

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

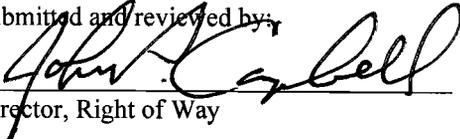
The Texas Transportation Commission (commission) finds it necessary to propose the repeal of Chapter 21, Subchapter I, Regulation of Signs along Interstate and Primary Highways, §§21.141 - 21.163, and Subchapter K, Control of Signs along Rural Roads, §§21.401 - 21.581; and propose new Subchapter I, Regulation of Signs along Interstate and Primary Highways, §§21.141 - 21.203; new Subchapter J, Regulation of Electronic Signs, §§21.251 - 21.260; new Subchapter K, Control of Signs along Rural Roads, §§21.401 - 21.446; and new Subchapter Q, Regulation of Directional Signs, §§21.941 - 21.947, all relating to regulation of signs along interstate and primary highways and rural roads to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed repeals and new sections, attached to this minute order as Exhibits A - G, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the Texas Register.

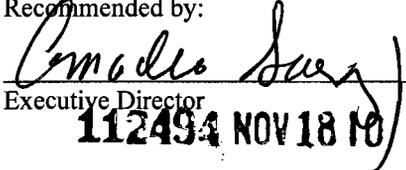
IT IS THEREFORE ORDERED by the commission that the repeal of §§21.141-21.163 and §§21.401-21.581 and new §§21.141-21.203, §§21.251-21.260, §§21.401-21.446, and §§21.941-21.947 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:


Director, Right of Way

Recommended by:


Executive Director

112494 NOV 18 10

Minute Number Date Passed

Proposed Preamble

1
2 The Texas Department of Transportation (department) proposes
3 repealing existing 43 TAC Chapter 21, Subchapter I, Regulation
4 of Signs along Interstate and Primary Highways, §§21.141 -
5 21.163, and Subchapter K, Control of Signs along Rural Roads,
6 §§21.401 - 21.581. The department proposes the simultaneous
7 replacement of the repealed subchapters with new Subchapter I,
8 Regulation of Signs along Interstate and Primary Highways,
9 §§21.141 - 21.203; new Subchapter J, Regulation of Electronic
10 Signs, §§21.251 - 21.260; new Subchapter K, Control of Signs
11 along Rural Roads, §§21.401 - 21.446; and new Subchapter Q,
12 Regulation of Directional Signs, §§21.941 - 21.947.

13

14 EXPLANATION OF PROPOSED REPEALS AND NEW SECTIONS

15 The department is in the process of restructuring the Outdoor
16 Advertising Program. To achieve this goal the department has
17 determined that changes to the existing rule format are
18 necessary. To streamline this process the department is
19 proposing to repeal the rules relating to the existing program
20 and simultaneously propose new sections. A majority of the new
21 rules are nonsubstantive changes. The department proposes a new
22 rule organizational structure that subdivides the current rules
23 into smaller sections and reorganizes them so that the new rules
24 logically follow the sign permitting process. The revision
25 permits easier location of and access to specific provisions and

1 makes them more understandable.

2

3 In addition, the department has made substantive changes to the
4 rules to address four specific areas: fee structure,
5 streamlining current regulations, methods to increase
6 consistency between the primary and rural road programs, and
7 methods to improve consistent enforcement. The department
8 requested input from interested parties on these four issues and
9 any other suggestions on improving existing rules to help
10 formulate these new rules. Several comments were received and
11 used in drafting these revisions.

12

13 The Texas Transportation Commission (commission) also appointed
14 a rulemaking advisory committee. Members of the Outdoor
15 Advertising Rulemaking Advisory Committee represent the
16 regulated industry, local political subdivisions, land owners,
17 and scenic organizations. The views from the committee were
18 diverse and provided the necessary input for the department to
19 formulate the rule revisions. The committee focused on the rule
20 revisions with substantive changes and provided advice and
21 guidance for the language included in these rules.

22

23 In this preamble, the abbreviation "OAS" is used for "outdoor
24 advertising signs."

25

1 New §21.141, Purpose, contains the purpose and scope of the
2 subchapter and is the same as the current §21.141.

3

4 New §21.142, Definitions, incorporates a majority of the
5 definitions from the current §21.142 without change. The
6 definitions for "commercial or industrial area," "zoned
7 commercial or industrial area," "unzoned commercial or
8 industrial area," and "commercial or industrial activity" have
9 been moved to separate sections because they provided
10 substantive language regarding the qualifications for a sign
11 permit. This change makes the language easier to understand and
12 find. The new section also changes the definitions of "freeway"
13 by adding toll roads, "intersection" by referencing the
14 statutory definition, and "interstate highway system" by more
15 clearly defining which roadways qualify. Additional grammatical
16 changes were made in this section to clarify the provisions and
17 remove unnecessary language.

18

19 New §21.143, Permit Required, is primarily the language of the
20 current §21.146(b), but now provides an unambiguous
21 identification of the type of OAS for which a permit is
22 required. The language is altered from the current rule to
23 provide that if any of the advertisement or information content
24 is visible from the main travel lanes of a regulated highway the
25 OAS is required to have a permit unless otherwise exempted under

1 the chapter.

2

3 New §21.144, License Required, provides that a person must hold
4 as outdoor advertisement license to obtain a permit for an OAS.
5 This language is the same as the first part of the current
6 §21.149(a)(1) with minor grammatical changes. There are no
7 substantive changes to the requirement for the OAS license.

8

9 New §21.145, Prohibited Signs, provides specific circumstances
10 under which a sign is prohibited and ineligible for an OAS
11 permit under the subchapter. This language was taken from
12 current §21.148 with the addition of the reference to signs
13 prohibited under Transportation Code, §391.252. This reference
14 was added so that the statutory prohibitions would not be
15 overlooked if a licensee or another individual were tempted to
16 rely only on the rules for guidance.

17

18 New §21.146, Exempt Signs, is a revision of the current §21.147
19 and provides descriptions of signs that are exempt from the
20 permitting requirements of the subchapter. This new section
21 provides a detailed listing of the requirements of each type of
22 exempted sign including size, restrictions of location and time
23 of posting if applicable, and content of the sign. This
24 language is needed for clarification. The new section exempts a
25 recorded subdivision's permanent entrance sign that only

1 identifies the subdivision. The new language also allows exempt
2 ranch or farm signs to include the telephone number and Internet
3 website information of the ranch or farm to address current
4 technology trends. New language also requires that an on-
5 premise sign be erected no sooner than one year before the
6 business is open in order to maintain exempt status. This
7 change is needed to clarify that, although the business does not
8 have to be open at the time the sign is installed, the opening
9 must be forthcoming.

10

11 New §21.147, On-Premise Sign, provides the requirements for a
12 sign to qualify as an on-premise sign, for which a permit is not
13 required under the subchapter. The language is substantially
14 the same as current §21.147(b). The new section expands the
15 information that can be displayed on an on-premise sign to
16 include telephone number and the Internet address of the
17 business. New parts of the section require that a sign that
18 advertises the sale or lease of real property on which the sign
19 is located must be removed within 90 days after the date of the
20 transfer of ownership or execution of the lease. This
21 limitation prevents a real estate agent or entity from using
22 such a sign as a means of advertisement for the agent or entity.
23 The new language provides a working definition of "date of
24 closing" a sales or lease transaction to clarify the time that a
25 real estate sign can be posted. Finally, current rules limit an

1 incidental trade mark or logo to less than 50 percent of the
2 sign face. With the emergence of electronic on-premise signs
3 this clarification is necessary to allow for the rotation of
4 images. The new rule requires the name of the business be
5 displayed 50 percent of the time in any five minute interval.

6
7 New §21.148, Exception to License Requirements for Nonprofit
8 Signs, is substantially the same language as current §21.149(g).
9 The section provides that a nonprofit organization does not have
10 to obtain an OAS license, but must obtain a permit under new
11 §21.149.

12
13 New §21.149, Nonprofit Sign Permit, provides a separate
14 permitting process for nonprofit signs. The new section expands
15 the listing of nonprofit organizations in current §21.147(a)(5)
16 to include a service club, charitable association, religious
17 organization, chamber of commerce, nonprofit museum, or
18 governmental entity. These additions provide more guidance and
19 reflect the current policy of the types of entities that qualify
20 for nonprofit signs. New language also provides for an expanded
21 message to include information pertaining to the meeting,
22 services, events, or location of the nonprofit entity. The
23 department believes that a separate permitting process for
24 nonprofit signs will help clarify the differences between these
25 specific types of signs and general advertising OAS signs.

1
2 New §21.150, Continuance of Nonconforming Signs, is one part of
3 a four section revision of current §21.143. This new section
4 deals with the specifics of the renewal of a permit for a
5 nonconforming sign and provides clear statements as to the
6 standards with which a nonconforming sign must comply. The
7 language provides that to be eligible for a permit renewal, the
8 nonconforming sign must have been lawful on the date it was
9 erected or came under the control of the department and must
10 remain substantially the same as it was on that date. The new
11 section is taken from current §21.143(a) with minor
12 nonsubstantive changes.

13
14 New §21.151, Time Proposed Roadway Becomes Subject to
15 Subchapter, clarifies that a proposed roadway becomes subject to
16 the rules of the subchapter when the environmental clearance and
17 the approved alignment have been obtained from the Federal
18 Highway Administration. If FHWA approval is not needed, the
19 road comes under the chapter when the alignment is approved by
20 the governmental entity responsible for the construction of the
21 roadway. This new section provides a specific point in time in
22 which a roadway becomes subject to these rules. This change is
23 needed to prevent signs from being erected without complying
24 with the permitting requirements. The current language
25 regarding when the road becomes subject to the rules is in the

1 current definitions of freeway and interchange in §21.142(9) and
2 (10).

3

4 New §21.152, License Application, provides the application
5 process for an OAS license. This language incorporates the
6 language of current §21.149(a). The new section provides for
7 the specifics of applying for an OAS license including the
8 information that must be included in the application, the
9 statutory requirement of a surety bond in the amount of \$2,500
10 for each county in which the applicant's signs are to be erected
11 or maintained, and the requirement of the license fee. The
12 surety bond is payable to the commission to reimburse the
13 department for removal costs of a sign that the license holder
14 unlawfully erects or maintains. The language regarding the
15 information that must be contained in the surety document in the
16 current rule is not included in this new section because the
17 requirement that the document must be in a form prescribed by
18 the department is sufficient to provide the department with all
19 necessary information to determine if the surety meets the
20 minimum requirements. Other than the deleted language regarding
21 the surety form the new language has only minor grammatical
22 changes from the current §21.149(a).

23

24 New §21.153, License Issuance, stipulates that the department
25 will issue a license if the requirements of new §21.152 are

1 satisfied. The new section states that the department may not
2 issue a license to a business entity that is not authorized to
3 conduct business in this state. This differs in wording from
4 the current §21.149(a)(3) which refers to a corporation or
5 limited partnership that is "authorized by the secretary of
6 state to conduct business in the State of Texas."

7

8 New §21.154, License Not Transferable, states that a license
9 issued under the subchapter is not transferable. This is a
10 rewording of current §21.149(a)(4).

11

12 New §21.155, License Renewals, retains the requirement for
13 annual renewal of an OAS license stated in current
14 §21.149(b)(1). The new section provides for the renewal of all
15 licenses on the date of expiration, which will increase
16 administrative efficiency from a special listing of licenses in
17 current §21.149(b)(1)(B) and (C), which required a renewal date
18 of January 1st of each succeeding year if the original license
19 was issued after January 1, 1991. The requirements for the
20 annual renewal in the new section state that the applicant must
21 file a written application in a form prescribed by the
22 department accompanied by the annual renewal fee listed in new
23 §21.156. Further, the new section requires the minimal
24 compliance for the renewal application to be the license
25 holder's complete legal name, mailing address, telephone number,

1 number of licenses being renewed, proof of bond coverage,
2 signature of the license holder or person signing on behalf of
3 the business entity, and any additional information the
4 department considers necessary. Lastly, the new section states
5 that a license is not eligible for renewal if the license holder
6 is not authorized to conduct business in this state. The
7 renewal points of compliance in the new section differ from the
8 current §21.149(b)(2) - (4) only in the correction of grammar.
9 Language is also added to allow a 30-day grace period for
10 renewals with the payment of an additional late fee. The
11 department will not accept a renewal if received more than 30
12 days after the license expires.

13
14 New §21.156, License Fees, and Transportation Code, §391.069 and
15 §394.025, provide that the department may charge fees in an
16 amount that will recover the costs of enforcing the program.
17 Research indicates the current fee structure for the original
18 license application and the annual license renewal has remained
19 unchanged since December 2, 1991 and does not support a revenue
20 neutral program that is in substantial need of modernization in
21 inventory and enforcement procedures paramount to federal
22 compliance issues. To create and maintain an inventory and
23 needed enforcement, the new section sets the original license
24 application fee at \$125, and increases the current renewal fee
25 from \$60 to \$75. The appropriate fee must be submitted with the

1 application and is payable by check, cashier's check, or money
2 order to the Texas Highway Beautification Fund. A license is
3 voidable if the check or money order used to pay the fee is
4 dishonored. New verbiage requires the renewing applicant to pay
5 a late penalty of an additional \$100 for late payment up to 30
6 calendar days after the date of termination of the license,
7 which is established as one year from its last issuance. A
8 payment or late payment received by the department after this 30
9 day late penalty period will not be honored and the license will
10 be subject to revocation. The rules also provide that the
11 department will give notification of the pending expiration at
12 least 30 days before the expiration and will provide notice of
13 the opportunity to file a late renewal. The 30 day grace period
14 was added to prevent the harsh penalty of license revocation for
15 being late on a payment.

16
17 New §21.157, Temporary Suspension of License, provides the
18 process for the temporary suspension of an OAS license if the
19 department is notified by a surety company that a bond is being
20 cancelled. The new section provides that the department will
21 notify the license holder and that a new bond must be obtained
22 and filed with the department before the bond cancellation date
23 or the 30th day after the day of the receipt of the notice,
24 whichever is later. This new section is primarily a rewording
25 of current §21.149(d) with the additional statement that the

1 notice under this section will be presumed to be received on the
2 fifth day after the mailing.

3

4 New §21.158, License Revocation, provides that the department
5 will revoke a license and in a restatement of §21.149(d) will
6 not issue any permits or transfer existing permits under the
7 license if the surety bond is not provided in the proper period,
8 the surety bond is terminated, the license holder has not
9 responded to previous enforcement actions, or the license holder
10 has violations under the subchapter, new Subchapter J, or
11 Transportation Code, Chapter 391, in combination, on more than
12 10 percent of the number of the license holder's valid permits.
13 The department will send notice of the revocation clearly
14 stating the reasons for the action, the effective date of the
15 action, and the right and procedures for the license holder to
16 request an administrative hearing. The format of the notice is
17 a rewording of current §21.149(f)(1). The new section also
18 restates current §21.149(f)(2) but provides 20 days to request
19 an administrative hearing instead of the current 10 days. The
20 language also now states that the notice is presumed to be
21 received five days after mailing. The 20-day period in the new
22 section provides additional time for a business entity to
23 determine whether to request a hearing. The new section
24 restates current §21.149(f)(3) by providing that the
25 administrative hearings will be conducted in accordance with 43

1 TAC Chapter 1, Subchapter E, Procedures in Contested Case. The
2 rule is changed to require 10 percent of violations to
3 correspond with the seriousness of the penalty. The department
4 has the ability to go after the individual permits for specific
5 violations and believes that a license should be revoked only if
6 the license holder is showing a disregard for the rules
7 evidenced by multiple violations. Ten percent was selected
8 because the department feels that it is significant enough to
9 show a problem for the sign owner.

10

11 New §21.159, Permit Applications, addresses the permit
12 application process. Current §21.150 contains all aspects of
13 the permit process from eligibility through conversions of
14 permits. The new section adds clarity and ease of understanding
15 by dividing current §21.150 into separate functional processes
16 beginning with new §21.159, which includes restatements of
17 requirements for obtaining a permit that are primarily the same
18 requirements found in current §21.150(b). These requirements
19 include submitting an application on a form prescribed by the
20 department with the information from current §21.150(b), such as
21 name and address of the applicant, the applicant's signature,
22 the proposed location and description of the sign, the legal
23 name and address of the owner of the designated site and
24 verification of the nonprofit status of the applicant if
25 applicable.

1
2 New §21.159 strengthens minimal application requirements by
3 stating that the applicant must provide written evidence in the
4 form of the signature of the site owner or site owner's
5 representative consenting to the erection of the sign and
6 providing the department right of entry onto the property at the
7 sign location. The new section also provides that if the sign
8 is to be located within the jurisdiction of a municipality that
9 is exercising its authority to regulate outdoor advertising, a
10 certified copy of the permit issued by the municipality must be
11 submitted with the application. That provision is similar to
12 the current §21.150(b)(3). The copy is not required if the city
13 requires a state permit prior to issuing the city permit or the
14 city requires the sign to be erected within one year. The rule
15 also requires the signatures to be originals to eliminate a
16 problem with photo copied signatures submitted on multiple
17 applications. The changes are needed to improve the quality of
18 the information the department receives and to improve the
19 application process.

20
21 Additional strengthening of minimal permit application
22 requirements in §21.159 include having the application
23 notarized, requiring a sketch that shows the location of the
24 sign structure support poles, and providing the exact location
25 of the sign faces in relation to the sign structure, the means

1 of access to the sign, the distance from buildings, landmarks,
2 right of way line, other signs, and distinguishable features of
3 the landscape. All of these requirements help the department
4 review the applications in a timely manner.

5

6 New §21.160, Applicant's Identification of Proposed Site,
7 requires the applicant to identify the location of the proposed
8 sign structure by setting a stake or marking the concrete at the
9 proposed location. The new section adds language regarding
10 marking a concrete location to address the situation in which
11 the proposed location is in an area that cannot be marked by a
12 stake. Other than the additional language regarding concrete
13 markings, only minor grammatical and formatting changes were
14 made from the language of current §21.150(b)(6).

15

16 New §21.161, Withdrawal of Site Owner's Consent, restates the
17 portion of current §21.150(b)(2) addressing the withdrawal of a
18 site owner's consent to allow an OAS on the property. The
19 restatement includes language that the site owner's consent
20 operates for the life of the lease or until the site owner
21 delivers a written statement to the department that the consent
22 has been withdrawn in accordance with the terms of the lease
23 agreement or through a court order. The land owner must also
24 notify the sign owner that the consent has been withdrawn. This
25 notice demonstrates to the department that all parties are aware

1 of the issue. The new section strengthens language over the
2 current rule by including the site owner's consent to include
3 erection and maintenance of the sign and access to the site for
4 inspection by the department or its agents. In addition, the
5 new section adds that if the sign owner is disputing the lease
6 termination in court, the sign owner must provide documentation
7 establishing that fact for the department to stay cancellation
8 proceedings. Requiring documentation enables the department to
9 verify that the dispute is being addressed.

10

11 New §21.162, Permit Application for Certain Preexisting Signs,
12 provides that the owner of an existing sign that becomes subject
13 to Transportation Code, Chapter 391, because of a new highway or
14 a change in a highway's designation must apply for a permit
15 within 60 days after notification by the department. This
16 revises current §21.150(n) which requires a permit application
17 to be filed within 30 days. The department has provided the
18 additional 30 days to provide the sign owner ample time to
19 submit the application before the department initiates an
20 enforcement action. In addition, the department will send
21 notification to the sign owner by certified mail to ensure
22 receipt and to have a specific date for any enforcement actions.

23

24 New §21.163, Permit Application Review, restates current
25 §21.150(c) indicating permit applications will be considered in

1 the order of their receipt and if the application is incomplete
2 or incorrect, it will lose its priority position. If during the
3 review process of the application another application for the
4 same site or a conflicting site is received, that application
5 will be held until a final decision on the previously received
6 application is final. The department will notify the applicant
7 that the application is being held. The new section specifies
8 when a decision on an application is final to avoid confusion of
9 when the department will consider a subsequent application for
10 the same or a conflicting sign location. The new section adds
11 language identifying the review process to include a review of
12 the application document and a site inspection that will include
13 verification of measurements for compliance with spacing and
14 locations requirements.

15
16 New §21.164, Decision on Application, provides that in both the
17 approval and denial of a permit application, the department will
18 send a copy of the approved or denied application to the
19 applicant within 45 days of receipt of the application. If the
20 decision cannot be made within 45 days the department will
21 notify the applicant of the delay and provide an estimate for
22 when the decision will be made. This will ensure that the
23 department continues to maintain a focus on reviewing
24 applications. In the case of approval, a sign permit plate will
25 be included with the copy, and in the case of denial, a written

1 notice stating the reason for denial will be included. The new
2 section eliminates unnecessary language in the portion of
3 current §21.150(b)(5) relating to the notice of an approved
4 application. The rule also contains new language requiring the
5 department to notify the land owner of an application denial.
6 The land owner has no standing to contest the decision unless
7 land owner is also the sign owner. The notice is purely
8 informational so that the land owner is aware of the status of
9 the application.

