchapter K:

Subchapter K is being repealed and replaced to streamline, update, and clarify the rules governing administrative proceedings for adjudication of fair housing complaints as required in Texas Property Code, Chapter 301.

New Subchapter K aligns with APA, as amended by SB 1267 and HB 2154, regarding notices of hearing, proposals for decision, motions for rehearing, and suits for judicial review.

§819.191. Administrative Hearings

New §819.191 provides that FHA hearings will be conducted by the Agency's Special Hearings Department in accordance with Texas Government Code, Chapter 2001.

§819.192. Parties

New §819.192 sets forth requirement and time frame in regards to parties.

§819.193. Evidence and Prehearing Conference

New §819.193 provides for the admissibility of evidence and handling of exhibits.

§819.194. Notice of Hearing

New §819.194 sets forth the requirements and time frames for issuing a notice of hearing.

§819.195. Postponement and Continuance

New §819.195 provides that a hearing may be postponed at the discretion of the hearing officer.

§819.196. Default

New §819.196 sets forth the procedures to be followed if a party does not appear for a hearing.

§819.197. Ex Parte Communications

New §819.197 generally prohibits communication between parties and a Commission member or Agency employee outside of the hearing process.

§819.198. Proposal for Decision

New §819.198 sets forth the procedures for drafting and exchanging the proposal for decision and exceptions to the proposal.

§819.199. Commission Decision

New §819.199 sets forth the procedures for issuing the Commission decision and when the decision becomes final.

§819.200. Motion for Rehearing

New §819.200 describes the procedures and deadlines for filing a motion for rehearing.

§819.201. Judicial Review

New §819.201 sets forth the right to appeal the Commission decision to a court under Texas Government Code, Chapter 2001.

SUBCHAPTER L. FAIR HOUSING FUND

The Commission adopts the following amendments to Subchapter L:

§819.221. Fair Housing Fund

Section 819.221(c) is amended to replace "Commission on Human Rights" with "Agency" to implement SB 208.

No comments were received.

The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§819.1 - 819.3

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it

deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Texas Government Code, Chapter 552.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Patricia Gonzalez

Deputy Director, Workforce Development Division Programs

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For further information, please call: (512) 475-0829



SUBCHAPTER B. EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

40 TAC §819.11, §819.12

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Texas Government Code, Chapter 552.

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SUBCHAPTER C. EQUAL EMPLOYMENT OPPORTUNITY REPORTS, TRAINING, AND REVIEWS

40 TAC §819.22

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted repeal affects Texas Government Code, Chapter 552.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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40 TAC §§819.23 - 819.25

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Texas Government Code, Chapter 552.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. EQUAL EMPLOYMENT OPPORTUNITY COMPLAINTS AND APPEALS PROCESS

40 TAC §§819.46, 819.47, 819.50, 819.52

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Texas Government Code, Chapter 552.

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SUBCHAPTER E. EQUAL EMPLOYMENT OPPORTUNITY DEFERRALS

40 TAC §819.72

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rule affects Texas Government Code, Chapter 552.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. TEXAS FAIR HOUSING ACT PROVISIONS

40 TAC §819.112

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rule affects Texas Government Code, Chapter 552.

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SUBCHAPTER H. DISCRIMINATORY HOUSING PRACTICES

40 TAC §§819.122, §819.136

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Texas Government Code, Chapter 552.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER I. TEXAS FAIR HOUSING ACT COMPLAINTS AND APPEALS PROCESS

40 TAC §§819.151, 819.153, 819.156

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Texas Government Code, Chapter 552.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER J. FAIR HOUSING DEFERRAL TO MUNICIPALITIES

40 TAC §819.171

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rule affects Texas Government Code, Chapter 552.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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40 TAC §819.172

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted repeal affects Texas Government Code, Chapter 552.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER K. FAIR HOUSING ADMINISTRATIVE HEARINGS AND JUDICIAL REVIEW

40 TAC §§819.191 - 819.201

The repeals are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted repeals affect Texas Government Code, Chapter 552.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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40 TAC §§819.191 - 819.201

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Texas Government Code, Chapter 552.

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SUBCHAPTER L. FAIR HOUSING FUND

40 TAC §819.221

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rule affects Texas Government Code, Chapter 552.

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