

SUBCHAPTER N. Historically Underutilized Businesses
28 TAC §1.1601

1. INTRODUCTION. The Texas Department of Insurance adopts amendments to 28 TAC §1.601, concerning historically underutilized businesses. The amendments are adopted without changes to the proposed text published in the August 29, 2014, issue of the *Texas Register* (39 TexReg 6779).

2. REASONED JUSTIFICATION. The amendments are necessary to update the department's rule to incorporate by reference the rules adopted by the Texas Comptroller of Public Accounts for historically underutilized businesses, as required by Texas Government Code §2161.003.

3. HOW THE SECTION WILL FUNCTION. The department originally adopted §1.1601 on September 26, 2000, to implement Government Code §2161.003, which adopted by reference General Services Commission rules regarding historically underutilized businesses for the purchase of goods and services paid for with appropriated money. As originally adopted, §1.1601 was located in 1 TAC §§111.11 – 111.28.

The General Services Commission was abolished in 2001 by SB 311, 77th Legislature, Regular Session, and its duties and powers were transferred to the Texas Building and Procurement Commission. The department's rules remained in 1 TAC §§111.11 – 111.28.

In 2007, the Legislature transferred some of the duties and powers of the Texas Building and Procurement Commission to the comptroller with House Bill 3560, 80th Legislature, Regular Session. The authority to adopt rules addressing historically underutilized businesses under Texas Government Code, §2161.0012, was included in this transfer.

Following the transfer of duty and powers of the Texas Building and Procurement Commission to the comptroller, the Texas Secretary of State transferred and reorganized 1 TAC §§111.11 – 111.28, relocating the sections to 34 TAC §§20.11 – 20.28. The transfer and reorganization occurred on July 6, 2007, and is located at 32 TexReg 4237.

The transfer and reorganization resulted in new numbering of the rules addressing historically underutilized businesses, but it was not a substantive change to the rules themselves. The secretary of state transferred and reorganized the rules under Government Code §2002.058, and under HB 3560, the rules were to continue in effect until superseded by an act of the comptroller. This did not constitute a rulemaking procedure under Government Code Chapter 2001. The comptroller updated the rules addressing historically underutilized businesses and added an additional section in 2011. These updated rules addressing historically underutilized businesses remain at 34 TAC §§20.10 – 20.28.

The amendments do not make a substantive change to the adoption by reference of the comptroller's rules addressing historically underutilized businesses. Rather, the purpose of the amendments is for clarity and ease of locating the most

current version of the rules addressing historically underutilized businesses the department adopted by reference.

3. SUMMARY OF COMMENTS. The department did not receive any comments on the proposed amendments.

4. STATUTORY AUTHORITY. The amendments are adopted pursuant to Government Code §2161.003 and Insurance Code §36.001. Section 2161.003 of the Government Code requires that the Texas Department of Insurance adopt the comptroller's rules for historically underutilized businesses. Section 36.001 of the Insurance Code provides that the commissioner of insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance only as authorized by statute.

5. TEXT.

§1.1601. Historically Underutilized Businesses. The Texas Department of Insurance adopts the rules of the Comptroller of Public Accounts relating to the Historical Underutilized Business Program at 34 TAC Chapter 20, Subchapter B.

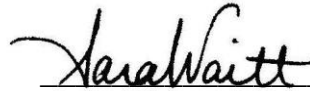
CERTIFICATION. This agency certifies that legal counsel has reviewed the amended section and found it to be a valid exercise of the agency's legal authority.

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TITLE 28. INSURANCE
Part I. Texas Department of Insurance
Chapter 1. General Administration

Adopted Section
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Issued in Austin, Texas, on October 16, 2014.



Sara Waitt, General Counsel
Texas Department of Insurance

The commissioner adopts the amendments to 28 TAC §1.601.



Julia Rathgeber
Commissioner of Insurance

COMMISSIONER'S ORDER NO. **3583**