10

11 New §21.165, Sign Permit Plate, is a revision of current
12 §21.150(b)(5) and (f). The new section provides direction for
13 placement of the sign permit plate on the sign structure and
14 expands the language to require that if a permit plate becomes
15 lost, stolen, or illegible, the sign owner must complete a
16 department form for the replacement along with a replacement
17 fee. New wording strengthens the visibility requirement that
18 the sign permit plate be visible from the main-traveled way at
19 all times. The new section incorporates a revision of current
20 §21.150(i)(11) by stating that failure to apply for a
21 replacement plate within 60 days of notification or fail to
22 attach in conformance with the applicable requirements may
23 result in the cancellation of the permit.

24

25 New §21.166, Sign Location Requirements, provides that a permit

1 will not be issued for an OAS unless it is located along a
2 roadway subject to Transportation Code, Chapter 391 within a
3 zoned or unzoned commercial or industrial area. The new section
4 has minor grammatical changes from current §21.150(b)(4).

5
6 New §21.167, Erection and Maintenance from Private Property,
7 provides that a permit will not be issued for an OAS unless the
8 sign can be both erected and maintained from private property.

9 This is a restatement with minor rewording of current §21.161(a)
10 and strengthens current §21.161(b) by changing "erected or
11 maintained" to "erected and maintained" from private property.

12
13 New §21.168, Conversion of Certain Authorization to Permit,
14 provides language for the conversion of an off-premise OAS to a
15 permit under the subchapter when a highway regulated under
16 Transportation Code, Chapter 394 regarding rural roads becomes
17 subject to Transportation Code, Chapter 391 related to regulated
18 highways. A fee for the original application for a permit is
19 not required and a sign permit plate will be issued at no
20 charge. If the sign owner has prepaid registration fees under
21 the rural roads rules, the outstanding balance will be credited
22 to the sign owner's annual renewal fee. The new section makes
23 additional grammatical changes, clarifies provisions, and
24 removes unnecessary language from current §21.150(m).

25

1 New §21.169, Notice of Sign Becoming Subject to Regulation,
2 provides notification that the owner of a sign that has become
3 subject to Transportation Code, Chapter 391 must obtain an OAS
4 license. The section provides that the department will send
5 written notification by certified mail, or if the sign owner
6 cannot be determined, the department will post the notice on the
7 sign for 30 days. The sign owner will have 60 days to submit an
8 OAS license application. This language adds grammatical
9 changes, and clarifies and removes unnecessary language from
10 current §21.150(n).

11
12 New §21.170, Appeal Process for Permit Denials, provides that if
13 a permit application is denied, the applicant may file for an
14 appeal with the executive director. The appeal must be in
15 writing and contain a copy of the denied application, statements
16 as to why the denial is believed to be in error, and supporting
17 documentation for the appeal. The written appeal must be
18 received by the department within 20 days after the date the
19 denial notice was received by the applicant. The final
20 determination will be sent to the applicant and will contain the
21 reason for the denial of the appeal or a decision that the
22 permit will be issued. The new section reenacts the basic
23 language of current §21.162. However, the new section
24 strengthens the language by providing a maximum period of 20
25 days in which the applicant may submit the appeal. The current

1 rule was silent regarding the period for appeal. By providing a
2 period to request an appeal the department is able to have a
3 specific date that the denial is final if no appeal is
4 requested. This allows the department to move forward on other
5 permit applications for the same or conflicting locations. The
6 rule also states that the department will make a decision on the
7 appeal within 90 days. If the department is unable to make a
8 decision the department will notify the applicant of the delay.
9 This language is needed to provide the sign owner some guidance
10 on how long the appeal process will take.

11
12 New §21.171, Permit Expiration, provides that an OAS permit is
13 valid for one year or automatically expires if the license under
14 which the permit was issued expires, is revoked by the
15 department, or if the sign is acquired by the state in the
16 process of a transportation project. The new section is a
17 reenactment of current §21.150(h) with minor grammatical changes
18 and removal of unnecessary language.

19
20 New §21.172, Permit Renewals, provides that an OAS permit must
21 be renewed before the date on which it expires and is eligible
22 for renewal if the sign continues to meet all applicable
23 requirements of new Subchapter I and Transportation Code,
24 Chapter 391. The renewal must be filed on the department's
25 renewal application form and be accompanied by the scheduled

1 renewal fee. Eligibility for the annual renewal requires that
2 the sign be erected before the anniversary of the date the
3 original permit was issued. The new section provides a maximum
4 of 30 days after the date of expiration in which a late renewal
5 will be accepted by the department along with an additional late
6 fee penalty. The department has not always been consistent
7 through out the districts regarding the acceptance of late
8 renewals. This additional grace period is provided so that the
9 sign owner is alerted that there is a specific date after which
10 the sign cannot be renewed. The new section rephrases current
11 §21.150(d)(1) and adds a 30-day late period in which a late
12 renewal application can be received.

13

14 New §21.173, Transfer of Permit, provides that with the written
15 approval of the department, one or more OAS permits may be
16 transferred from one business entity to another assuming both
17 entities hold a valid OAS license and that the appropriate
18 department forms are completed and are accompanied by a
19 prescribed transfer fee. The ability to transfer permits
20 extends from one nonprofit organization to another assuming the
21 sign will be maintained as a nonprofit sign. A nonprofit
22 organization is also allowed to convert a nonprofit permit to a
23 regular permit if the transferee holds an OAS license for the
24 county in which the sign is located. The department will not
25 approve the transfer of a permit if cancellation of the permit

1 is pending or has been abated awaiting the outcome of an
2 administrative hearing. The section allows for a statewide
3 transfer policy. Other than the statewide transfer policy the
4 new section differs from current §21.150(e) only in grammatical
5 changes and removal of unnecessary language.

6
7 New §21.174, Amended Permit, provides new language that
8 strengthens the overall OAS permit process by allowing an
9 applicant to submit an application to amend a permit to make
10 changes to the illumination of a sign, configuration of a
11 multiple faced sign, size of the face, or location of the sign,
12 to make customary maintenance or substantial changes under new
13 §21.191, or to change a static sign face to an electronic face.
14 This new section will allow a degree of flexibility missing from
15 the current rules without a loss of compliance control.
16 Nonconforming signs are not eligible for an amended permit
17 except to perform customary maintenance. The language allows
18 the department to develop a form and require the information
19 from the original application that is applicable to an amended
20 permit. All the information required on an original application
21 is not necessary to amend the permit and the department needs
22 the flexibility to require only the information that is needed
23 based on the reason for amending the permits. In addition, the
24 section includes the same 45-day requirement as in §21.164.

25

1 New §21.175, Permit Fees, sets the permit application fee at
2 \$100 per sign permit (current fee is \$96 per permit) and the
3 annual renewal fee at \$75 per sign permit (current fee is \$40
4 per sign). The proposed rule also provides for a new type of
5 application for an "amended permit" and sets the fee at \$100.
6 The fees do not change for the replacement plate set at \$25, the
7 transfer of a permit set at \$25, the transfer of a non-profit
8 permit that does not have a fee, or the non-profit sign permit
9 set at \$10. The new rules allow, in addition to the \$75 annual
10 fee, an additional late fee of \$100 for the renewal of a permit
11 that is received within 30 days after the permit's expiration
12 date.

13
14 Transportation Code, §391.069 and §394.025 allow the department
15 to recover the costs of enforcing the program. The current fee
16 structure for OAS permits in §21.150(g)(1) has not changed since
17 November 22, 1991. The existing fee schedule does not support a
18 revenue neutral program. In addition, it does not allow for
19 modernization in inventory and enforcement procedures to comply
20 with federal law.

21
22 To create and maintain a statewide electronic inventory and
23 produce enforcement results needed to maintain a modern,
24 efficient, responsive program, new §21.175 increases the fees
25 for permits and renewals. Obviously since 1991, administrative

1 costs have increased as have the number of signs. Without rule
2 changes to increase the license and permit fee structure,
3 compliance with federal and state laws becomes impossible. With
4 the inadequate funding the department has seen a reduction in
5 inventory compliance which has led to a decrease in effective
6 enforcement policies. Without an increase in the fees the
7 department will have a difficult time improving the
8 effectiveness of the program. Failure to meet the federal
9 compliance requirements in areas adjacent to the interstate
10 highway system and the primary highway system could lead to a
11 reduction in federal-aid highway funds.

12

13 New §21.175 refers to the \$10 fee for the original application
14 for or annual renewal of a nonprofit sign permit, which is set
15 by Transportation Code, §391.070.

16

17 New language in §21.175 requires the renewing applicant to pay a
18 late penalty of an additional \$100 per sign face for late
19 payment up to 30 calendar days after the expiration date. A
20 payment or late payment received by the department after the 30-
21 day late period will not be honored and the permit will be
22 subject to cancellation. This language was added to address the
23 new language of §21.171 regarding the expiration of the permit.
24 The fee was set at \$100 to encourage sign owners to timely
25 initiate the renewal process, and to offset costs for additional

1 notices and monitoring the renewal process.

2

3 New §21.176, Cancellation of Permit, provides that a permit will
4 be cancelled if the sign is removed; not maintained in
5 accordance with the subchapter or Transportation Code, Chapter
6 391; damaged beyond repair; abandoned; not built at the location
7 described in the application; repaired or altered without
8 obtaining an amended permit; built by an applicant who uses
9 false information; located on property owned by a person who
10 withdraws permission; erected, repaired, or maintained in
11 violation of the rules on destruction of vegetation and access
12 from the highway right of way; or does not have a permit plate
13 properly attached. The department will provide written
14 notification of the cancellation to the sign owner that includes
15 the reason for the cancellation, the effective date of
16 cancellation, and the procedures for and right of the permit
17 holder to request an administrative hearing. The written
18 request for the hearing must be delivered to the department
19 within 20 days after the date the notice of cancellation is
20 received by the sign owner. The hearing will be conducted in
21 accordance with rules for standard contested case procedures.
22 These provisions are found in current §21.150(i). In addition
23 to the current language, the new section expands the provisions
24 to include violations leading to cancellation authority when the
25 repair or alteration have been conducted without obtaining an

1 amended permit as now required under §21.174. The new section
2 also provides for a voluntary cancellation process. This allows
3 a licensee to voluntarily cancel a permit by written
4 notification to the department and eliminates the need for the
5 department to follow the administrative hearing process. The
6 rule also states that for building in the wrong location or a
7 permit plate violation the department will provide notice and 60
8 days to correct the problem prior to initiating a cancellation.
9 This also provides that the department will only initiate
10 cancellations for the wrong location for signs erected after the
11 effective date of these rules. The department has begun an
12 extensive inventory and this safe harbor provision prevents the
13 inventory from triggering multiple cancellation proceedings for
14 mistakes that have gone unidentified by the department for many
15 years. The rule also adds language that the department will
16 notify the land owner of pending cancellations. The land owner
17 has no standing to challenge the cancellation unless he is also
18 the sign owner. However, the notification will advise the land
19 owner of the pending action.

20
21 Of all compliance issues relating to the program, the
22 identification of the land use and activity of the area being
23 recognized as commercial or industrial is of paramount
24 importance. New §21.177, Commercial or Industrial Area,
25 clarifies that a commercial or industrial area can be either a

1 zoned or unzoned area and references specific definitions for
2 both zoned and unzoned commercial or industrial areas to be
3 found in new §21.178 and §21.179.

4

5 New §21.178, Zoned Commercial or Industrial Area, contains the
6 qualifications for a zoned commercial or industrial area. This
7 is the language from current §21.142(33) with only minor
8 changes. The section states that for the purposes of OAS
9 locations, an area is not considered zoned commercial or
10 industrial if the area is: (1) an area in which limited
11 commercial or industrial activities incident to other primary
12 land uses are allowed; (2) an area that is designated for and
13 created primarily to allow outdoor advertising structures along
14 a regulated highway; (3) an unrestricted area; or (4) a small
15 parcel or narrow strip of land that cannot be put to ordinary
16 commercial or industrial use and that is designated for a use
17 classification that is different from and less restrictive than
18 its surrounding area.

19

20 New §21.179, Unzoned Commercial or Industrial Area, provides
21 guidance for sign location in areas that are not zoned by a
22 local municipality. The proposed site for an OAS in an area
23 that is not zoned must be located on the same side of the
24 highway and within 800 feet of at least two adjacent recognized
25 commercial or industrial activities that are not used

1 predominately for residential purposes. The two commercial or
2 industrial activities must be within 200 feet of the highway
3 right of way and the permanent building in which the activity is
4 conducted must be visible from the main-traveled way. To be
5 considered adjacent, the two activities' regularly used
6 buildings, parking lots, storage, or processing areas of the
7 activities may not be separated by roads, streets, a vacant lot,
8 or undeveloped area more than 50 feet wide. Two activities that
9 occupy the same building qualify as adjacent activities if each
10 activity has at least 400 square feet of floor space dedicated
11 to that activity, are activities that are customarily allowed
12 only in a zoned commercial or industrial area, are separated by
13 a dividing wall constructed from floor to ceiling, have separate
14 and independent access and separate and independent access to
15 the restroom facilities, and can operate independently of one
16 another and are owned by different individuals. In this
17 scenario, two separate product lines offered by one business are
18 not considered to be two activities. The criterion used to
19 determine whether an area is not predominantly used for
20 residential purposes is that not more than 50 percent of the
21 area (when considered as a whole) is used for residential
22 purposes. Roads and streets are considered to be used for
23 residential purposes if residential property is located on both
24 sides of the road or street. The area considered an unzoned
25 commercial or industrial area is the total of actual or

1 projected frontage of the commercial or industrial activities
2 plus 800 feet on each of the roadway frontage to a depth of 660
3 feet. The length of an unzoned commercial or industrial area is
4 measured from the outer edge of the regularly used building,
5 parking lot, storage, or processing area of the activities and
6 along or parallel to the edge of the highway pavement.

7

8 New §21.179 revises and combines certain language from current
9 §21.142(31), the definition for unzoned commercial or industrial
10 activity, and §21.144(a) and (b) regarding measurements for
11 these types of areas. The new section corrects grammar and
12 eliminates redundant and unnecessary language. The new section
13 strengthens the requirements relating to the dividing wall
14 between two activities occupying the same buildings, access to
15 each activity and from each activity to restroom facilities, and
16 the independent operation of the activities. These changes were
17 needed to address interpretation problems with the current rule.
18 The department wanted to clarify that the activities must
19 actually be distinct from one another and not conducted by the
20 same business. The requirement that there be a floor to ceiling
21 wall will eliminate confusion caused by the current language of
22 a dividing wall. The section also clarifies that the businesses
23 must be capable of being independent. In addition, language was
24 added to grandfather the permits issued under the previous
25 rules. With the changes made to the rules, the current

1 billboards might not be eligible. Providing the language to
2 eliminate the need for previous permits to comply with the new
3 restrictions will mean that this change does not create
4 nonconforming signs. The prior signs will continue to be
5 eligible for changes and full maintenance.

6
7 New §21.180, Commercial or Industrial Activity, provides the
8 requirements for qualifying as a commercial or industrial
9 activity. The section states that a commercial or industrial
10 activity is an activity customarily allowed only in a zoned area
11 and is conducted in a building or structure that has an indoor
12 restroom, running water, functioning electrical connections,
13 adequate heating, and permanent flooring, other than dirt,
14 gravel, or sand, is visible from the traffic lanes of the main-
15 traveled way, is not primarily used as a residence, has at least
16 400 square feet of its interior floor space devoted to the
17 activity, and has been open for business for six months. The
18 new section lists activities that are not considered to be
19 commercial or industrial, including agricultural activities of
20 various types, seasonal activities, the operation or maintenance
21 of certain activities or structures, and activities created
22 primarily or exclusively to qualify an area under §21.179. The
23 new section revises language from current §21.142(2) by
24 correcting grammar and the elimination of redundant and
25 unnecessary language. The new section requires the business to

1 employ at least one individual at the activity site for a
2 minimum of 25 hours a week. The sections also require that the
3 employee be at the site at least five days a week. The 25 hours
4 can be spread over the five days in any manner as long as the
5 hours are posted. This is a change from the current rule that
6 required 30 hours a week or at least 5 days per week. Under the
7 current rule a business could qualify if a person showed up at
8 the business site for any amount of time as long as the person
9 did it five days a week. This requirement was difficult for the
10 department to observe and confirm compliance. In addition, the
11 floor space requirement for the business was increased from 300
12 to 400 square feet and the length the business is open is
13 increased to six months in an attempt to eliminate business
14 created for the sole purpose on obtaining an OAS. The new
15 language provides for a more enforceable standard and also helps
16 to eliminate businesses created solely to have the site meet the
17 requirements. The language of the section also deletes the
18 requirement for a telephone to recognize the emergence of
19 reliance on cellular technology. Language was added so that the
20 new extended hours, the larger square footage, length of time
21 the business must be open for business, and the square footage
22 for residence portion will only affect the issuance of new
23 permits. The department will not use the new requirements to
24 change the status of a current sign.

25

1 New §21.181, Abandonment of Sign, provides that a sign is
2 considered abandoned if it goes without advertising for 365
3 consecutive days or longer or if it needs to be repaired or is
4 overgrown by trees or other vegetation. The department does not
5 have to show that the sign has been without advertisement for
6 each of the 365 days and can initiate the cancellation process
7 if the department has evidence from four separate occasions that
8 supports that conclusion. Small temporary signs, such as garage
9 sale or campaign signs, located on private property that are
10 attached to the structure do not constitute advertising for the
11 purpose of these rules. Payment of property taxes or retention
12 of a sign as a balance sheet asset will not be considered in
13 determining whether a sign's permit will be canceled. If the
14 location of an abandoned sign is conforming, a permit may be
15 issued to anyone who submits an application that meets the
16 requirements of the subchapter after cancellation of the prior
17 permit is final. The new section restates current §21.156(b)
18 while correcting grammar and removing unnecessary language. In
19 addition, the new section strengthens the current rule by
20 expanding the specifics of the abandonment of a sign for 365
21 consecutive days by stating that the department can initiate the
22 cancellation process without proof of abandonment for each of
23 the 365 days. Other support, such as photographs of the sign on
24 four separate occasions, can be used to make the determination
25 of the sign being abandoned. The new section also deletes

1 language stating that a sign permit that has not been renewed
2 may be considered abandoned. This language conflicted with
3 current §21.150(j) which authorized the removal of a sign for
4 which the permit has expired. Deleting this language clarifies
5 that the department may move for removal of such a sign without
6 using the cancellation process. In addition, the section now
7 includes a requirement that the department will notify the sign
8 owner before the cancellation and provide 60 days for the sign
9 owner to correct the issue. This will create a more effective
10 enforcement program. Under the current process the department
11 initiates the cancelation procedures at the time of notification
12 and has often dismissed or settled the case when the sign
13 company begins to place advertising on the sign.

14

15 New §21.182, Sign Face Size and Positioning, provides for the
16 maximum sign face size and the types of sign configurations.
17 The size of a single face of a sign may not exceed 672 square
18 feet, 25 feet in height, and 60 feet in length, including the
19 border and trim. Temporary protrusions may be added to a sign
20 provided that the protruding area does not exceed 20 percent of
21 the sign face and the total sign face area, including the
22 protrusions, does not exceed 807 square feet. Measurements of
23 the area are taken by the smallest square, rectangle, triangle,
24 circle, or combination that encompasses the entire sign face.
25 Signs may have more than one face on a structure and may be

1 placed back-to-back, side-by-side, stacked, or in "V" shape
2 construction but not more than two faces may be presented in
3 each direction. Two sign faces, facing the same direction, may
4 not exceed the maximum sign face area when measured together.
5 Two sign faces facing the same direction may be presented as one
6 face as long as the size limitations are not exceeded. The
7 determination of fees is based on each face of a sign. In the
8 case of two sign faces covered to make one face, fees are based
9 on the original number of two faces. The new section uses
10 corrected grammar and removes unnecessary language in a
11 restatement of current §21.152 as it relates to limits for size,
12 number, direction of visibility, height, length, and temporary
13 protrusions for sign faces. The new section removes current
14 §21.182(g), which states that a sign may be permanently enlarged
15 without a new permit by up to 10%, because this provision relies
16 totally on self-reporting and provides errors in record
17 management related to compliance with sign limitations.

