

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to §11.1, Historically Underutilized Business Program. Section 11.1 is adopted *without changes* to the proposed text as published in the December 29, 2000 issue of the *Texas Register* (25 TexReg 12904) and will not be republished.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

Texas Government Code, §2161.003, as added by Senate Bill (SB) 178, 76th Legislature, 1999, requires every state agency to adopt, as that agency's own rules, the Texas General Services Commission (GSC) Historically Underutilized Business (HUB) rules promulgated in response to the requirements of Texas Government Code, §2161.002, as revised and expanded by SB 178. The GSC adopted amendments to 1 TAC, §§111.12, 111.16, and new 111.28 on June 9, 2000, to comply with the requirements of Texas Government Code, Subchapter B, §2161.065 (Mentor Protege Program), Subchapter C (Planning and Reporting Requirements), and Subchapter F (Subcontracting) as enacted by SB 178.

To comply with the requirements of Texas Government Code, §2161.003, the commission is adopting by reference all of the GSC HUB rules under Title 1 TAC, Chapter 111, Subchapter B (Historically Underutilized Business Program) through the most recent revisions adopted by the GSC and published in the June 9, 2000, issue of the *Texas Register* (25 TexReg 5621); except for §111.24 (Program Review) and §111.25 (Memorandum of Understanding between the Texas Department of Economic Development and the General Services Commission) which apply only to the GSC.

#### SECTION BY SECTION DISCUSSION

The adopted changes to §11.1 add language to adopt by reference 1 TAC §§111.26 - 111.28, which were not previously adopted by reference, and replace the date and issue of the *Texas Register* the referenced rules are amended through to represent the most recent revisions published in the June 9, 2000, issue of the *Texas Register* (25 TexReg 5621). In order to correctly cite the subchapter title of the GSC rules, the word “Certification” is deleted.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rule is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in the act. “Major environmental rule” means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rule does not meet the definition of “major environmental rule” because it is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The rulemaking adopts by reference administrative rules of the GSC relating to HUBs as required by Texas Government Code, §2161.003. The commission invited public comment on the draft regulatory impact analysis determination, and no comments were received.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated the rulemaking and performed a final assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission determined that Texas Government Code, Chapter 2007 does not apply to the rulemaking because it is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). Nevertheless, the commission further evaluated the adopted rule and performed a final assessment of whether the rule constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the rulemaking is to adopt by reference administrative rules of the GSC relating to HUBs as required by Texas Government Code, §2161.003. Promulgation and enforcement of the adopted rule will be neither a statutory nor a constitutional taking of private real property.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the adopted rule is not subject to the Coastal Management Program.

#### HEARING AND COMMENTERS

No public hearing was held regarding this rulemaking. The public comment period closed on January 29, 2001, and no comments were received.

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; and Texas Government Code, §2161.003, which requires a state agency to adopt the GSC rules under Texas Government Code, §2161.002, as the agency's own rules.

**SUBCHAPTER A : HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM**

**§11.1**

**§11.1. Historically Underutilized Business Program.**

The commission adopts by reference the rules of the Texas General Services Commission in 1 TAC §§111.11 - 111.23 and §§111.26 - 111.28 (relating to Historically Underutilized Business Program), as amended through the June 9, 2000, issue of the *Texas Register* (25 TexReg 5621).