18
19 New §21.183, Signs Prohibited at Certain Locations, provides
20 that a sign may not be located in a place that creates a safety
21 hazard. The new section is a restatement of current §21.153(a)
22 with only minor grammatical changes.

23
24 New §21.184, Location of Signs Near Parks, provides that a sign
25 may not be located within 1,500 feet of a public park that is

1 adjacent to a regulated highway on either side of a nonfreeway
2 primary system highway and on the side of a highway adjacent to
3 the public park if the highway is on the interstate or freeway
4 primary system. The new section is a restatement of current
5 §21.153(b). The rule also adds a provision that provides that a
6 separate measurement can be taken from a park that does not abut
7 the highway. If a park does not abut the highway a sign cannot
8 be within a 250 foot radius from the park. The measurement is
9 taken from the center pole of the proposed sign structure.

10

11 New §21.185, Location of Signs Near Certain Facilities, provides
12 location restrictions for intersections, interchanges, rest
13 areas, entrance ramps, and exit ramps. A sign may not be
14 erected outside of the incorporated city limits of a
15 municipality in an area that is adjacent to or within 1,000 feet
16 of these facilities. The new section clarifies current
17 §21.153(c) in the language describing how the 1,000 feet
18 limitation is measured perpendicular and along the highway right
19 of way in relation to the distance from interchanges,
20 intersection, rest areas, ramps and acceleration and
21 deceleration lanes. The clarification includes identifying the
22 distance measurements from interchanges and intersections to be
23 from the point of widening at the intersection of the right of
24 way of the intersecting roadways. For rest areas, ramps, and
25 acceleration and deceleration lanes the measurements are taken

1 from the point of pavement widening at the beginning of the
2 entrance or exit ramp and from the point that the pavement
3 widening ends at the conclusion of the entrance or exit ramp.
4 Further, the new section identifies and clarifies the "area
5 adjacent to" an interchange, intersection, rest area, ramp or
6 acceleration and deceleration lane in which a sign cannot be
7 erected.

8
9 New §21.186, Location of Signs Near Rights of Way, provides that
10 no part of the sign face may be within five feet of the highway
11 right of way. The new section revises current §21.153(h) and is
12 different only in the deletion of unnecessary language.

13
14 New §21.187, Spacing of Signs, provides that signs on the same
15 side of a regulated freeway and the freeway frontage roads
16 outside of incorporated municipal boundaries may not be erected
17 closer than 1,500 feet apart. A municipality's extraterritorial
18 jurisdiction is not considered to be within its boundaries. On a
19 nonfreeway primary system highway outside of incorporated
20 municipal boundaries the spacing limitation is 750 feet apart
21 and includes the areas of the extraterritorial jurisdiction. On
22 a nonfreeway primary system highway within the boundaries of an
23 incorporated municipality, the spacing limitation is further
24 reduced to 300 feet apart and does not include the
25 extraterritorial jurisdiction in which the spacing limitations

1 would default to 750 feet. In all cases, the measurements
2 between signs are taken along the highway right of way
3 perpendicular to the center of the signs. The new section
4 restates current §21.153(d), (e), and (f) but clarifies the
5 spacing limitations to extraterritorial jurisdictions of
6 incorporated municipal boundaries. The new section also
7 includes an exception to spacing limitations between signs that
8 are separated by buildings, natural surroundings, or other
9 obstructions that cause only one sign located within the
10 specified area to be visible at any one time, which is in
11 current §21.153(g).

12

13 New §21.188, Wind Load Pressure, provides that an original
14 application and an application for the renewal of an OAS must
15 include a certification that the sign will withstand specific
16 wind load pressure based on the size of the sign. The new
17 section is a restatement of current §21.157 with only minor
18 reorganization, grammatical changes, and removal of unnecessary
19 language. The wind load pressure remains the same.

20

21 New §21.189, Sign Height Restrictions, provides that the maximum
22 height of an OAS is 42.5 feet and is measured from the grade
23 level of the centerline of the main-traveled way closest to the
24 sign at a point perpendicular to the sign location. A roof sign
25 with a solid face surface may not exceed 24 feet above the roof

1 level. A roof sign with an open sign face in which the open
2 area between individual letter or shapes is not less than 40
3 percent of the total gross area of the sign face may not at any
4 point exceed 40 feet above the roof level. The lowest point of
5 a projecting roof sign must be at least 14 feet above grade.
6 The new section is basically a restatement of current §21.158
7 with grammatical changes and removal of unnecessary language.
8 However, it does include a clarification that the frontage road
9 is not the main traveled way of a controlled access highway.
10 This clarification is needed to ensure that all parties
11 understand the starting point for the measurement of height.
12
13 New §21.190, Lighting of and Movement on Signs, provides that a
14 sign may not contain or be illuminated by flashing,
15 intermittent, moving lights, or animated or scrolling displays
16 except for public service information such as time, date,
17 temperature, weather, or similar information. If lights are
18 part of or used to illuminate a sign, they must be shielded,
19 directed, and positioned from all parts of the traveled ways of
20 a regulated highway and may not have an intensity or brilliance
21 that would cause vision impairment of a driver on a regulated
22 highway or interfere with the driver's operation of a vehicle.
23 In addition, no more than four luminaries can be used per
24 direction of the sign face or faces. The department has
25 received numerous complaints regarding the lights of the sign

1 and at this time the department has determined that four lights
2 adequately illuminate a sign. Lights or illumination on a sign
3 may not obscure or interfere with the effectiveness of an
4 official traffic sign, device, or signal. The same limitations
5 are applied to a temporary protrusion on a sign, except that it
6 may be animated only if it does not create a safety hazard to
7 the traveling public. Reflective paint or reflective disks may
8 be used on a sign face only if they do not create the illusion
9 of flashing or moving lights or cause an undue distraction to
10 the traveling public. Neon lights may be used on sign faces
11 only if the light does not flash and does not cause undue
12 distraction and if the permit for the sign specifies that the
13 sign is an illuminated sign. Electronic temporary protrusions
14 that display alphabetical or numerical characters only are not
15 prohibited as long as the display consists of a stationary
16 image, does not change more than twice every 24 hours, and the
17 change occurs within one minute. The department identifies this
18 type of protrusion as being part of the sign face similar to a
19 cut out or other design feature. The remaining new section is a
20 restatement of current §21.154 with grammatical changes and
21 removal of unnecessary language.

22
23 New §21.191, Repair and Maintenance, provides the process by
24 which an OAS may be maintained and repaired. The new language
25 breaks the section into three parts, routine maintenance,

1 customary maintenance, and substantial changes. Routine
2 maintenance allows for the replacement of minor parts as long as
3 the parts' materials to be the same type as those being replaced
4 and that the basic design or structure of the sign is not
5 altered. It also addresses such issues as changing the
6 advertising message, cleaning, painting, nailing, welding, or
7 the replacement of nuts and bolts. Routine maintenance can be
8 performed without an amended permit. Under customary
9 maintenance a sign owner can change the sign face structure as
10 long as using the same material, upgrade lighting to energy
11 efficient lighting, add a catwalk, and replace half the poles in
12 a 12 month period. These changes require an amended permit.
13 They are basically the current rules regarding normal
14 maintenance under §21.143(b) with the addition of upgrading the
15 lighting and adding a catwalk. The use of energy efficient
16 lighting regardless of whether there is an initial change in the
17 casing used for the lighting is not considered a substantial
18 change and is allowed for nonconforming signs. The department
19 recognizes a benefit in allowing energy efficient lights on all
20 billboards and providing the safety feature of a catwalk. Under
21 substantial changes the sign owner can make major changes to the
22 sign structure as long as the sign structure remains in
23 compliance with all other requirements of the subchapter. These
24 changes are the current language of §21.143(c). Substantial
25 changes can only be performed on conforming signs and an amended

1 permit is required to make the change. The amended permit
2 eliminates the potential inequity of a sign owner loosing the
3 site between the time an existing permit was cancelled and a new
4 permit was filed in order to comply with "substantial" changes
5 in the current rule. The new section also excludes language in
6 current §21.143(c)(1)(I) that classifies making repairs that
7 exceed 60 percent of the cost to erect a new sign of the same
8 type at the same location a substantial change. Determining the
9 cost of the repairs that exceeded the 60 percent level requires
10 a level of self-reporting and response that is burdensome to
11 sign owners. Removing the language from the new section means
12 that all "substantial" repairs and maintenance can be
13 administratively handled by using the new amended permit
14 application. This section also addresses a problem with
15 continual maintenance and repair of nonconforming signs. Under
16 the new section, nonconforming signs may only receive routine or
17 customary maintenance. A nonconforming sign can obtain an
18 amended permit to perform customary maintenance. This change
19 will allow the department to monitor the maintenance and improve
20 compliance with these provisions.

21
22 New §21.192, Permit for Relocation of Sign, allows the
23 relocation of an OAS that is legally erected and maintained and
24 that will be within the highway right of way as a result of a
25 construction project. If the sign is completely located in the

1 highway right of way, the relocation of the sign requires a new
2 permit and departmental approval of the new relocation site,
3 including the new sign site's compliance with all local codes,
4 ordinances, and applicable laws. An amended permit will be used
5 for the relocation of a sign if it will be partially located
6 within the highway right of way as the result of a construction
7 project. The new section restates current §21.160(c) making
8 grammatical changes and removing unnecessary language. The new
9 section revises and expands current §21.160(f) by correcting
10 grammar, removing unnecessary language, and adding the use of an
11 amended permit for signs that will only be partially located
12 (otherwise known as a bisection) within the new right of way
13 resulting from a construction project. Again, this change
14 provides a more efficient and equitable means for sign owners to
15 complete administrative documents for relocation and decreases
16 the department's response time without lessening quality
17 compliance control. The new rule also establishes a time frame
18 in which the new application must be submitted. The current
19 rules do not provide such a period and that failure has caused
20 administrative problems because the department cannot close out
21 the prior sign file. The rule sets the period at 18 months
22 which can be extended an additional six months by written
23 request. The department believes this is adequate time for the
24 sign owner to determine a new location for the sign.

25

1 New §21.193, Location of Relocated Sign, provides the relaxed
2 location provisions for a relocated sign. The new section
3 expands on new §21.192 by specifying in detail the requirements
4 of the actual location of the sign relocated as a result of a
5 highway construction project. To receive a permit under the
6 relocation provisions, the existing sign must first be relocated
7 to an area perpendicular to the current sign location and the
8 highway right of way line. The rule also provides a 50 foot
9 variance on either side to accommodate terrain or other
10 obstructions. If that location is not available the sign can be
11 relocated to the remaining parcel of land in which the sign was
12 situated before relocation. If neither of these locations is
13 economically or physically feasible the sign can be relocated to
14 any location that meets the provisions of the subsection that
15 provide for relaxed spacing requirements. The 50 mile provision
16 has been removed as it is not necessary to limit the location
17 within 50 miles. The 50 miles was originally used as it relates
18 to the reimbursement provisions. The sign owner can only be
19 reimbursed for 50 miles of the move but the new rules allow the
20 sign owner the opportunity to move the sign further in order to
21 avoid condemnation. The sign may not be relocated to a place
22 where it would cause a driver to be unduly distracted, obscure
23 or interfere with the effectiveness of an official traffic sign,
24 signal, or device, or a driver's view of approaching, merging,
25 or intersecting traffic. A sign located along a regulated

1 highway on an interstate or freeway primary system may not be
2 relocated to a place that is within 500 feet of a public park,
3 interchange, intersection at grade, rest area, ramp, or ramp's
4 acceleration or deceleration lane. For relocation on a highway
5 on the interstate or freeway primary system, the sign may not be
6 closer than 500 feet to another permitted OAS on the same side
7 of the highway. For a highway on the nonfreeway primary system
8 and outside of the incorporated limits of a municipality, the
9 sign may not be closer than 100 feet to another permitted sign
10 on the same side of the highway or within five feet of any
11 highway right of way line. After relocation, the sign must be
12 within 800 feet of at least one recognized commercial or
13 industrial activity about which it provides information and that
14 is located on the same side of the highway. The spacing
15 limitations for relocated signs do not apply to on-premise
16 signs, directional signs, or official signs exempted from the
17 Transportation Code. The new section revises current
18 §21.160(b)(5) and (7) and the spacing limitations of
19 §21.160(b)(8) with reorganization, grammatical corrections, and
20 removal of unnecessary language, but it does not change the
21 reduced spacing limitations for relocated signs. The rule also
22 provides that a sign cannot be relocated from a primary road to
23 a road subject to the rural road program, preventing the
24 movement of the signs into rural areas.

25

1 New §21.194, Construction and Appearance of Relocated Sign,
2 provides that a relocated sign must be constructed with the same
3 number of poles and of the same type of materials as the
4 existing sign. The number of sign faces and lighting may not
5 exceed that of the existing sign. The size of each of the sign
6 faces of a relocated sign visible to approaching traffic may not
7 exceed the smaller of the size of the existing sign face or an
8 area of 1,200 square feet, a height of 25 feet, and a length of
9 60 feet. Configuration of the relocated sign faces may be back-
10 to-back, side-by-side, stacked, or in "V" construction with not
11 more than two displays facing any direction. The exception is
12 that if the area of a sign face exceeds 350 square feet, sign
13 faces may not be stacked or placed side-by-side. The sign
14 structure and sign faces are considered to be one sign except
15 for the computation of fees. The new section revises current
16 §21.160(c)(6),(9), and (10) with corrected grammar and removal
17 of unnecessary language. It does not change the general size,
18 configuration, or construction requirements expressed in the
19 current rule. This new section excludes the language of
20 §21.160(c)(6) that required the sign to be placed in the same
21 relative position as to the line of sight, because the provision
22 is unnecessary and set a subjective standard that was difficult
23 to enforce.

24

25 New §21.195, Relocation of Sign within Municipality, provides

1 that to relocate a sign from a location within a certified city
2 to another location within the same city only requires the
3 permission of the city. The new section revises current
4 §21.160(g) by correcting grammar and removing unnecessary
5 language. Nothing in the new section dilutes the local control
6 of a certified city.

7
8 New §21.196, Relocation Benefits, provides that relocation
9 benefits will be paid in accordance with 43 TAC Chapter 21,
10 Subchapter G for the relocation of an OAS displaced by a highway
11 transportation project. To receive the relocation benefits, the
12 sign owner must enter into a written agreement with the
13 governmental entity that is acquiring the right of way in which
14 the sign is located. By so doing, the sign owner, in
15 consideration of eligible relocation benefits, waives and
16 releases any claim for damages against the governmental entity
17 and the state for any temporary or permanent taking of the sign.
18 The new section restates current §21.160(c)(11) and revises
19 current §21.160(e).

20
21 New §21.197, Discontinuance of Sign Due to Destruction, provides
22 for the repair or permit cancellation of a sign that is
23 partially destroyed by an occurrence outside the control of the
24 permit holder, including vandalism, motor vehicle wreck, or
25 natural forces such as wind, tornado, lightening, flood, fire or

1 hurricane. The department will determine whether the sign can
2 be repaired without an amended permit under the rules for
3 customary maintenance. The permit holder must submit an
4 estimate of the proposed work, including an itemized list of the
5 materials to be used and the manner in which the work will be
6 done. For an act of nature, if the department determines the
7 damage is substantial, cost of the repairs to the sign exceed 60
8 percent of the replacement costs, an amended permit will be
9 required. If the licensee does not request an amended permit,
10 the department may move to cancel the existing permit. If the
11 permit is cancelled, the remaining sign structure must be
12 dismantled and removed at the owner's expense. If a decision to
13 cancel the permit is appealed, the sign may not be repaired
14 during the appeal process. The new section restates current
15 §21.156(a) and adds authority for the owner to rebuild the sign
16 if the sign is destroyed by vandalism or a motor vehicle wreck.
17
18 New §21.198, Order of Removal, provides that if a sign permit
19 expires without renewal or is canceled or if the sign is erected
20 or maintained in violation of the rules, the department will
21 send a written demand to the sign owner requiring the sign be
22 removed at no cost to the state. Failure of the owner to remove
23 the sign within 30 days allows the department to remove the sign
24 and charge the sign owner for the cost of the removal including
25 the cost of any court proceedings. The new section revises

1 current §21.150(j) and strengthens the position of the state by
2 allowing the department to remove the sign at the sign owner's
3 expense if the owner fails to remove the sign after notice. The
4 30-day time period was added to provide notice to all parties of
5 the timeframe the department will use to remove the sign.
6 Without a specific timeframe the department was not consistent
7 in processing removals throughout the state. This section also
8 adds authority for the department to rescind a removal notice
9 sent in error in order to correct mistakes before the court
10 settlement process.

11
12 New §21.199, Destruction of Vegetation and Access from Right of
13 Way Prohibited, prohibits a person from destroying trees or
14 vegetation on the right of way for any purpose related to a sign
15 or erecting or maintaining a sign from the right of way. The
16 section provides that any of these actions will result in
17 cancelation of the sign's permit whether the violator was the
18 sign owner, permit holder, or someone acting on behalf of the
19 permit holder. The new section clarifies current §21.161 by
20 creating a violation for these actions that is enforceable by
21 the department. Under the current rule the department has had
22 difficulties enforcing the provisions. In addition, language
23 was added to clarify use of right of way for signs in railroad
24 right of way. Until March 1986 the department allowed signs in
25 certain portions of railroad right of way which is also now

1 considered portions of the state right of way. These signs are
2 grandfathered and some are still in existence. Due to the
3 location, use of highway right of way is often the only option
4 for repairs. In these situations the department will allow
5 access to state highway right of way only if the sign owner
6 obtains prior approval from the department.

7

8 New §21.200, Local Control, provides the guidelines for the
9 department to authorize political subdivisions to exercise
10 control over off-premise outdoor advertising signs within their
11 incorporated boundaries. The section requires that a city
12 request approval from the department by providing a copy of its
13 sign and zoning regulations, information about the number of
14 personnel who will be dedicated to the program, the types of
15 records that the political subdivision will keep, including an
16 electronic inventory of signs, and an enforcement plan that
17 includes removal of illegal signs. The political subdivision
18 may use more or less restrictive requirements than state rules
19 regarding the size, lighting, and spacing of signs. The
20 department will consult with the Federal Highway Administration
21 to decide whether the political subdivision's program is
22 consistent with the purposes of the Highway Beautification Act
23 of 1965. If approved, the political subdivision will be listed
24 and monitored by the department. The department may de-certify
25 a political subdivision if it violates its accepted regulatory

1 responsibilities and the department may reinstate the approval
2 if the political subdivision demonstrates a new plan that meets
3 the requirements of these rules. The new section revises
4 current §21.151 by making grammatical corrections, removing
5 unnecessary language, and changing current §21.151(d) to require
6 the documents be sent annually to the department and requiring
7 the city to participate in conferences regarding OAS
8 regulations. Centralization will provide a higher level of
9 administrative efficiency for control and consolidation of data,
10 public complaints, and investigation of enforcement activities.

11
12 New §21.201, Fees Nonrefundable, provides that all fees paid to
13 the department under the rules are nonrefundable. This new
14 section combines current §21.149(c)(2) and §21.150(g)(4), under
15 which license and permit fees are nonrefundable.

16
17 New §21.202, Property Right Not Created, provides that the
18 issuance of a license or permit for an OAS does not create a
19 contract or property right in the license or permit holder. The
20 new section revises current §21.159 with grammatical
21 corrections, rephrasing, and removal of unnecessary language.
22 The context of the language remains the same.

23
24 New §21.203, Complaint Procedures, outlines the current
25 compliant process for all outdoor advertising signs. The

1 department will accept and investigate all written complaints.
2 The department will notify the sign owner of the pending
3 investigation and will provide all parties the results of the
4 investigation. This language is included in the rule to provide
5 timelines and the specific process.

6
7 New Subchapter J, Regulation of Electronic Signs, §§21.251-
8 21.260, revises current §21.163. The new sections divide
9 current §21.163 into 10 sections to provide consistency with the
10 organization and revisions in new Subchapter I and provide a
11 greater level of efficiency for finding and understanding the
12 rules.

13
14 New §21.251, Definition, restates the definition of an
15 electronic sign found in current §21.142(8) as a sign, display,
16 or device that changes its message or copy by programmable
17 electronic or mechanical processes.

18
19 New §21.252, Department Determination, provides that the use of
20 an electronic image on a digital display is not the use of a
21 flashing, intermittent, or moving light for the purposes of any
22 rule, regulation, or standard promulgated by the department or
23 any agreement between the department and the Secretary of
24 Transportation of the United States. Support of the federal
25 assurance for the rules of the state pertaining to off-premise

1 electronic outdoor advertising signs was obtained on November
2 19, 2007 by written correspondence from the Federal Highway
3 Administration. The new section is a restatement of current
4 §21.163(a).

5
6 New §21.253, Issuance of Permit, provides that an electronic
7 sign requires a permit like any other OAS. The new section
8 states that the application for the permit must satisfy the
9 requirements of new Subchapter J and the applicable parts of
10 Subchapter I. A certified copy of a permit issued by the
11 municipality that has gives permission for the erection of an
12 electronic sign must accompany the application. If the
13 municipality in which the electronic sign will be located does
14 not require the issuance of municipal permits for electronic
15 signs, a certified copy of the written permission from the
16 municipality for the erection of the electronic sign must
17 accompany the application. The new section restates current
18 §21.163(h) without a change in substance.

19
20 New §21.254, Prohibitions, provides that electronic signs may
21 not be illuminated by flashing, intermittent, or moving lights,
22 contain or display animated, moving video, or scrolling
23 advertising, consist of a static image projected upon a
24 stationary object, or be a mobile sign located on a truck or
25 trailer. The new section restates current §21.163(b) without a

1 change in substance.

2

3 New §21.255, Location, provides the location requirements for
4 electronic signs. Electronic signs may be located, relocated,
5 or upgraded only along regulated highways within the corporate
6 limits of a municipality that allows electronic signs under its
7 sign or zoning ordinances or within the extraterritorial
8 jurisdiction of a municipality that under state law has extended
9 its municipal regulation to include that area. Electronic signs
10 may not be located within 1,500 feet of another electronic sign
11 on the same side of a regulated highway. The new section
12 eliminates the confusion of whether an electronic sign structure
13 can have back to back electronic faces. The current rule
14 allowed each sign to be visible from only one direction. The
15 language created an unnecessary restriction and has been removed
16 from the language.

17

18 New §21.256, Modification to Electronic Sign, provides that a
19 sign may be modified to be an electronic sign if a new permit
20 for the new electronic sign is obtained from both the
21 municipality in whose jurisdiction the sign is located and the
22 department. However, lighting may not be added to or used to
23 illuminate a nonconforming sign. The new section restates
24 current §21.163(d).

25

1 New §21.257, Requirements, requires each message on an
2 electronic sign to be displayed for at least eight seconds and
3 the change of message must be completed within two seconds and
4 be made simultaneously on the entire sign face. The sign must
5 contain default mechanism that freezes the sign in one position
6 if a malfunction occurs and automatically adjusts the intensity
7 of its display according to natural ambient light conditions.
8 If the department finds that the sign causes glare, impairs
9 vision of drivers, or interferes with the operation of a motor
10 vehicle, the sign owner is required to reduce the intensity of
11 the sign to a level acceptable to the department within 12 hours
12 of request by the department. The new section addresses the
13 safety issue concerns of the use of electronic signs and is a
14 combination of current §21.163(e)(2) and (3), §21.163(f), and
15 §21.163(g). The current section limits an electronic sign to
16 one electronic face and creates an almost impossible
17 interpretation of "one direction" at an interchange or
18 intersection. The department has determined that there is not a
19 greater safety risk in having a back to back electronic sign
20 than allowing two signs on opposite sides of the highway facing
21 opposite directions. Accordingly, the department has removed
22 the limitation.

23

24 New §21.258, Emergency Information, requires the owner of an
25 electronic sign to coordinate with local authorities to display

1 emergency information important to the traveling public, such as
2 Amber Alerts and alerts concerning terrorist attacks or natural
3 disasters. Emergency information messages must remain in the
4 advertising rotation according to the protocols of the agency
5 that issues the information. The section provides for the
6 dissemination of important safety information to the traveling
7 public without a cost to the taxpayers. Provision of the
8 emergency information has the potential of saving lives and
9 provides instantaneous communication tools previously not
10 available to the citizens particularly in metropolitan areas.
11 The new section restates current §21.163(g)(1).

12
13 New §21.259, Contact Information, requires the owner of an
14 electronic sign to provide the department with contact
15 information for a person who is available to be contacted at any
16 time and who is able to turn off the electronic sign promptly if
17 a malfunction occurs. New language is added to provide that the
18 contact information will also be provided to the local authority
19 to accommodate the emergency information posting requirement.
20 This change will eliminate the need of passing the emergency
21 information through the department to the sign owner. The
22 remainder of the new section restates current §21.163(g)(2).

23
24 New §21.260, Application of Other Rules, provides that
25 provisions of new Subchapter I also apply to electronic signs,

1 unless there is a conflict with new Subchapter J, in which
2 event, new Subchapter J controls. The new section restates the
3 substance of current §21.163(i).

4

5 New §21.401, Purpose, introduces new Subchapter K, Control of
6 Signs along Rural Roads. This section restates current §21.401
7 and provides the purpose of the chapter, which is the regulation
8 of signs along rural roads.

9

10 New 21.402, Definitions, provide the definitions for the new
11 subchapter. The new section restates the definitions from
12 current §21.411 with minor grammatical changes. The definition
13 for "sign structure" is added to address other changes in
14 Subchapter K regarding maintenance and repair. The definition
15 for "small business" and "on-premise" are deleted from the new
16 section as unnecessary. On-premise signs are discussed in
17 §21.442.

18

19 New §21.403, Prohibited Signs, provides specific circumstances
20 when a sign is prohibited and ineligible for an OAS permit. The
21 new section restates current §21.551, however the language is
22 revised to be consistent with new §21.145 where applicable.

23

24 New §21.404, Permit Required, provides the requirement of a
25 permit for an off-premise sign. This section contains the

1 substance of current §21.441(a).

2

3 New §21.405, Exemptions, provides a list of signs that are
4 exempt from the requirements of Subchapter K. The language
5 restates the provisions of §21.421(a) with minor grammatical
6 changes, except that §21.421(a)(8) regarding signs no larger
7 than 8 square feet is deleted from this section because that
8 exception is not authorized under the current statute. In
9 addition, provisions from §21.146, Exempt Signs, exempting a
10 sign required by the Railroad Commission for oil and gas leases,
11 a sign that provides the name and contact information for the
12 ranch and that is less than 32 square feet, and a sign
13 identifying a recorded subdivision located at the entrance to
14 the subdivision have been added for better organization of the
15 rules.

16

17 New §21.406, Exemptions for Certain Populous Counties, provides
18 the exceptions found in Transportation Code, §394.061 and
19 §394.063. The language is a restatement of current §21.421(c)-
20 (e) with minor grammatical changes.

21

22 New §21.407, Existing Off-Premise Signs, exempts certain signs
23 that were in existence before September 1, 1985 from the permit
24 requirement. The language restates current §21.431 with minor
25 changes, except that an amended registration is required to

1 perform customary maintenance to the sign. This change is
2 needed to ensure that the sign is not altered more than what is
3 allowed under customary maintenance.

4

5 New §21.408, Continuance of Nonconforming Signs, is added for
6 consistency between the rural and primary road programs. The
7 language is the same as §21.150 and provides that a
8 nonconforming sign can be renewed as long as it remains in
9 substantially the same condition as the sign was on the day it
10 became nonconforming. This language is added to place into the
11 rule a policy the department has been implementing in this
12 program.

13

14 New §21.409, Permit Application, provides a detailed listing of
15 the information that must be included on the permit application.
16 This language expands current §21.441(b) to include the
17 requirements under §21.159 that are applicable to rural road
18 permits. The department's intent is to streamline the programs
19 and have consistent requirements for both programs, when
20 appropriate, to eliminate confusion. The new application
21 requirements include written evidence of the right of entry to
22 the sign location.

23

24 New §21.410, Withdrawal of Site Owner's Consent, provides the
25 process for the owner of the land to withdraw consent for the

1 sign. This language is not included in current Subchapter K,
2 but department policy allows the land owner to withdrawal
3 consent for signs regulated under that subchapter. The language
4 of this section is similar to the language of §21.161.

5
6 New §21.411, Applicant's Identification of Proposed Site,
7 requires the applicant to identify the location of the sign with
8 a stake or a mark depending on the ground surface. This
9 language is not included in current §21.441, however, it is
10 currently a part of the application process. This language
11 mirrors the language in new §21.160 to maintain consistency
12 between the two programs.

13
14 New §21.412, Permit Application Review, provides the process by
15 which the department will review and evaluate permit
16 applications. The new section expands the general provisions in
17 current §21.441(b)(3) by defining when a decision on an
18 application is final, clarifying the process for competing sign
19 applications, and stating that the department will complete a
20 site inspection. The language is consistent with §21.163 to
21 provide for consistent processing of all applications.

22
23 New §21.413, Decision on Application, provides the actions the
24 department will take for approved and denied applications. This
25 language revises current §21.441(b)(4) and is consistent with

1 new §21.164.

2

3 New §21.414, Sign Permit Plate, requires the attachment of a
4 permit plate to the sign structure. The language expands
5 current §21.441(b)(4) by providing procedures for obtaining a
6 replacement permit plate and the consequences for failing to
7 properly attach the permit plate to the sign structure. These
8 provisions are added to conform the two sign programs.

9

10 New §21.415, General Sign Location Requirements, provides
11 general information for sign locations. The section provides
12 that permits will only be issued for signs located on rural
13 roads and within 800 feet of a recognized commercial or
14 industrial activity. These provisions state the requirements of
15 Transportation Code, Chapter 394.

16

17 New §21.416, Commercial or Industrial Activity, provides the
18 requirements for an activity to qualify as a commercial or
19 industrial activity for purposes of the OAS program. The
20 language originated from current §21.411(13) but is amended to
21 conform with new §21.180. The new language strengthens
22 compliance aspects relating to amount of time the activity must
23 be staffed by an employee. These changes will provide for
24 better enforcement of the provisions and should help to
25 eliminate the problem of a sham business being used to meet the

1 sign location requirements. The language also deletes the
2 requirement of a landline telephone to recognize the emergence
3 of cellular technology. The provisions are consistent with
4 §21.180 and provide for consistent definition of a business
5 activity for both programs.

6
7 New §21.417, *Erection and Maintenance from Private Property*,
8 provides that the department will not issue a sign permit if the
9 sign cannot be erected and maintained from private property.

10 This language is added to be consistent with the language in new
11 §21.167.

12
13 New §21.418, *Appeal Process for Permit Denials*, adds an appeal
14 of a permit denial to the executive director. This provision
15 was added to be consistent with the procedures authorized under
16 the primary road program. The current rules authorize an appeal
17 to the Board of Variance if a sign cannot meet the requirements
18 of the subchapter but the owner feels that an injustice will
19 result if the sign is not authorized, but not an appeal to
20 ensure consistent application of the rules throughout the state.
21 Sign owners are using the variance process to argue that the
22 permit met all requirements but had been wrongly denied by the
23 department. The appeal process is established to mirror the
24 current process for primary roads and matches the language in
25 new §21.170. The new section provides a 20-day request period,

1 which will provide a specific date to finalize an application if
2 an appeal is not requested.

3

4 New §21.419, Board of Variance, establishes the board and
5 outlines the responsibility of the board. This section contains
6 the substance of current §21.531 with only minor grammatical
7 changes.

8

9 New §21.420, Permit Expiration, provides the date that a permit
10 expires. This language restates current §21.441(c)(1)
11 maintaining the one-year validity period. In addition, the new
12 section states that the permit expires on the date the sign is
13 acquired by the state, which may occur as the result of road
14 construction projects.

15

16 New §21.421, Permit Renewals, provides the renewal process for
17 OAS permits. The language expands current §21.441(c) to include
18 a period for acceptance of late renewals. The new language adds
19 a requirement that the OAS permit must be renewed within 30 days
20 of its expiration. Currently, the rules are silent on this and
21 the department has applied inconsistent policies across the
22 state. By adding a specific deadline the department is putting
23 the industry on notice that permits must be renewed in a timely
24 fashion or the sign is subject to removal.

25

1 New §21.422, Transfer of Permit, provides the requirements for
2 transferring permits. The language restates current §21.441(d)
3 and is consistent with new §21.173. New language prohibits the
4 transfer of a permit if there is a pending cancellation
5 proceeding regarding the permit, so that the cancellation
6 process can proceed without the necessity of changing the
7 parties involved.

8
9 New §21.423, Amended Permit, provides a new amended permit
10 process. This language corresponds to new §21.174 and provides
11 the ability to amend an existing permit to make specific
12 changes. This process will eliminate the need to cancel the
13 existing permit and subsequently apply for a new permit for the
14 same location or sign. The current process is an administrative
15 burden on all parties and this new section provides for a more
16 streamlined procedure.

17
18 New §21.424, Permit Fees, provides the fees under Subchapter K.
19 Transportation Code, §394.025 requires the commission by rule to
20 prescribe a fee to issue a permit in an amount the commission
21 determines is sufficient to enable the commission to recover the
22 costs of enforcing the orderly and effective display of outdoor
23 advertising along rural roads.

24
25 As explained under §21.175 of this preamble, the department has

1 determined the cost to run an effective revenue neutral OAS
2 program under new §21.423. The fee for an original application
3 is raised from \$96 per sign to \$100. The renewal is raised from
4 \$40 per sign to \$75. The rule also adds the \$100 late fee for a
5 permit renewal received within 30 days of the expiration. These
6 fees are the same as those under §21.175 for the interstate and
7 primary highway program.

8
9 New §21.425, Cancellation of Permit, provides the procedures for
10 the cancellation of an OAS permit. The section revises current
11 §21.541 but includes specific information about when the
12 department will seek cancellation. The term "revocation" is
13 changed to "cancellation" and additional language is added to
14 correspond with new §21.176. This section also includes the
15 language from current §21.572 regarding the notice and appeal
16 process for cancellations. The new language restates the
17 current rule but provides for a longer period to request a
18 hearing to correspond with other hearing request processes.

19
20 New §21.426, Administrative Penalties, provides the process for
21 imposing administrative penalties. The section contains the
22 substance of current §21.542 and §21.572. In addition this
23 section establishes a penalty matrix. The department has
24 reviewed the violations and set a specific dollar amount for
25 certain violations. A permit plate violation is set at \$150 per

1 violation, the lowest penalty available under Transportation
2 Code, §394.081. A registration or location violation is set at
3 \$250 per violation. The rule makes it a \$500 penalty for
4 maintenance from the right of way or performing maintenance
5 without obtaining an amended permit. It is a \$1000 penalty, the
6 highest amount authorized under the statute, for erecting the
7 sign from the right of way. The Sunset Commission review for
8 the 2009 legislative session recommended that the department
9 develop a penalty matrix and the department believes it will
10 help eliminate some of the contested cases by offering a set
11 penalty for the violation.

12
13 New §21.427, Abandonment of Sign, establishes when the
14 department will consider a sign abandoned and initiate a
15 cancellation action. The language restates current §21.571 with
16 grammatical changes and matches the language in new §21.181 to
17 maintain consistency with the primary highway program.

18
19 New §21.428, Sign Face Size and Positioning, provides
20 information about size and height limitations. The language is
21 a restatement of current §21.471 with minor grammatical changes.
22 The size restrictions remain the same. This section also
23 includes language that is in new §21.182 regarding how the sign
24 face size is calculated. Although this measurement calculation
25 is not part of current Subchapter K it is consistent with

1 current policies on determining size of the sign face.

2 Subsection (j), regarding the requirement of an amended permit

3 to change the size of the sign face, is added to ensure

4 consistency with the primary highway program.

5

6 New §21.429, Spacing of Signs, clarifies the spacing

7 requirements for signs on rural roads provided by Transportation

8 Code, §394.045. The current rule and statute provide that small

9 signs may be erected closer together than large signs, which may

10 create a compliance problem if there is a larger pre-existing

11 sign. Under current §21.451, a sign of over 301 square feet in

12 size may not be erected closer than 1,500 feet from another off-

13 premise sign. However, a sign of less than 301 square feet may

14 be erected 501 feet from the larger sign. This creates a

15 problem if the pre-existing sign is damaged by an outside force

16 and is required to be replaced. It would no longer be eligible

17 for a permit at that location because it may not be erected

18 within 1,500 feet of the smaller sign. The change to the

19 language clarifies that the department will not permit a new

20 smaller sign that will in turn create a nonconforming sign out

21 of a pre-existing larger sign. The section provides that it is

22 the spacing distance of the larger of the two signs in question

23 that dictates the spacing requirement. Additional language is

24 added to this section to make it consistent with new §21.187

25 regarding the spacing requirements for an OAS on a primary road.

1

2 New §21.430, Multiple Faced Signs, provides the process for
3 determining the size of the sign face of a multiple-faced sign,
4 which is used to determine the spacing requirements. The
5 language restates current §21.481 with grammatical changes.

6

7 New §21.431, Wind Load Pressures, provides the amount of wind
8 pressure that signs must be able to withstand. The language
9 restates current §21.441(b)(2)(B) with minor non-substantive
10 changes.

11

12 New §21.432, Height Restrictions, provides the restrictions for
13 the height of the sign and sign structure and how the height of
14 the sign is measured. The language restates current §21.461
15 with grammatical and formatting changes.

16

17 New §21.433, Lighting, provides the types of lighting that can
18 be used for an OAS. The current rules lack specific guidelines
19 on lighting. These provisions are consistent with the language
20 in new §21.190. The inclusion of this language in Subchapter K
21 will address an issue that is overlooked in the current rules
22 and provide consistency with the primary road program.

23

24 New §21.434, Repair and Maintenance, provides new guidelines for
25 maintaining and repairing an OAS. The new language is the same

1 as new §21.191 to ensure consistent procedures for all signs.
2 As stated in the discussion under new §21.191, the current
3 language was difficult to enforce and relied too heavily on
4 self-reporting to maintain compliance. The new section provides
5 guidance on what qualifies as routine maintenance and customary
6 maintenance and what is a substantial change.

7
8 New §21.435, Permit for Relocation of Sign, provides for the
9 relocation of a sign that must be removed because of a road
10 construction project. The current rules do not contain such a
11 provision. With the increase in population, many rural roads
12 are being widened to accommodate more vehicles. The department
13 has seen an increase in the number of requests for the
14 relocation of rural road signs. This section, which is modeled
15 after the current primary highway program and the language in
16 new §21.192, provides that the permit holder must obtain a new
17 permit for the new location, unless only a portion of the sign
18 will be located in the highway right of way after the
19 construction project, in which event the permit holder may apply
20 for an amended permit to adjust the sign to be entirely on
21 private property.

22
23 New §21.436, Location of Relocated Sign, provides the order of
24 priority for the location of a relocated sign and tracks new
25 §21.193. The same priority order is used as in the primary

1 highway program. Because the rural road program only requires
2 one business activity to qualify as an unzoned commercial or
3 industrial area there is not a reduction in that requirement.
4 The rules also do not reduce the spacing requirements regarding
5 the spacing between two OAS structures as the spacing is set by
6 statute. In addition, the section specifically states that a
7 sign may not be relocated from a rural road to a highway on the
8 primary system. The relocation provision for signs on the
9 primary system should be reserved for relocations from that
10 system to ensure that there will be adequate spacing for those
11 relocated signs.

12

13 New §21.437, Construction and Appearance of Relocated Sign,
14 provides the requirements for materials and size of a relocated
15 sign to match the language of new §21.194. The section provides
16 that the relocated sign must be constructed with the same type
17 of material and number of poles as the existing sign. The
18 section also requires that the new sign may not be larger than
19 the existing sign and should be placed in the same relative line
20 of sight if possible. These provisions are based on the
21 existing primary highway relocation provisions and are used to
22 maintain consistency between the programs.

23

24 New §21.438, Relocation Benefits, identifies the relocation
25 benefits that a sign owner may be entitled to. The section

1 requires a written agreement that includes a release for claims
2 against the government entity for any temporary or permanent
3 taking of the sign. This language is the same as new §21.196
4 and is included to maintain consistency between the programs.

5
6 New §21.439, Discontinuance of Sign Due to Destruction, provides
7 for the repair or cancellation process for signs that are
8 partially destroyed by an occurrence outside the control of the
9 permit holder. The section tracks the language of new §21.197
10 and contains new provisions regarding destruction caused by
11 vandalism, motor vehicle accidents, and additional natural
12 forces. The current §21.511 is also expanded to address the new
13 cancellation process for failure to obtain an amended permit and
14 repair the damaged sign.

15
16 New §21.440, Order of Removal, provides the authority for the
17 department to order the removal of an OAS. The section restates
18 current §21.156 with grammatical changes. In addition, the
19 language includes a 30-day period in which the sign owner must
20 remove the sign, which provides the department with a definite
21 time for proceeding with its next action. Language also
22 authorizes the department to rescind a removal notice if the
23 demand was issued incorrectly. The new language is added to
24 maintain consistency with language that is being added to new
25 §21.198.

1

2 New §21.441, Destruction of Vegetation and Access from Right of
3 Way Prohibited, creates a violation if a person destroys
4 vegetation on the right of way or erects or maintains the sign
5 from the right of way. This section addresses problems
6 encountered with the enforcement of current §21.161 under the
7 primary highway program. Currently, the rules do not provide
8 any specific prohibition against removing vegetation or erecting
9 or maintaining from the right of way. This section creates
10 consistent enforcement procedures for all OAS permits.

11

12 New §21.442, On-Premise Signs, provides the requirements for on-
13 premise signs on rural roads and revises current §21.501. The
14 language is consistent with §21.147 to maintain uniformity
15 between the programs.

16

17 New §21.443, On-Premise Sign Erectors, provides the bond
18 requirements for an entity that is primarily in the business of
19 erecting on-premise signs. It revises current §21.521, with no
20 substantive changes.

21

22 New §21.444, Fees Nonrefundable, provides that all fees paid to
23 the department under Subchapter K are nonrefundable. This
24 language is currently in §21.441(e)(2) and is moved to a
25 separate section to make it more conspicuous.

1

2 New §21.445, Property Right Not Created, provides specifically
3 that issuance of a permit does not create a property right in
4 the permit holder. It restates current §21.581, with no
5 substantive changes.

6

7 New §21.446, Time Proposed Roadway Becomes Subject to
8 Subchapter, establishes when an area becomes subject to the sign
9 permitting requirements based on construction of new roads. The
10 language is the same as §21.151 and is included to create
11 consistency between the two programs.

12

13 New Subchapter Q, Regulation of Directional Signs, §§21.941 -
14 21.947, revises current §21.155, regarding directional signs.
15 This organizational change eliminates potential confusion
16 between a directional sign, which does not require a license or
17 permit, and off-premise outdoor advertising signs. Current
18 §21.155 is divided into seven sections providing for easier
19 location of particular provisions.

20

21 New §21.941, Description of Directional Sign, provides the
22 definition of a directional sign in language similar to that of
23 current §21.155(c). A directional sign may only contain a
24 message that identifies an attraction or activity meeting the
25 requirements of this section or provide directional information,

1 such as mileage, route numbers, or exit numbers useful to the
2 traveling public in locating the attraction or activity. A
3 directional sign may not contain descriptive words, phrases, or
4 pictorial or photographic representations of the activity or its
5 environs.

6
7 New §21.942, Requirements for Erection and Maintenance of Sign,
8 requires that a person must obtain approval from the department
9 before erecting a directional sign. The application at a
10 minimum must show the proposed location, message content,
11 construction, and dimensions of the sign. No fee for filing the
12 application is required and no permit will be issued for a
13 directional sign. The new section revises current §21.155(a)
14 and (b) without changing the substance of those provisions.

15
16 New §21.943, Eligibility, provides the eligibility requirements
17 for a directional sign. The sign must be for a privately owned
18 activity or attraction that is of national or regional interest
19 to the traveling public or must be a natural phenomenon, scenic
20 attraction, outdoor recreational area, or scientific, historic,
21 educational, cultural, or religious site. The department will
22 determine whether the attraction or activity satisfies the
23 requirements and may use among other resources, the National
24 Register of Historic Places and the "Texas State Travel Guide."
25 The new section is a restatement of current §21.155(d) without a

1 change of substance.

2

3 New §21.944, Size of Sign, provides that the maximum size of a
4 directional sign, including its border and trim but excluding
5 its supports, is an area of 150 square feet, a height of 20
6 feet, and a length of 20 feet. The new section is a restatement
7 of current §21.155(f).

8

9 New §21.945, Condition of Sign, provides that directional signs
10 must be structurally safe and maintained in good repair and may
11 not be obsolete, move, or have animated or moving parts. The
12 new section restates current §21.155(e)(4), (5), and (6).

13

14 New §21.946, Location and Spacing, provides that a directional
15 sign may not be located within 2,000 feet of an interchange,
16 intersection at grade along the interstate or other primary
17 system highway, a rest area, park, or scenic area. A
18 directional sign may not obscure or otherwise interfere with the
19 effectiveness of an official traffic sign, signal, or device,
20 interfere with a driver's view of approaching, merging, or
21 intersecting traffic, be erected on a tree or painted or drawn
22 on a rock or other natural feature, or be located in a rest
23 area, parkland, or scenic area. The distance between two
24 directional signs facing the same direction of travel may not be
25 less than one mile. Further, not more than three directional

1 signs relating to the same attraction or activity and facing the
2 same direction may be erected along a single route that is
3 approaching the attraction or activity. A directional sign
4 located adjacent to the interstate highway system must be within
5 75 air miles of the attraction or activity and within 50 air
6 miles if located adjacent to a highway on the primary system.
7 The new section restates current §21.155(e)(2), (3), and (7) and
8 (h).

9
10 New §21.947, Lighting of Sign, provides that directional signs
11 may have lights that are a part of or illuminate the sign, but
12 the lights may not be flashing, intermittent, or moving. The
13 lights must be shielded so that they are not directed at any
14 portion of the traveled way of an interstate or primary highway
15 and may not be of such intensity or brilliance that they impair
16 vision of a driver, interfere with the driver's operation, or
17 obscure or interfere with the effectiveness of an official
18 traffic sign, device, or signal. The new section revises
19 current §21.155(g).

20
21 FISCAL NOTE

22 James Bass, Chief Financial Officer, has determined that for
23 each of the first five years the repeals and new sections as
24 proposed are in effect, there will be fiscal implications for
25 state governments and local governments as a result of enforcing

1 or administering the repeals and new sections. During the first
2 five years, the department will incur non-personnel costs of
3 \$125,000 to provide modifications to the computer programs to
4 accommodate the fee change. That increase in costs will be
5 offset by an increase in revenue of approximately \$6.48 million.
6 The increase in revenue will cover not only the new programming
7 costs, but the daily expenses incurred by the department in
8 managing the program over the next five years.

9
10 The new sections create a minor cost for a municipality that
11 participates as a certified city. Federal and state laws allow
12 a municipality to regulate outdoor advertisement within its
13 jurisdictional boundaries if it meets minimal requirements. The
14 new sections increase the reporting requirements for a certified
15 city. The certified city is now required to submit annual sign
16 inventories and other additional reports to allow the department
17 to ensure that the city is adhering to the requirements. The
18 current rules require a certified city to maintain an effective
19 enforcement plan. The section also allows the department to
20 consider whether the city has an accurate sign inventory for
21 purposes of decertification. The new rule requires the city to
22 report its enforcement efforts and to provide the department
23 with the inventory in an electronic format that can be merged
24 with the department's state inventory. The department assumes
25 that the reports will be readily available and that the only

1 additional requirement is the conversion of the sign inventory
2 to a format acceptable to the department. The department
3 believes the benefits from the additional requirement far
4 outweigh the additional costs. Failure of the state to
5 effectively oversee a certified city's program could result in
6 the loss of state highway funding.

7

8 John Campbell, Director, Right of Way Division, has certified
9 that there will be no significant impact on local economies or
10 overall employment as a result of enforcing or administering the
11 repeals and new sections.

12

13 PUBLIC BENEFIT AND COST

14 Mr. Campbell has also determined that for each year of the first
15 five years the sections are in effect, the public benefit
16 anticipated as a result of enforcing or administering the new
17 sections will be to restructure the Outdoor Advertising Program
18 to achieve maximum efficiency and to comply with federal and
19 state law. The proposed new sections implement substantive
20 changes to address four specific areas: fee structure,
21 streamlining current regulations, methods to increase
22 consistency between the primary and rural road programs, and
23 methods to improve consistent enforcement. The reorganization
24 and restructuring of the program will further the department's
25 vision to be a progressive state transportation agency

1 recognized and respected by the citizens of Texas. In addition,
2 centralization and enforcement of the proposed rules will
3 provide transparency and consistency to the program at a much
4 higher level than the current rules allow under the antiquated
5 organization and fee structure of almost two decades past.

6
7 There are anticipated economic costs for persons required to
8 comply with the new sections as proposed. There will also be an
9 economic effect on small businesses.

10

11 The license and permit fee increases do result in an economic
12 impact to small businesses, but the fee increases will provide a
13 more efficient, streamlined, and responsive program to all the
14 citizens of Texas and the outdoor advertising industry.

15

16 TAKINGS IMPACT ASSESSMENT

17 The department has evaluated the proposed amendments to
18 determine whether Government Code, Chapter 2007 (Private Real
19 Property Rights Preservation Act) requires the department to
20 complete a takings assessment. The department has determined
21 that the proposed amendments do not affect private real property
22 in a manner that requires the takings assessment. To constitute
23 a taking the governmental action must cause a reduction of at
24 least 25 percent in the market value of the affected private
25 real property. The department has determined that any reduction

1 in property value resulting from the proposed rules would be
2 significantly less than that amount.

3

4 SMALL BUSINESS IMPACT STATEMENT

5 Under Government Code, §2006.002 a state agency must prepare an
6 Economic Impact Statement (EIS) to assess the potential impact
7 of a proposed rule on small businesses and a Regulatory
8 Flexibility Analysis that considers alternative methods of
9 achieving the purpose of the rule if the proposed rule will have
10 an adverse economic effect on small businesses.

11

12 To determine if the economic impact would have an adverse
13 economic effect on small business, the department first had to
14 determine how many small businesses are regulated under the
15 program. The department reviewed its program database, culled
16 duplications and multiple permit holders resulting in a list of
17 1,220 license holders that accounted for over 14,000 individual
18 sign permits. The department mailed a three question
19 questionnaire to each of the identified companies. The
20 questionnaire required a yes or no answer to the three questions
21 regarding whether the business met the definition of a small
22 business as provided by Government Code, §2006.001(2). The
23 response rate was extremely high with 762 responses representing
24 57% of the mailed requests. Of the 762 responses, 617 or 81% of
25 the respondents claimed to meet the definition of small

1 business.

2

3 During the drafting of the proposed rules the department
4 carefully reviewed the proposed changes to determine which, if
5 any, could potentially result in an economic impact that would
6 burden a small outdoor advertising company. The department
7 determined that the fee increases would have an economic impact
8 on the regulated community.

9

10 An increase in fees for licenses and permits will increase costs
11 of small business operations. However, in this circumstance a
12 fee increase is unavoidable to achieve the goals of an efficient
13 and consistent outdoor advertising program. The revenue from
14 the current license and fee structure does not provide the basis
15 of a revenue-neutral program that will meet the program goals
16 for streamlining current regulations, providing increased
17 consistency between the primary and rural road programs, and
18 improving consistent enforcement. The department estimated the
19 total cost of operations under a centralized program that is
20 necessary to achieve the goals of the restructuring to determine
21 the required increase in license and permit fees necessary to
22 support the program on a revenue-neutral basis.

23

24 To determine the cost to effectively run the outdoor advertising
25 sign compliance program, the department developed a centralized

1 program which became effective in the Spring of 2010 resulting
2 in 20 full-time staff of outdoor advertising compliance agents
3 moving into field, compliance, monitoring and enforcement
4 positions throughout the state. This was accomplished with
5 internal postings thus all positions were filled with existing
6 department employees from various districts around the state.
7 Under the new centralized program, the agents have been
8 strategically located throughout the state in an effort to
9 equalize workload and minimize travel time and cost. The
10 centralized plan for 20 agents put 5 staff in the north region
11 of the state, 4 in the east region, 4 in the south region and 2
12 in the west region. The remaining 5 agents office out of the
13 Right of Way Division in Austin, and consist of 1 agent
14 processing all documents related to the more than 14,000 permit
15 applications, renewals, and transfers. Another single agent
16 processes all documents related to the licensing and receipt of
17 revenue for the program. Review of all denials for permits,
18 complaint resolution, open records requests, legislative
19 inquires, policy review, reporting and monitoring of field
20 services is handled by the remaining 3 compliance agents which
21 are located in the headquarters office in Austin.

22
23 The cost estimates include the cost of the 20 agents to conduct
24 a complete statewide sign inventory necessary to update the
25 department's records to ensure that all signs have complete

1 electronic and hard copy inventory files. The regulated
2 highways throughout the state are to be continuously inventoried
3 and monitored and account for the largest outdoor advertising
4 regulatory program in the nation when considering the number of
5 signs and the lane miles to be traveled. The inventory process
6 is scheduled for the physical viewing of each regulated sign
7 every 3-4 years to ensure that the department continues to
8 maintain a complete inventory. Based on the cost analysis the
9 department has determined that an average of \$1.74 million is
10 needed to efficiently fund the program per year.

11
12 In developing the fee structure, the department surveyed other
13 states for alternatives in calculating billboard fees, and
14 reviewed the other fee structures and whether its program was
15 capable of assessing the various fees to determine the best
16 option at this time. The department worked within the confines
17 of the information it has from current billboard permit
18 applications to determine whether it would be able to obtain the
19 required information to assess the fees.

20
21 The proposed fee structure for a license under §21.156 does not
22 provide for an increase to the one-time \$125 fee for an original
23 license application. The annual license renewal fee is
24 increased to \$75 per year, an increase of \$15 per year per
25 license from the current \$60 fee. Under the license fee

1 increase each current outdoor advertising entity that is
2 required to be licensed will encounter the new \$75 annual
3 license renewal fee regardless of the size of the entity.

4
5 The proposed rules increase the one-time permit application fee
6 by \$6 from \$94 per sign permit to \$100 per sign permit. The
7 annual permit renewal fee of \$40 under the current rule
8 increases to \$75 per sign permit in the new rules. Each sign
9 structure is equal to one sign permit.

10
11 The proposed rules do not increase fees established under the
12 current rules for replacement permit plates, transfer of
13 permits, or sign permits for non-profit entities.

14
15 The proposed rules create an amended permit process in order to
16 make changes to the illumination, the configuration of a
17 multiple faced sign, size of the sign, location of the sign,
18 make substantial repairs or maintenance, or to change to a
19 static face to an electronic face for a one-time fee of \$100.

20
21 The reason for the proposed increases is so that the operation
22 of the program can be revenue-neutral and the current fee
23 increases are determined to reach that goal, excluding the cost
24 of personnel benefits, rather than to generate revenue for the
25 state.

1

2 In preparing the proposed rules the department considered
3 alternative methods of achieving the amount of revenue necessary
4 to fund the program. With each alternative, the department's
5 considerations included analyzing whether the alternate option
6 would minimize the adverse impacts on a small business and yet
7 allow the department to operate a revenue neutral program.

8

9 In the comparison of the alternatives, the department considered
10 the effects of the fee increases on a business entity with 10
11 signs, one with 100 signs, and one with 500 signs. Under the
12 current rules these entities would pay \$400, \$4,000, and \$20,000
13 per year, respectively, for renewing all their sign permits at
14 the current \$40 annual renewal permit fee.

15

16 The first alternative considered by the department was an
17 increase of fees as a direct prorated share. Current rules
18 specify fees for sign permits based on a single annual renewal
19 fee per sign structure regardless of the number or size of the
20 sign faces. Continuing with this approach appears to be an
21 efficient and supportable method for determining the cost of a
22 permit fee. To reach a revenue-neutral position for the
23 centralized program, the department divided the cost of
24 operations by the number of active sign permits. At the
25 proposed annual renewal fee of \$75 permit, the opportunity to

1 reach a revenue-neutral position is attainable and supported.

2

3 Under the first alternative, the three comparison entities would
4 pay \$750, \$7,500, and \$37,500 per year, respectively, for the
5 annual renewal of their sign permits. All three companies would
6 experience an 87.5% increase in the cost of permit renewals.

7 With this increase small sign companies do not suffer adverse
8 economic impacts less or greater than any other sign company on
9 a percentage basis per permit. Larger companies do not gain an
10 advantage over the smaller sign companies on the basis of an
11 economy of scale. In addition, this fee structure allows the
12 department to efficiently manage the program using an easy to
13 determine fee.

14

15 The second alternative considered was to base the fee structure
16 on the total number of permits held by a company. Under this
17 scenario, three levels were considered. The department would
18 set the permit fee based on whether the company had fewer than
19 100 permits, between 100 and 500 permits, or more than 500
20 permits. Current data indicates less than 40 percent of the
21 total number of license holders have fewer than 100 signs and
22 that number appears to be the best indicator of small sign
23 companies. In a controlled environment, this alternative would
24 appear to be the good alternative in terms of minimizing adverse
25 economic effects to small sign companies. The department would

1 be able to vary the permit fee based on the size of the
2 company's billboard business. However, in considering this
3 alternative the department discovered that it could not
4 adequately identify the size of all the sign companies without a
5 requirement of a license to obtain a permit for a rural road
6 billboard. The statute does not require a license to erect a
7 sign on a rural road; therefore, the department might not have
8 the information needed to correctly calculate the number of
9 signs a person owns. In addition, a sign company may hold
10 multiple licenses under different corporate entities. Without a
11 determination of each license holder's corporate structure, it
12 is highly possible that a number of entities would fall in the
13 lower category of the range due to the use of different
14 corporate names.

15
16 Based on a review of this option the department determined that
17 it did not have adequate information to develop a fee structure
18 based on the number of sign permits held by a sign company. The
19 department also concluded based on its lack of complete
20 ownership information that it is not known if this approach
21 would lessen adverse economic impacts on small sign companies.

22
23 The third alternative considered is a graduated fee schedule for
24 permit fees based on the total square footage of the sign faces
25 for each sign structure. While being consistent with the

1 health, safety, environmental, and economic welfare of the
2 state, this alternative would require a certification of the
3 each sign's square footage by each sign owner and verification
4 by department staff in the field. Field verification by the
5 department would require immediate field inventory and
6 measurement for over approximately 14,000 signs in over 200
7 counties throughout the state. The inventory on all signs can
8 only be accomplished every 3 to 4 years with department staff.
9 Determining a fee schedule based on face size would require an
10 inventory to be accomplished every 1-2 years driving the cost of
11 operations to substantially higher levels to approximately \$130
12 per sign structure. As a revenue-neutral program, the
13 additional costs would be passed on to the sign owners and would
14 not minimize adverse economic impacts on small sign companies.

15
16 Considering those alternatives, the analysis leads the
17 department to conclude that none of the three alternatives
18 presented would further minimize adverse economic impacts to
19 small sign companies at the present time. However, of the three
20 alternatives, the first alternative of a simple increase in fees
21 for the annual renewal of permits is the most efficient and
22 supportable method. An annual analysis of the cost of
23 operations compared to the revenue generated by the fee increase
24 will be performed. With this fee schedule the department has
25 minimized the effects of this rule for small businesses.

1

2 In summary, the department concludes the rules as proposed
3 accomplish the objectives needed to improve the safety of the
4 general public and the economic welfare of the state with the
5 least amount of economic impact on the regulated industries.
6 The department further concludes that the rules are necessary to
7 achieve a sound system of management and administration of the
8 program.

9

10 PUBLIC HEARING

11 Pursuant to the Administrative Procedure Act, Government Code,
12 Chapter 2001, the Texas Department of Transportation will
13 conduct a public hearing to receive comments concerning the
14 proposed rules. The public hearing will be held at 1:00 p.m. on
15 January 10, 2011, in the first floor hearing room of the Dewitt
16 C. Greer State Highway Building, 125 East 11th Street, Austin,
17 Texas and will be conducted in accordance with the procedures
18 specified in 43 TAC §1.5. Those desiring to make comments or
19 presentations may register starting at 12:30 p.m. Any
20 interested persons may appear and offer comments, either orally
21 or in writing; however, questioning of those making
22 presentations will be reserved exclusively to the presiding
23 officer as may be necessary to ensure a complete record. While
24 any person with pertinent comments will be granted an
25 opportunity to present them during the course of the hearing,

1 the presiding officer reserves the right to restrict testimony
2 in terms of time and repetitive content. Organizations,
3 associations, or groups are encouraged to present their commonly
4 held views and identical or similar comments through a
5 representative member when possible. Comments on the proposed
6 text should include appropriate citations to sections,
7 subsections, paragraphs, etc. for proper reference. Any
8 suggestions or requests for alternative language or other
9 revisions to the proposed text should be submitted in written
10 form. Presentations must remain pertinent to the issues being
11 discussed. A person may not assign a portion of his or her time
12 to another speaker. Persons with disabilities who plan to
13 attend this meeting and who may need auxiliary aids or services
14 such as interpreters for persons who are deaf or hearing
15 impaired, readers, large print or Braille, are requested to
16 contact the Government and Public Affairs Division, 125 East
17 11th Street, Austin, Texas 78701-2483, 512/305-9137 at least two
18 working days prior to the hearing so that appropriate services
19 can be provided.

20

21 SUBMITTAL OF COMMENTS

22 Written comments on the proposed repeal of §§21.141 - 21.163,
23 and §§21.401 - 21.581 and new §§21.141 - 21.203, §§21.251 -
24 21.260, §§21.401 - 21.446, and §§21.941 - 21.947 may be
25 submitted to John Campbell, Director, Right of Way Division,

1 Texas Department of Transportation, 125 East 11th Street,
2 Austin, Texas 78701-2483. The deadline for receipt of comments
3 is 5:00 p.m. on January 28, 2011.

4

5 STATUTORY AUTHORITY

6 The amendments are proposed under Transportation Code, §201.101,
7 which provides the commission with the authority to establish
8 rules for the conduct of the work of the department, and more
9 specifically, Transportation Code, §391.032, which provides
10 authority to establish rules to regulate the orderly and
11 effective display of outdoor advertising on primary roads,
12 Transportation Code, §391.063, which provides authority for the
13 commission to set fees for the issuance of an outdoor
14 advertising license; Transportation Code, §391.065, which
15 provides authority to establish rules to standardize forms and
16 regulate the issuance of outdoor advertising licenses,
17 Transportation Code, §394.004, which provides the commission
18 with the authority to establish rules to regulate the erection
19 and maintenance of signs on rural roads; and Transportation
20 Code, §394.025, which provides authority for the commission to
21 set fees for the issuance of an outdoor advertising license.

22

23 CROSS REFERENCE TO STATUTE

24 Transportation Code, Chapters 391 and 394.

1 (7) Intersection--The term as defined by Transportation
2 Code, §541.303.

3 (8) Interstate highway system--Highways designated
4 officially by the commission and approved pursuant to 23 United
5 States Code §103 as part of the national system of interstate
6 and defense highways.

7 (9) License--An outdoor advertising license issued by the
8 department.

9 (10) Main-traveled way--The traveled way of a highway
10 that carries through traffic. In the case of a divided highway,
11 the traveled way of each of the separate roadways for traffic in
12 opposite directions is a main-traveled way. It does not include
13 such facilities as frontage roads, turning roadways, or parking
14 areas.

15 (11) National Highway System--Highways designated
16 officially by the commission and approved pursuant to 23 United
17 States Code §103 as part of the national highway system.

18 (12) Nonconforming sign--A sign that was lawfully erected
19 but no longer complies with a law or rule because the law was
20 enacted or rule adopted after the sign was erected.

21 (13) Nonprofit sign--A sign that is erected and
22 maintained by a nonprofit organization under a permit issued
23 under §21.149 of this subchapter (relating to Nonprofit Sign

1 Permit).

2 (14) Person--An individual, association, partnership,
3 limited partnership, trust, corporation, or other legal entity.

4 (15) Primary system--Highways designated by the
5 commission as the federal-aid primary system and any highway on
6 the National Highway System. The term includes all roads
7 designated as part of the National Highway System as of 1991.

8 (16) Public park--A public park, forest, playground,
9 nature preserve, or scenic area designated and maintained by a
10 political subdivision or governmental agency.

11 (17) Regulated highway--A highway on the interstate
12 highway system or primary system.

13 (18) Rest area--An area of public land designated by the
14 department as a rest area, comfort station, picnic area, or
15 roadside park.

16 (19) Sign--An object that is designed, intended, or used
17 to advertise or inform, including a sign, display, light,
18 device, figure, painting, drawing, message, plaque, placard,
19 poster, billboard, logo, or symbol.

20 (20) Sign face--The part of the sign that contains
21 advertising or information and is distinguished from other parts
22 of the sign, including another sign face, by borders or
23 decorative trim. The term does not include a lighting fixture,

1 apron, or catwalk unless it displays a part of the advertising
2 or information contents of the sign.

3 (21) Sign structure--All of the interrelated parts and
4 materials, such as beams, poles, braces, apron, frame, catwalk,
5 and stringers that are used, designed to be used, or intended to
6 be used to support or display a sign face.

7 (22) Visible--Capable of being seen, whether legible or
8 not, without visual aid by a person with normal visual acuity.

9
10 §21.143. Permit Required. Except as provided by this chapter,
11 unless a person holds a permit issued under §21.164 of this
12 subchapter (relating to Decision on Application) or §21.200 of
13 this subchapter (relating to Local Control), the person may not
14 erect or maintain an outdoor sign that is:

15 (1) within 660 feet of the nearest edge of the right of
16 way of a regulated highway if any part of the sign's advertising
17 or information content is visible from any place on the main-
18 traveled way of the highway; or

19 (2) outside of the jurisdiction of an incorporated city
20 and more than 660 feet from the nearest edge of the right of way
21 of a regulated highway if any part of the sign's advertising or
22 information content is visible from the main-traveled way of the
23 highway and the sign was erected for the purpose of having its

1 advertising or information content seen from the main-traveled
2 way of the highway.

3

4 §21.144. License Required.

5 (a) Except as provided by this subchapter, a person may not
6 obtain a permit for a sign under this subchapter unless the
7 person holds a currently valid license issued under §21.153 of
8 this subchapter (relating to License Issuance) applicable to the
9 county in which the sign is to be erected or maintained.

10 (b) A license is valid for one year from the date of
11 issuance or most recent renewal.

12

13 §21.145. Prohibited Signs.

14 (a) A sign may not be erected or maintained on a tree or
15 painted or drawn on a rock or other natural feature.

16 (b) A sign may not be erected or maintained within the
17 right of way of a public roadway or an area that would be within
18 the right of way if the right of way boundary lines were
19 projected across an area of railroad right of way, utility right
20 of way, or road right of way that is not owned by the state or a
21 political subdivision.

22 (c) A sign may not be erected or maintained on a highway or
23 part of a highway designated under Transportation Code,

1 §391.252.

2

3 §21.146. Exempt Signs.

4 (a) The following signs are exempt from this subchapter:

5 (1) an on-premise sign that meets the criteria provided
6 by §21.147 of this subchapter (relating to On-premise Sign)
7 except as provided by subsection (c) of this section;

8 (2) a sign that has the purpose of protecting life or
9 property;

10 (3) a sign that provides information about underground
11 utility lines;

12 (4) an official sign that is erected by a public officer,
13 public agency, or political subdivision under the officer's,
14 agency's, or political subdivision's constitutional or statutory
15 authority;

16 (5) a sign required by the Railroad Commission of Texas
17 at the principal entrance to or on each oil or gas producing
18 property, well, tank, or measuring facility to identify or to
19 locate the property if the sign is no larger than necessary to
20 comply with the Railroad Commission's regulations;

21 (6) a sign of a nonprofit service club, charitable
22 association, religious organization, chamber of commerce,
23 nonprofit museum, or governmental entity that gives information

1 about the meetings, services, events, or locations of the entity
2 and that does not exceed an area of eight square feet;

3 (7) a public service sign that:

4 (A) is located on a school bus stop seating bench or
5 shelter;

6 (B) identifies the donor, sponsor, or contributor of
7 the shelter;

8 (C) contains a public service message that occupies at
9 least 50 percent of the area of the sign;

10 (D) has no content other than that described by
11 subparagraphs (B) and (C) of this paragraph;

12 (E) is authorized or approved by the law of the entity
13 that controls the highway involved, including being located at a
14 place approved by the entity;

15 (F) has a sign face that does not exceed an area of 32
16 square feet; and

17 (G) is not facing the same direction as any other sign
18 on that seating bench or shelter;

19 (8) a sign that shows only the name of a ranch on which
20 livestock are raised or a farm on which crops are grown and the
21 directions to, telephone number, or internet address of the
22 ranch or farm and that has a sign face that does not exceed an
23 area of 32 square feet; and

1 (9) a sign that:

2 (A) relates only to a public election;

3 (B) is located on private property;

4 (C) is erected after the 91st day before the date of
5 the election and is removed before the 11th day after the
6 election date;

7 (D) has a sign face that does not exceed an area of 50
8 square feet; and

9 (E) contains no commercial endorsement; and

10 (10) a sign identifying the name of a recorded
11 subdivision located at an entrance to the subdivision or on
12 property owned by or assigned to the subdivision, home owners
13 association, or other entity associated with the subdivision.

14 (b) This subchapter does not apply to a sign that was
15 erected before October 23, 1965 and that the commission, with
16 the approval of the Secretary of the United States Department of
17 Transportation, has determined to be a landmark sign of such
18 historic or artistic significance that preservation would be
19 consistent with the purposes of the Highway Beautification Act
20 of 1965, 23 United States Code §131.

21 (c) An on-premise sign cannot be erected earlier than one
22 year before the date that the business for which the sign is
23 erected will open and conduct business.

1

2 §21.147. On-premise Sign.

3 (a) An on-premise sign is a sign that:

4 (1) is located on the real property of a business and
5 consists only of:

6 (A) the name, logo, trademark, telephone number, and
7 internet address of that business; or

8 (B) an identification of that business's principal and
9 accessory products or services offered on the property;

10 (2) only advertises the sale of the real property on
11 which the sign is located and is removed within 90 days after
12 the date of the closing of the real property transaction; or

13 (3) only advertises the lease, including a pre-lease, of
14 the real property on which the sign is located and is removed
15 within 90 days after the date of the closing of the lease
16 transaction.

17 (b) For the purposes of this section, a sign is located on
18 the real property of a business if:

19 (1) the real property on which the sign is located and
20 the real property on which the activity of the business is
21 conducted are one contiguous tract that is under common
22 ownership; or

23 (2) the sign is located on the real property of a

1 commercial development and the businesses of the development
2 share the sign structure of that sign.

3 (c) For the purpose of subsection (b)(1) of this section,
4 real property is not considered to be a part of one contiguous
5 tract if the real property on which the sign is located is:

6 (1) separated from the real property on which the
7 business activity is located by a road or highway or by another
8 business;

9 (2) devoted to a separate purpose unrelated to the
10 advertised business activity;

11 (3) held under an easement or other lesser property
12 interest than the property interest in the land on which the
13 business activity is located; or

14 (4) a narrow strip or other configuration of land that
15 cannot be put to any reasonable use related to the advertised
16 business activity other than for signing purposes.

17 (d) A sign is not an on-premise sign if:

18 (1) brand name or trade name advertising regarding a
19 product or service that is only incidental to the business
20 activity covers more than 50 percent of the area of a static
21 sign face or for an electronic sign, as defined by §21.251 of
22 this chapter (relating to Definition), if brand name or trade
23 name advertising is displayed 50 percent or more of the time

1 during any five minute period;

2 (2) the sign advertises activities that are not conducted
3 on the premises; or

4 (3) the sign provides rental income to the owner of the
5 real property on which it is located, unless the owner of the
6 real property receives the income from an on-premise business
7 for the use of the sign.

8 (e) For the purposes of this subsection:

9 (1) the date of the closing of a sales transaction is the
10 date that legal title to a property is conveyed to a purchaser
11 for property under a contract to buy; and

12 (2) the date of the closing of a lease transaction is the
13 date that the landlord and tenant enter into a binding lease of
14 a property.

15

16 §21.148. Exception to License Requirement for Nonprofit Signs.

17 A nonprofit organization may erect or maintain a nonprofit sign
18 without obtaining an outdoor advertising license, but the
19 organization must obtain a permit under §21.149 of this
20 subchapter (relating to Nonprofit Sign Permit) to erect or
21 maintain such a sign.

22

23 §21.149. Nonprofit Sign Permit.

1 (a) A nonprofit service club, charitable association,
2 religious organization, chamber of commerce, nonprofit museum,
3 or governmental entity may obtain a permit under this section to
4 erect or maintain a nonprofit sign.

5 (b) To qualify as a nonprofit sign, the sign must:

6 (1) be in a municipality or the extraterritorial
7 jurisdiction of a municipality;

8 (2) advertise or promote only:

9 (A) the municipality;

10 (B) a political subdivision whose jurisdiction is
11 wholly or partially located in the municipality; or

12 (C) the entity that will hold the permit, but may only
13 give information about the meetings, services, events, or
14 location of the entity; and

15 (3) comply with each sign requirement under this
16 subchapter from which it is not specifically exempted.

17 (c) An application for a permit under this section must be
18 in a form prescribed by the department and must include, in
19 detail, the content of the message to be displayed on the sign.

20 (d) After a permit is issued, the permit holder must obtain
21 approval from the department to change the message of the sign.
22 The department may issue an order of removal of the sign if the
23 permit holder fails to obtain that approval.

1 (e) If a sign ceases to qualify as a nonprofit sign, the
2 permit for the sign is subject to cancellation under §21.176 of
3 this subchapter (relating to Cancellation of Permit).

4 (f) If the holder of a permit issued under this section
5 loses its nonprofit status or wishes to change the sign so that
6 it no longer qualifies as a nonprofit sign the permit holder
7 must:

8 (1) obtain a license under §21.153 of this subchapter
9 (relating to License Issuance); and

10 (2) convert the sign permit to a permit for a sign other
11 than a nonprofit sign and pay the original permit and renewal
12 fees provided by §21.175 of this subchapter (relating to Permit
13 Fees).

14

15 §21.150. Continuance of Nonconforming Signs.

16 (a) Notwithstanding other provisions of this subchapter,
17 the department will renew a permit for a nonconforming sign only
18 if the sign structure:

19 (1) was lawful on the later of the date it was erected or
20 became subject to the control of the department; and

21 (2) remains substantially the same as it was on the later
22 of the date it was erected or became subject to the department's
23 control.

1 (b) A sign that was legally erected before March 3, 1986 in
2 a railroad, utility, or road right of way that is not owned by
3 the state or a political subdivision may be maintained as a
4 nonconforming sign if all other requirements of this subchapter
5 are met.

6 (c) A nonconforming sign may not be:

7 (1) removed for any reason, other than a request by a
8 condemning authority; or

9 (2) substantially changed, as described by §21.191 of
10 this subchapter (relating to Repair and Maintenance).

11 (d) A nonprofit organization that holds a permit for a
12 nonconforming sign that otherwise qualifies for a permit under
13 §21.149 of this subchapter (relating to Nonprofit Sign Permit)
14 may convert the permit to one issued under that section.

15

16 §21.151. Time Proposed Roadway Becomes Subject to Subchapter.
17 For the purposes of this subchapter, a proposed roadway becomes
18 a roadway or a proposed interchange becomes an interchange:

19 (1) when environmental clearance and the approved
20 alignment have been obtained from the Federal Highway
21 Administration; or

22 (2) if environmental clearance and approved alignment
23 from the Federal Highway Administration are not required for a

1 proposed roadway, when the alignment is approved by the
2 department or other political subdivision responsible for
3 constructing the roadway.

4

5 §21.152. License Application.

6 (a) To apply for a license under this chapter, a person
7 must file an application in a form prescribed by the department.

8 The application must include at a minimum:

9 (1) the complete legal name, mailing address, and
10 telephone number of the applicant; and

11 (2) designation of each county in which the applicant's
12 signs are to be erected or maintained.

13 (b) The application must be signed, notarized, and filed
14 with the department and be accompanied by:

15 (1) a fully executed outdoor advertiser's surety bond:

16 (A) in the amount of \$2,500 for each county designated
17 under subsection (a)(2) of this section up to a maximum of
18 \$10,000;

19 (B) payable to the commission to reimburse the
20 department for removal costs of a sign that the license holder
21 unlawfully erects or maintains; and

22 (C) in a form prescribed by the department, executed by
23 a surety company authorized to transact business in this state;

1 (2) a duly certified power of attorney from the surety
2 company authorizing the surety company's representative to
3 execute the bond on the effective date of the bond; and

4 (3) the license fee prescribed by §21.156 of this
5 subchapter (relating to License Fees).

6

7 §21.153. License Issuance.

8 (a) The department will issue a license if the requirements
9 of §21.152 of this subchapter (relating to License Application)
10 are satisfied.

11 (b) The department will not issue a license to an entity
12 that is not authorized to conduct business in this state.

13

14 §21.154. License Not Transferable. A license issued under this
15 subchapter is not transferable.

16

17 §21.155. License Renewals.

18 (a) To continue a license in effect, the license must be
19 renewed.

20 (b) To renew a license, the license holder must file a
21 written application in a form prescribed by the department
22 accompanied by each applicable license fee prescribed by §21.156
23 of this subchapter (relating to License Fees). The application

1 must be received by the department before the 31st day after the
2 date of the license's expiration and must include at a minimum:

- 3 (1) the complete legal name, mailing address, and
4 telephone number of the license holder;
5 (2) number of the license being renewed;
6 (3) proof of current surety bond coverage; and
7 (4) the signature of the license holder or person signing
8 on behalf of the business entity.

9 (c) A license is not eligible for renewal if the license
10 holder is not authorized to conduct business in this state.

11

12 §21.156. License Fees.

13 (a) The amount of the fee for the issuance of a license
14 issued under this subchapter is \$125.

15 (b) The amount of the annual renewal fee is \$75.

16 (c) In addition to the \$75 annual renewal fee, an
17 additional late fee of \$100 is required for a renewal license
18 application that is received before the 31st day after the
19 expiration date of the license.

20 (d) A license fee is payable by check, cashier's check, or
21 money order made payable to the Texas Highway Beautification
22 Fund, and must be submitted with the application. If the check
23 or money order is dishonored upon presentment, the license is

1 voidable.

2 (e) The department will provide a renewal notification to
3 the licensee at least 30 days before the date of the license
4 expiration and if the license is not renewed before it expires,
5 the department within 10 days after the date of expiration will
6 provide notification to the licensee of the opportunity to file
7 a late renewal application.

8

9 §21.157. Temporary Suspension of License.

10 (a) If the department is notified by a surety company that
11 a bond is being canceled, the department will notify the license
12 holder that a new bond must be obtained and filed with the
13 department before the bond cancellation date or the 30th day
14 after the day of the receipt of the notice, whichever is later.

15 (b) Notice under this section is presumed to be received on
16 the fifth day after the date of mailing.

17

18 §21.158. License Revocation.

19 (a) The department will revoke a license and will not issue
20 or renew permits or transfer existing permits under the license
21 if:

22 (1) the surety bond is not provided within the time
23 specified by the department under §21.152 of this subchapter

1 (relating to License Application) or §21.155 of this subchapter
2 (relating to License Renewals);

3 (2) surety bond coverage is terminated under §21.157 of
4 this subchapter (relating to Temporary Suspension of License);

5 (3) the number of violations of this subchapter,
6 Subchapter J of this chapter, or Transportation Code, Chapter
7 391, committed by the license holder in the aggregate equal or
8 exceed 10 percent of the number of valid permits held by the
9 license holder; or

10 (4) has not responded to or complied with previous
11 administrative enforcement actions regarding the license or any
12 permit held under the license.

13 (b) The department will send notice of an action under this
14 section to the address of record provided by the license holder.

15 (c) The notice will clearly state:

16 (1) the reasons for the action;

17 (2) the effective date of the action;

18 (3) the right of the license holder to request an
19 administrative hearing; and

20 (4) the procedure for requesting a hearing including the
21 period in which the request must be made.

22 (d) Notice is presumed to be received five days after the
23 day of its mailing.

1 (e) A request for an administrative hearing under this
2 section must be made in writing to the department within 20 days
3 after the date that the notice is mailed.

4 (f) If timely requested, an administrative hearing will be
5 conducted in accordance with 43 TAC Chapter 1, Subchapter E
6 (relating to Procedures in Contested Case).

7

8 §21.159. Permit Applications.

9 (a) To obtain a permit for a sign, a person must file an
10 application in a form prescribed by the department. The
11 application must include, at a minimum:

12 (1) the complete name and address of the applicant;

13 (2) the original signature of the applicant;

14 (3) the proposed location and description of the sign;

15 (4) the complete legal name and address of the owner of
16 the designated site;

17 (5) a statement of whether the requested sign is located
18 within an incorporated city or within the city's
19 extraterritorial jurisdiction;

20 (6) the site owner's or the owner's authorized
21 representative's original signature on the application
22 demonstrating:

23 (A) consent to the erection and maintenance of the

1 sign; and

2 (B) right of entry onto the property of the sign

3 location by the department or its agents;

4 (7) a document from the city that provides the city's
5 current zoning map or the portion of that map applicable to the
6 sign's location; and

7 (8) information that details how and the location from
8 which the sign will be erected and maintained.

9 (b) If the sign is a nonprofit sign, the application must
10 include verification of the applicant's nonprofit status.

11 (c) If the sign is to be located within the jurisdiction of
12 a municipality, including the extraterritorial jurisdiction of
13 the municipality, that is exercising its authority to regulate
14 outdoor advertising, a certified copy of the permit issued by
15 the municipality must be submitted with the application unless
16 documentation is provided to show that the municipality's sign
17 ordinance requires:

18 (1) the issuance of a department permit before the
19 municipality's; or

20 (2) the erection of the sign within a period of less than
21 twelve months after the date of the issuance of the municipal
22 permit.

23 (d) The application must be:

1 (1) notarized;

2 (2) filed with the department's division responsible for
3 the outdoor advertising program in Austin; and

4 (3) accompanied by the fee prescribed by §21.175 of this
5 subchapter (relating to Permit Fees).

6 (e) The application must include a sketch that shows:

7 (1) the location of the poles of the sign structure;

8 (2) the exact location of the sign faces in relation to
9 the sign structure;

10 (3) the means of access to the sign; and

11 (4) the distance from the buildings, landmarks, right of
12 way line, other signs, and other distinguishable features of the
13 landscape.

14

15 §21.160. Applicant's Identification of Proposed Site.

16 (a) An applicant for a permit for a new sign must identify
17 the proposed site of the sign by setting a stake or marking the
18 concrete at the proposed location of the center pole of the sign
19 structure or if there is no center pole, at each pole of the
20 sign structure.

21 (b) At least two feet of a stake must be visible above the
22 ground and must be distinguished from any other stake at the
23 location.

1 (c) A stake or mark on the concrete may not be moved or
2 removed until the application is denied or if approved, until
3 the sign has been erected.

4

5 §21.161. Withdrawal of Site Owner's Consent.

6 (a) A site owner's consent to the erection and maintenance
7 of the sign and access to the site by the department or its
8 agent is provided with a permit application under §21.159 of
9 this subchapter (relating to Permit Applications). The consent
10 operates for the life of the lease or until the owner delivers
11 to the department and to the sign owner a written statement that
12 permission for the maintenance or inspection by the department
13 or its agents of the sign has been withdrawn and documentation
14 showing that the lease allowing the sign has been terminated in
15 accordance with the terms of the lease agreement or through a
16 court order.

17 (b) If the sign owner provides documentation that the sign
18 owner is disputing the lease termination in court, the
19 department will not cancel the permit until a court order
20 settling the dispute is delivered to the department.

21

22 §21.162. Permit Application for Certain Preexisting Signs. If
23 a sign was in place before the time that the land on which the

1 sign is located first became subject to Transportation Code,
2 Chapter 391, the owner of the sign must apply for a permit for
3 the sign within 60 days after the date on which the department
4 sends notice by certified mail to the owner that a permit for
5 the sign is required.

6

7 §21.163. Permit Application Review.

8 (a) The department will consider permit applications in the
9 order of the receipt of the applications.

10 (b) If an application is returned to an applicant because
11 it is not complete or has incorrect information, the application
12 loses its priority position.

13 (c) The department will hold an application that is for the
14 same site as or a conflicting site with that of an application
15 that the department previously received until the department
16 makes a final decision on the previously received application or
17 returns it to the applicant. The department will notify the
18 applicant that the applicant's application is being held because
19 an application for the same or a conflicting site was previously
20 received. For the purposes of this subsection, the date of a
21 final decision on an application is:

22 (1) the date of the final decision on an appeal under
23 §21.170 of this subchapter (relating to Appeal Process for

1 Permit Denials); or

2 (2) if an appeal is not filed within the period provided
3 by §21.170 of this subchapter, on the 21st day after the date
4 the denial notice was received under §21.164 of this subchapter
5 (relating to Decision on Application).

6 (d) The department will review the permit application for
7 completeness and compliance with all requirements of this
8 subchapter. Measurements will be taken at the site to determine
9 if the sign placement meets the spacing and location
10 requirements.

11

12 §21.164. Decision on Application.

13 (a) The department will make a decision on an application
14 within 45 days after the date of receipt of the application. If
15 the decision cannot be made within the 45 day period the
16 department will notify the applicant of the delay and provide
17 the reason for the delay and provide an estimate for when the
18 decision will be made.

19 (b) If the permit application is approved, the department
20 will issue a permit for the sign by sending a copy of the
21 approved application and a sign permit plate to the applicant.

22 (c) If the permit application is not approved, the
23 department will send a copy of the denied application and a

1 notice that states the reason for the denial.

2 (d) If an application is denied, the department will notify
3 the landowner indentified on the permit application of the
4 denial. The notice is for informational purposes only, and does
5 not convey any rights to the landowner. The landowner may not
6 appeal the denial unless the landowner is also the applicant.

7

8 §21.165. Sign Permit Plate.

9 (a) The sign owner shall securely attach the sign permit
10 plate to the part of the sign structure that is nearest to the
11 highway and visible from the main-traveled way not later than
12 the 30th day after the date that:

13 (1) the sign is erected; or

14 (2) the permit is issued if the sign is lawfully in
15 existence when the highway along which it is located becomes
16 subject to this subchapter.

17 (b) The sign permit plate may not be removed from the sign.

18 (c) The sign permit plate must remain visible from the
19 main-traveled way at all times.

20 (d) If a sign permit plate is lost or stolen or becomes
21 illegible, the sign owner must submit to the department a
22 request for a replacement plate on a form prescribed by the
23 department accompanied by the replacement plate fee prescribed

1 by §21.175 of this subchapter (relating to Permit Fees).

2 (e) Failure to apply for a replacement permit plate or
3 attach the plate to the sign structure as required in subsection
4 (a) of this section within 60 days after the date of receipt of
5 written notification from the department that the permit plate
6 is not attached or not visible may result in the cancellation of
7 the permit under §21.176 of this subchapter (relating to
8 Cancellation of Permit).

9

10 §21.166. Sign Location Requirements.

11 (a) The department will not issue a permit under this
12 subchapter unless the sign for which application is made is
13 located along a roadway to which Transportation Code, Chapter
14 391, applies and is in:

15 (1) an unzoned commercial or industrial area; or

16 (2) a zoned commercial or industrial area.

17 (b) Subsection (a) of this section does not apply to a sign
18 that was lawfully in existence when it became subject to
19 Transportation Code, Chapter 391.

20

21 §21.167. Erection and Maintenance from Private Property. The
22 department will not issue a permit for a sign unless it can be
23 erected and maintained from private property.

1

2 §21.168. Conversion of Certain Authorization to Permit.

3 (a) The department will convert a registration issued under
4 §21.409 of this chapter (relating to Permit Applications) or a
5 permit issued under §21.407 of this chapter (relating to
6 Existing Off-Premise Signs) to a permit under this subchapter if
7 a highway previously regulated under Transportation Code,
8 Chapter 394 becomes subject to Transportation Code, Chapter 391.

9 (b) A holder of a permit or registration converted under
10 this section is not required to pay an original permit fee under
11 §21.175 of this subchapter (relating to Permit Fees). The
12 permit must be renewed under §21.172 of this subchapter
13 (relating to Permit Renewals), on the date the renewal of the
14 permit or registration issued under §21.407 or §21.409 of this
15 chapter (relating to Permit Applications), as appropriate, would
16 have been due.

17 (c) If a sign owner has prepaid registration fees under
18 §21.407 of this chapter, the outstanding balance will be
19 credited to the sign owner's annual renewal fee.

20 (d) The department will issue a sign permit plate to a
21 holder of a permit or a registration converted under this
22 section at no charge. If a replacement plate is needed after
23 the initial issuance, a fee will be charged in accordance with

1 §21.175 of this subchapter (relating to Permit Fees).

2

3 §21.169. Notice of Sign Becoming Subject to Regulation.

4 (a) The department will send notice by certified mail to
5 the owner of a sign that becomes subject to Transportation Code,
6 Chapter 391 because of the construction of a new highway, the
7 change in designation of an existing highway, or decertification
8 of a certified city. If the owner of the sign cannot be
9 identified from the information on file with the department, the
10 department will give notice by prominently posting the notice on
11 the sign for a period of 30 consecutive days.

12 (b) If the owner of a sign described by subsection (a) of
13 this section does not hold a license issued under §21.153 of
14 this subchapter (relating to License Issuance), the owner must
15 obtain the license within 60 days after the day that:

16 (1) the department sends notice under subsection (a) of
17 this section; or

18 (2) the 30-day posting period under subsection (a) of
19 this section ends.

20

21 §21.170. Appeal Process for Permit Denials.

22 (a) If a sign permit is denied, the applicant may file a
23 request with the executive director for an appeal.

1 (b) The request for appeal must:

2 (1) be in writing;

3 (2) contain:

4 (A) a copy of the denied permit application;

5 (B) a statement of why the denial is believed to be in
6 error; and

7 (C) evidence that supports the issuance of the
8 application, such as drawings, surveys, or photographs; and

9 (3) be received within 20 days after the date the denial
10 notice was received.

11 (c) The executive director or the executive director's
12 designee who is not below the level of assistant executive
13 director, will make a final determination on the appeal within
14 90 days after the date that the executive director receives the
15 request for appeal. If the determination is that the permit is
16 denied, the executive director or the executive director's
17 designee will send the determination to the applicant stating
18 the reason for denial. If the determination is that the
19 application be approved, the department will issue the permit in
20 accordance with §21.164 of this subchapter (relating to Decision
21 on Application).

22 (d) If the executive director or designee is unable to make
23 a final determination on the appeal within the 90-day period

1 under subsection (c) of this section, the department will notify
2 the applicant by mail of the delay and provide an estimated time
3 in which a final determination will be made.

4

5 §21.171. Permit Expiration.

6 (a) A permit is valid for one year.

7 (b) A permit automatically expires on the date that:

8 (1) the license under which the permit was issued expires
9 or is revoked by the department under §21.158 of this subchapter
10 (relating to License Revocation); or

11 (2) the sign is acquired by the state.

12

13 §21.172. Permit Renewals.

14 (a) To be continued in effect, a sign permit must be
15 renewed.

16 (b) A permit is eligible for renewal if the sign for which
17 it was issued continues to meet all applicable requirements of
18 this subchapter and Transportation Code, Chapter 391.

19 (c) To renew the permit, the permit holder must file with
20 the department a written application in a form prescribed by the
21 department accompanied by the applicable fees prescribed by
22 §21.175 of this subchapter (relating to Permit Fees). The
23 application must be received by the department before the 31st

1 day after the date of the permit's expiration.

2 (d) A permit may not be renewed if the sign for which it
3 was issued is not erected before the first anniversary of the
4 date that the permit was issued.

5

6 §21.173. Transfer of Permit.

7 (a) A sign permit may be transferred only with the written
8 approval of the department.

9 (b) At the time of the transfer, both the transferor and
10 the transferee must hold a valid license issued under §21.153 of
11 this subchapter (relating to License Issuance), except as
12 provided in subsections (e) - (g) of this subsection.

13 (c) To transfer one or more sign permits, the permit holder
14 must send to the department a written request in a form
15 prescribed by the department accompanied by the prescribed
16 transfer fee.

17 (d) If the request is approved, the department will send to
18 the transferor and to the transferee a copy of the approved
19 permit transfer form.

20 (e) A permit issued to a nonprofit organization under
21 §21.149 of this subchapter (relating to Nonprofit Sign Permit)
22 may be transferred to another nonprofit organization that does
23 not hold a license issued under §21.153 of this subchapter if

1 the sign will be maintained as a nonprofit sign.

2 (f) A permit issued to a nonprofit organization under
3 §21.149 of this subchapter may be converted to a regular permit
4 and transferred to a person that is not a nonprofit organization
5 if the transferee holds a license for the county in which the
6 sign is located at the time of the transfer and the sign meets
7 all requirements of this subchapter.

8 (g) The department may approve the transfer of one or more
9 sign permits from a transferor whose license has expired to a
10 person who holds a license, with or without the signature of the
11 transferor, if the person provides to the department:

12 (1) legal documents showing the sign has been sold; and

13 (2) documents that indicate that the transferor is dead
14 or cannot be located.

15 (h) The department will not approve the transfer of a
16 permit if cancellation of the permit is pending or has been
17 abated awaiting the outcome of an administrative hearing.

18

19 §21.174. Amended Permit.

20 (a) To perform customary maintenance or to make substantial
21 changes to the sign or sign structure under §21.191 of this
22 subchapter (relating to Repair and Maintenance) a permit holder
23 must submit an amended permit application. To change the sign

1 face of an existing permitted sign to an electronic sign under
2 Subchapter J of this chapter (relating to Regulation of
3 Electronic Signs) a permit holder must submit an amended permit
4 application.

5 (b) The amended permit application must be submitted on a
6 form prescribed by the department and must provide the
7 information required under §21.159 of this subchapter (relating
8 to Permit Applications) applicable to an amended permit and
9 indicates the change from the information in the original
10 application for the sign permit.

11 (c) The new sign face size, configuration, or location must
12 meet all applicable requirements of this subchapter and if the
13 amended permit is to erect an electronic sign the requirements
14 of Subchapter J of this chapter.

15 (d) The holder of a permit for a nonconforming sign may
16 apply for an amended permit to perform eligible customary
17 maintenance under §21.191(b) of this subchapter. An amended
18 permit will not be issued for a substantial change as described
19 by §21.191(c) of this subchapter to a nonconforming sign.

20 (e) Making a change to a sign that requires an amended
21 permit without first obtaining an amended permit is a violation
22 of this subchapter and will result in an administrative
23 enforcement action.

1 (f) The department will make a decision on an amended
2 permit application within 45 days of the date of the receipt of
3 the amended permit application. If the decision cannot be made
4 within the 45 day period the department will notify the
5 applicant of the delay, provide the reason for the delay and
6 provide an estimate of when the decision will be made.

7

8 §21.175. Permit Fees.

9 (a) The amounts of the fees related to permits under this
10 subchapter or Subchapter J of this chapter (relating to
11 Regulation of Electronic Signs) are:

12 (1) \$100 for an original or amended permit for a sign;

13 (2) \$100 for an original or amended permit issued under
14 Subchapter J of this chapter for an electronic sign;

15 (3) \$100 for an original permit for a sign that was
16 lawfully in existence when the sign became subject to
17 Transportation Code, Chapter 391;

18 (4) \$75 for the renewal of a permit;

19 (5) \$75 for the renewal of a permit issued under
20 Subchapter J of this chapter for an electronic sign;

21 (6) \$25 for the transfer of a permit up to a maximum of
22 \$2,500 for a single transaction regardless of the location of
23 the sign; and

1 (7) \$25 for a replacement sign permit plate.

2 (b) The original and renewal permit fee for a nonprofit
3 sign permit is \$10.

4 (c) In addition to the \$75 annual renewal fee, an
5 additional late fee of \$100 is required for a renewal of a
6 permit that is received before the 31st day after the permit
7 expiration date.

8 (d) No fee is charged for the transfer of a permit issued
9 to a nonprofit organization to another nonprofit under §21.173
10 of this subchapter (relating to Transfer of Permit). The fee
11 provided under subsection (a)(6) of this section applies to the
12 conversion and transfer of a permit issued to a nonprofit
13 organization to a person other than a nonprofit organization
14 under §21.173 of this subchapter.

15 (e) A fee prescribed by this section is payable by check,
16 cashier's check, or money order. If a check or money order is
17 dishonored upon presentment, the permit, renewal, or transfer is
18 void.

19
20 §21.176. Cancellation of Permit.

21 (a) The department will cancel a permit for a sign if the
22 sign:

23 (1) is removed, unless the sign is removed and re-erected

1 at the request of a political subdivision;

2 (2) is not maintained in accordance with this subchapter
3 or Transportation Code, Chapter 391;

4 (3) is damaged beyond repair, as determined under §21.197
5 of this subchapter (relating to Discontinuance of Sign Due to
6 Destruction);

7 (4) is abandoned, as determined under §21.181 of this
8 subchapter (relating to Abandonment of Sign);

9 (5) is erected after the effective date of this section
10 and is not built within ten feet of the location described in
11 the permit application or is built within ten feet of the
12 location described in the permit application but at a location
13 that does not meet all spacing requirements of this chapter or
14 in accordance with the sketch or other assertions contained in
15 the permit application;

16 (6) is repaired or altered without obtaining a required
17 amended permit under §21.174 of this subchapter (relating to
18 Amended Permit);

19 (7) is built by an applicant who uses false information
20 on a material issue of the permit application;

21 (8) is erected, repaired, or maintained in violation of
22 §21.199 of this subchapter (relating to Destruction of
23 Vegetation and Access from Right of Way Prohibited);

1 (9) has been made more visible by the permit holder
2 clearing vegetation from the highway right of way in violation
3 of §21.199 of this subchapter;

4 (10) is located in an unzoned commercial or industrial
5 area and the department has evidence that an activity supporting
6 the unzoned commercial or industrial area was created primarily
7 or exclusively to qualify the area as an unzoned commercial or
8 industrial area, and that no business has been conducted at the
9 activity site within one year; or

10 (11) does not have the permit plate properly attached
11 under §21.165 of this subchapter (relating to Sign Permit
12 Plate).

13 (b) Before initiating an enforcement action under this
14 section, the department will notify the sign owner in writing of
15 the violation of subsection (a)(5) or (11) of this section and
16 will give the sign owner 60 days to correct the violation and
17 provide proof of the correction the department.

18 (c) Upon determination that a permit should be canceled,
19 the department will mail a notice of cancellation to the address
20 of the record license holder. The notice must state:

21 (1) the reason for the cancellation;

22 (2) the effective date of the cancellation;

23 (3) the right of the permit holder to request an

1 administrative hearing on the cancellation; and

2 (4) the procedure for requesting a hearing and the period
3 for filing the request.

4 (d) A request for an administrative hearing under this
5 section must be in writing and delivered to the department
6 within 20 days after the date that the notice of cancellation is
7 received.

8 (e) If timely requested, an administrative hearing will be
9 conducted in accordance with 43 TAC Chapter 1, Subchapter E
10 (relating to Procedures in Contested Case) and the cancellation
11 is abated until the cancellation is affirmed by order of the
12 commission.

13 (f) A permit holder may voluntarily cancel a permit by
14 submitting a request in writing after the sign has been removed.
15 Subsections (c) - (e) of this section do not apply to a permit
16 voluntarily cancelled under this subsection.

17 (g) The department will notify the landowner indentified on
18 the permit application of a cancellation enforcement action.
19 The notice is for informational purposes only, and does not
20 convey any rights to the landowner. The landowner may not
21 appeal the cancellation unless the landowner is also the holder
22 of the permit.

23

1 §21.177. Commercial or Industrial Area. For the purposes of
2 this subchapter, a commercial or industrial area is:

3 (1) a zoned commercial or industrial area described by
4 §21.178 of this subchapter (relating to Zoned Commercial or
5 Industrial Area); or

6 (2) an unzoned commercial or industrial area described by
7 §21.179 of this subchapter (relating to Unzoned Commercial or
8 Industrial Area).

9

10 §21.178. Zoned Commercial or Industrial Area. A zoned
11 commercial or industrial area is an area that is designated,
12 through a comprehensive zoning action, for general commercial or
13 industrial use by a political subdivision with legal authority
14 to zone. An area is not a zoned commercial or industrial area
15 if it is:

16 (1) an area in which limited commercial or industrial
17 activities incident to other primary land uses is allowed;

18 (2) an area that is designated for and created primarily
19 to allow outdoor advertising structures along a regulated
20 highway;

21 (3) an unrestricted area; or

22 (4) a small parcel or narrow strip of land that cannot be
23 put to ordinary commercial or industrial use and that is

1 designated for a use classification that is different from and
2 less restrictive than its surrounding area.

3

4 §21.179. Unzoned Commercial or Industrial Area.

5 (a) An unzoned commercial or industrial area is an area
6 that:

7 (1) is within 800 feet, measured along the edge of the
8 highway right of way perpendicular to the centerline of the
9 main-traveled way, of and on the same side of the highway as the
10 principal part of at least two adjacent recognized commercial or
11 industrial activities that meet the requirements of subsection
12 (c) of this section;

13 (2) is not predominantly used for residential purposes;
14 and

15 (3) has not been zoned under authority of law.

16 (b) A part of the regularly used buildings, parking lots,
17 or storage or processing areas of each of the commercial or
18 industrial activities must be within 200 feet of the highway
19 right of way and the permanent building in which the activity is
20 conducted must be visible from the main-traveled way.

21 (c) For commercial or industrial activities to be
22 considered adjacent for the purposes of subsection (a)(1) of
23 this section, the regularly used buildings, parking lots,

1 storage or processing areas of the activities may not be
2 separated by a vacant lot, an undeveloped area that is more than
3 50 feet wide, a road, or a street.

4 (d) Two activities that occupy the same building qualify as
5 adjacent activities for the purposes of subsection (a)(1) of
6 this section, if:

7 (1) each activity:

8 (A) has at least 400 square feet of floor space
9 dedicated to that activity; and

10 (B) is an activity that is customarily allowed only in
11 a zoned commercial or industrial area;

12 (2) the two activities are separated by a dividing wall
13 constructed from floor to ceiling;

14 (3) the two activities have separate and independent
15 access and have separate and independent access to the restroom
16 facilities; and

17 (4) the two activities operate independently of one
18 another.

19 (e) For the purposes of subsection (d) of this section, two
20 separate product lines offered by one business are not
21 considered to be two activities.

22 (f) To determine whether an area is not predominantly used
23 for residential purposes under subsection (a)(2) of this

1 section, not more than 50 percent of the area, considered as a
2 whole, may be used for residential purposes. A road or street
3 is considered to be used for residential purposes only if
4 residential property is located on both of its sides. The area
5 to be considered is the total of actual or projected frontage of
6 the commercial or industrial activities plus 800 feet on each
7 side of that frontage, measured along the highway right of way
8 to a depth of 660 feet. The depth of an unzoned commercial or
9 industrial area is measured from the nearest edge of the highway
10 right of way perpendicular to the centerline of the main-
11 traveled way of the highway.

12 (g) The length of an unzoned commercial or industrial area
13 is measured from the outer edge of the regularly used building,
14 parking lot, storage, or processing area of the commercial or
15 industrial activity and along or parallel to the edge of the
16 pavement of the highway. If the business activity does not
17 front the highway, a projected frontage is measured from the
18 outer edge of the regularly used building, parking lot, storage,
19 or processing area to a point perpendicular to the centerline of
20 the main-traveled way.

21 (h) A sign is not required to meet the requirements of
22 subparagraphs (d)(1)(A), (d)(2), or (d)(3) of this section to
23 maintain conforming status if the permit for the sign was issued

1 before the effective date of this section.

2

3 §21.180. Commercial or Industrial Activity.

4 (a) For the purposes of this subchapter, a commercial or
5 industrial activity is an activity that:

6 (1) is customarily allowed only in a zoned commercial or
7 industrial area; and

8 (2) is conducted in a permanent building or structure
9 permanently affixed to the real property that:

10 (A) has an indoor restroom, running water, functioning
11 electrical connections, and permanent flooring, other than dirt,
12 gravel, or sand;

13 (B) is visible from the traffic lanes of the main-
14 traveled way;

15 (C) is not primarily used as a residence; and

16 (D) has at least 400 square feet of its interior floor
17 space devoted to the activity.

18 (b) The following are not commercial or industrial
19 activities:

20 (1) agricultural, forestry, ranching, grazing, farming,
21 and related activities, including the operation of a temporary
22 wayside fresh produce stand;

23 (2) an activity that is conducted only seasonally;

1 (3) an activity that has not been conducted at its
2 present location for at least 180 days;

3 (4) an activity that is not conducted by at least one
4 person who works for the business at the activity site for at
5 least 25 hours per week on at least five days per week and for
6 which the hours during which the activity is conducted are
7 posted at the activity site;

8 (5) the operation or maintenance of:

9 (A) an outdoor advertising structure;

10 (B) a recreational facility, such as a campground, golf
11 course, tennis court, wild animal park, or zoo, other than the
12 related activities conducted in a building or structure that
13 meets the requirements of subsection (a)(2) of this section and
14 the parking facilities for that building or structure;

15 (C) an apartment house or residential condominium;

16 (D) a public or private preschool, secondary school,
17 college, or university, other than a trade school or corporate
18 training campus;

19 (E) a quarry or borrow pit, other than the related
20 activities conducted in a building or structure that meets the
21 requirements of subsection (a)(2) of this section and the
22 parking facilities for that building or structure;

23 (F) a cemetery; or

1 (G) a place that is primarily used for worship;

2 (6) an activity that is conducted on a railroad right of
3 way; and

4 (7) an activity that is created primarily or exclusively
5 to qualify an area as an unzoned commercial or industrial area.

6 (c) For the purposes of this section, a building is not
7 primarily used as a residence if more than 50 percent of the
8 building's square footage is used solely for the business
9 activity.

10 (d) A sign is not required to meet the requirements of
11 subsection (a)(2)(C) of this section (as clarified by subsection
12 (c) of this section), (a)(2)(D), (b)(3), and (b)(4) of this
13 section to maintain conforming status if the permit for the sign
14 was issued before the effective date of this section.

15

16 §21.181. Abandonment of Sign.

17 (a) The department may consider a sign abandoned and cancel
18 the sign's permit if:

19 (1) the sign face is blank or without legible advertising
20 or copy for a period of 365 consecutive days or longer; or

21 (2) the sign needs to be repaired or is overgrown by
22 trees or other vegetation.

23 (b) Small temporary signs, such as garage sale signs or

1 campaign signs, that are attached to the structure do not
2 constitute legible advertising or copy for the purpose of ending
3 the period under subsection (a)(1) of this section.

4 (c) The department will not consider the payment of
5 property taxes or the retention of a sign as a balance sheet
6 asset in determining whether the sign permit should be canceled
7 under this section.

8 (d) The department may initiate the cancellation process if
9 the department has evidence that supports the fact that the sign
10 face has been blank or has been without legible advertisement or
11 copy for 365 days, such as photographs showing that on at least
12 four dates throughout the 365-day period the sign was in the
13 same condition or was degrading. Evidence is not required for
14 each of the 365 days.

15 (e) If the location of the abandoned sign is allowed under
16 this subchapter, the department may issue a permit for the sign
17 site to anyone who submits an application that meets the
18 requirements of this subchapter. The department will not issue
19 a permit for an abandoned sign that is located in a place that
20 does not meet the requirements of this subchapter.

21 (f) For the purposes of this section "copy" includes any
22 advertisement that the sign is available for lease.

23 (g) A multi-face sign is not abandoned unless all sign

1 faces may be considered abandoned under this section.

2 (h) Before initiating a cancellation process under this
3 section the department will provide notice to the sign owner and
4 land owner as identified on the permit application of the
5 abandonment determination and allow the sign owner 60 days to
6 correct the issue.

7

8 §21.182. Sign Face Size and Positioning.

9 (a) A sign face may not exceed:

10 (1) 672 square feet in area;

11 (2) 25 feet in height; and

12 (3) 60 feet in length.

13 (b) For the purposes of this section, border and trim are
14 included as part of the sign face.

15 (c) Notwithstanding the area limitation provided by
16 subsection (a)(1) of this section, one or more temporary
17 protrusions may be added to a sign, provided that:

18 (1) the sign face, including the protrusions, meets the
19 height and length limitations of subsection (a) of this section;

20 (2) the area of the protrusion does not exceed 25 percent
21 of the area indicated on the sign permit; and

22 (3) the sign face, including the area of the protrusions,
23 does not exceed 807 square feet in area.

1 (d) The area is measured by the smallest square, rectangle,
2 triangle, circle, or combination that encompasses the entire
3 sign face.

4 (e) A sign may have two or more sign faces that are placed
5 back-to-back, side-by-side, stacked, or in "V" type construction
6 with not more than two faces presented in each direction. If
7 such an arrangement is used, the sign structure or structures
8 are considered to be one sign for all purposes. Two sign faces
9 which together exceed 672 square feet in area, including
10 temporary protrusions, may not face in the same direction.

11 (f) Two sign faces that face in the same direction may be
12 presented as one face by covering both faces and the area
13 between the faces with an advertisement, as long as the size
14 limitations of subsection (a) of this section are not exceeded.

15

16 §21.183. Signs Prohibited at Certain Locations. A sign may not
17 be located in a place that creates a safety hazard, including a
18 location that:

19 (1) causes a driver to be unduly distracted;

20 (2) obscures or interferes with the effectiveness of an
21 official traffic sign, signal, or device; or

22 (3) obscures or interferes with the driver's view of
23 approaching, merging, or intersecting traffic.

1

2 §21.184. Location of Signs Near Parks.

3 (a) The center of a sign may not be located within 250 feet
4 of the nearest point of the boundary of a public park.

5 (b) This subsection applies only if a public park boundary
6 abuts the right of way of a regulated highway. A sign may not
7 be located within 1,500 feet of the boundary of the public park,
8 as measured along the right of way line from the nearest common
9 point of the park's boundary and the right of way. This
10 limitation applies:

11 (1) on both sides of a highway that is on a nonfreeway
12 primary system; or

13 (2) on the side of a highway on which the public park is
14 located, if the highway is on an interstate or freeway primary
15 system.

16

17 §21.185. Location of Signs Near Certain Facilities.

18 (a) A sign may not be erected along a freeway or interstate
19 regulated highway that is outside an incorporated municipality
20 in an area that is adjacent to or within 1,000 feet of:

21 (1) an interchange or intersection at grade; or

22 (2) a rest area, ramp, or the highway's acceleration and
23 deceleration lanes.

1 (b) The distance from a ramp or acceleration or
2 deceleration lane is measured from the point of the pavement
3 widening at the beginning of the entrance or exit ramp and from
4 the point that the pavement widening ends at the conclusion of
5 the entrance or exit ramp.

6 (c) The distance from a rest area is measured along the
7 right of way line from the outer edges of the rest area boundary
8 abutting the right of way.

9 (d) An area is adjacent to a rest area or a highway's
10 acceleration or deceleration lane if the area is between the
11 point of the highway widening at the beginning of the entrance
12 or exit ramp and the point that pavement widening ends at the
13 conclusion of the entrance or exit ramp.

14 (e) All measurements are taken from a point perpendicular
15 to the highway and along the highway right of way.

16

17 §21.186. Location of Signs Near Right of Way. A sign may not
18 be erected so that the part of the sign face nearest a highway
19 is within five feet of the highway's right of way line.

20

21 §21.187. Spacing of Signs.

22 (a) Signs on the same side of a regulated freeway,
23 including freeway frontage roads, that are outside of

1 incorporated municipal boundaries may not be erected closer than
2 1,500 feet apart.

3 (b) For a highway on a non-freeway primary system and
4 outside the incorporated boundaries of a municipality, signs on
5 the same side of the highway may not be erected closer than 750
6 feet apart.

7 (c) For a highway on a non-freeway primary system highway
8 and within the incorporated boundaries of a municipality, signs
9 on the same side of the highway may not be erected closer than
10 300 feet apart.

11 (d) For the purposes of this section, the space between
12 signs is measured between points along the right of way of the
13 highway perpendicular to the center of the signs.

14 (e) For the purposes of this section, a municipality's
15 extraterritorial jurisdiction is not considered to be included
16 within the boundaries of the municipality.

17 (f) This section does not apply to directional signs.

18 (g) The spacing requirements of this section do not apply
19 to signs separated by buildings, natural surroundings, or other
20 obstructions in a manner that causes only one of the signs to be
21 visible within the specified spacing area.

22

23 §21.188. Wind Load Pressure. An application for new sign permit

1 or a permit renewal must include a certification signed by the
2 applicant that the proposed or existing sign will withstand wind
3 load pressures in pounds per square foot as set out in the
4 following table.

5 Figure: §21.188

Wind Load Pressure in Pounds per Square Foot	
Height, in feet above ground, as measured above the average level of the ground adjacent to the structure	Pressure, pounds per square foot
0 - 5	0
6 - 30	20
31 - 50	25
51 - 99	35
100 - 199	45
200 - 299	50
300 - 399	55
400 - 500	60
501 - 800	70
Over 800	77

6

7 §21.189. Sign Height Restrictions.

8 (a) A sign may not be erected that exceeds an overall
9 height of 42-1/2 feet.

10 (b) A roof sign that has a solid sign face surface may not
11 at any point exceed 24 feet above the roof level.

12 (c) A roof sign that has an open sign face in which the
13 uniform open area between individual letter or shapes is not
14 less than 40 percent of the total gross area of the sign face

1 may not at any point exceed 40 feet above the roof level.

2 (d) The lowest point of a projecting roof sign or a wall
3 sign must be at least 14 feet above grade.

4 (e) For the purposes of this section, height is measured
5 from the grade level of the centerline of the main-traveled way
6 closest to the sign, at a point perpendicular to the sign
7 location. A frontage road of a controlled access highway or
8 freeway is not considered the main-traveled way for purposes of
9 this subsection.

10

11 §21.190. Lighting of and Movement on Signs.

12 (a) A sign may not contain or be illuminated by flashing,
13 intermittent, or moving lights, including any type of screen
14 using animated or scrolling displays, except that this
15 subsection does not apply to a sign that only provides public
16 service information, such as time, date, temperature, weather,
17 or similar information.

18 (b) Except for a relocated sign, any new sign may be
19 illuminated but only by:

20 (1) upward lighting of no more than 4 luminaries per
21 direction of the sign face or faces of the structure; or

22 (2) downward lighting of no more than 4 luminaries per
23 direction of the sign face or faces of the structure.

1 (c) Lights that are a part of or illuminate a sign:

2 (1) must be shielded, directed, and positioned to prevent
3 beams or rays of light from being directed at any portion of the
4 traveled ways of a regulated highway;

5 (2) may not be of such intensity or brilliance as to
6 cause vision impairment of a driver of any motor vehicle on a
7 regulated highway or otherwise interfere with the driver's
8 operation of a motor vehicle; and

9 (3) may not obscure or interfere with the effectiveness
10 of an official traffic sign, device, or signal.

11 (d) A temporary protrusion on a sign may be animated only
12 if it does not create a safety hazard to the traveling public. A
13 temporary protrusion may not be illuminated by flashing or
14 moving lights or enhanced by reflective material that creates
15 the illusion of flashing or moving lights.

16 (e) Reflective paint or reflective disks may be used on a
17 sign face only if the paint or disks do not:

18 (1) create the illusion of flashing or moving lights; or

19 (2) cause an undue distraction to the traveling public.

20 (f) A neon light may be used on a sign face only if:

21 (1) the light does not flash;

22 (2) the light does not cause an undue distraction to the
23 traveling public; and

1 (3) the permit for the sign specifies that the sign is an
2 illuminated sign.

3 (g) This subchapter does not prohibit a temporary
4 protrusion that displays only alphabetical or numerical
5 characters and that satisfies this subsection and the
6 requirements of §21.182 of this subchapter (relating to Size of
7 Off-Premise Outdoor Advertising Signs), relating to a temporary
8 protrusion. The display on the temporary protrusion may be a
9 digital or other electronic display, but if so:

- 10 (1) it must consist of a stationary image;
11 (2) it may not change more frequently than twice in any 24 hour period; and
12 (3) the process of any change of display must be completed within one minute.

13

14 §21.191. Repair and Maintenance.

15 (a) The following are considered to be routine maintenance
16 activities that do not require an amended permit:

- 17 (1) the replacement of nuts and bolts;
18 (2) nailing, riveting, or welding;
19 (3) cleaning and painting;
20 (4) manipulation of the sign structure to level or plumb
21 it;
22 (5) changing of the advertising message; and
23 (6) the replacement of minor parts if the materials of

1 the minor parts are the same type as those being replaced and
2 the basic design or structure of the sign is not altered.

3 (b) The following are considered to be customary
4 maintenance activities that may be made but require an amended
5 permit before the initiation of such an activity:

6 (1) changing all or part of the sign face structure but
7 only if materials similar to those of the sign face being
8 replaced are used;

9 (2) upgrading existing lighting for an energy efficient
10 lighting system;

11 (3) replacement of poles, but only if not more than one-
12 half of the total number of poles of the sign structure are
13 replaced in any 12 month period and the same material is used
14 for the replacement poles; and

15 (4) adding a catwalk to the sign structure.

16 (c) The following are examples of substantial changes that
17 may be made but require an amended permit application before the
18 initiation of such an activity:

19 (1) adding lights to an unilluminated sign or adding more
20 intense lighting to an illuminated sign whether or not the
21 lights are attached to the sign structure;

22 (2) changing the number of poles in the sign structure;

23 (3) adding permanent bracing wires, guy wires, or other

1 reinforcing devices;

2 (4) changing the material used in the construction of the
3 sign structure, such as replacing wooden material with metal
4 material;

5 (5) adding faces to a sign or changing the sign
6 configuration;

7 (6) increasing the height of the sign;

8 (7) changing the configuration of the sign structure,
9 such as changing a "V" sign to a stacked or back to back sign,
10 or a single face sign to a back-to back sign; and

11 (8) moving the sign structure or sign face in any way
12 unless the movement is made in accordance with §21.192 of this
13 subchapter (relating to Permit for Relocation of Sign).

14 (d) To add a catwalk to a sign structure the catwalk must
15 meet Occupational Safety and Health Administration guidelines.

16

17 §21.192. Permit for Relocation of Sign.

18 (a) A sign may be relocated in accordance with this
19 section, §21.193 of this subchapter (relating to Location of
20 Relocated Sign), §21.194 of this subchapter (relating to
21 Construction and Appearance of Relocated Sign), and §21.195 of
22 this subchapter (relating to Relocation of Sign within
23 Municipality) if the sign is legally erected and maintained and

1 will be within the highway right of way as a result of a highway
2 construction project.

3 (b) To relocate a sign under this section, the permit
4 holder must obtain a new permit under §21.164 of this subchapter
5 (relating to Decision on Application), but the permit fee is
6 waived.

7 (c) To receive a new permit to relocate a sign under this
8 section, the permit holder must submit a new permit application
9 that identifies that the application is for the relocation of an
10 existing sign due to a highway construction project. The new
11 location must meet all local codes, ordinances, and applicable
12 laws.

13 (d) Notwithstanding other provisions of this section, if
14 only a part of a sign will be located within the highway right
15 of way as a result of the construction project, the sign owner
16 may apply to amend the existing permit for the sign to
17 authorize:

18 (1) the adjustment of the sign face on a monopole sign
19 that would overhang the proposed right of way to the land on
20 which the sign's pole is located, including adding a second pole
21 if required to support the adjustment for a legal non-conforming
22 monopole sign;

23 (2) the relocation of the poles and sign face of a

1 multiple sign structure that are located in the proposed right
2 of way from the proposed right of way to the land on which the
3 other poles of the sign structure are located; or

4 (3) a reduction in the size of a sign structure that is
5 located partially in the proposed right of way so that the sign
6 structure and sign face are removed from the proposed right of
7 way.

8 (e) A permit application for the relocation of a sign must
9 be submitted within 18 months after the earlier of the date the
10 original sign was removed or the date the original sign was
11 required to move. Upon written request by the permit holder,
12 the department shall grant an additional six months to submit an
13 application.

14

15 §21.193. Location of Relocated Sign.

16 (a) To receive a new permit for relocation, an existing
17 sign must be relocated to one of the following locations, as
18 listed in order of priority:

19 (1) on the same parcel of land on which the existing sign
20 is located in a location that is allowed under this section and
21 that is within 50 feet of a line drawn through the center point
22 of the existing sign structure and perpendicular to the edge of
23 the highway right of way nearest to the existing sign; or

1 (2) on a part of the same parcel of land on which the
2 sign was situated before relocation in a location that is
3 allowed under this section.

4 (b) If the sign owner can demonstrate that both of the
5 locations under subsection (a) of this section are not
6 physically or economically feasible for a sign structure, the
7 sign owner, on approval by the department, may relocate the sign
8 to any other location that is allowed under this subsection.
9 The owner is not entitled to additional relocation benefits
10 under §21.196 of this subchapter (relating to Relocation
11 Benefits) if the sign structure is relocated further than 50
12 miles from the location of the existing sign.

13 (c) The location of the relocated sign must be within a
14 zoned commercial or industrial area as described by §21.178 of
15 this subchapter (relating to Zoned Commercial or Industrial
16 Area) or an unzoned commercial or industrial area, as described
17 by §21.179 of this subchapter (relating to Unzoned Commercial or
18 Industrial Area) except that an unzoned commercial or industrial
19 area may include only one recognized commercial or industrial
20 activity.

21 (d) A sign may not be relocated to a place where it:

22 (1) can cause a driver to be unduly distracted in any
23 way;

1 (2) will obscure or otherwise interfere with the
2 effectiveness of an official traffic sign, signal, or device; or

3 (3) will obstruct or interfere with the driver's view of
4 approaching, merging, or intersecting motor vehicle or rail
5 traffic;

6 (e) A sign may not be relocated to a place that is:

7 (1) within 500 feet of a public park that is adjacent to
8 a regulated highway, with the limitation provided under this
9 paragraph applying:

10 (A) on either side of a regulated highway that is on a
11 nonfreeway primary system; or

12 (B) on the side of the highway adjacent to the public
13 park if the regulated highway is on an interstate or freeway
14 primary system;

15 (2) if outside of an incorporated municipality along a
16 regulated highway, adjacent to or within 500 feet of:

17 (A) an interchange, intersection at grade, or rest
18 area; or

19 (B) a ramp or the ramp's acceleration or deceleration
20 lane;

21 (3) for a highway on the interstate or freeway primary
22 system, closer than 500 feet to another permitted sign on the
23 same side of the highway;

1 (4) for a highway on the nonfreeway primary system and
2 outside of a municipality, closer than 300 feet to another
3 permitted sign on the same side of the highway;

4 (5) for a highway on the nonfreeway primary system and
5 within the incorporated boundaries of a municipality, closer
6 than 100 feet to another permitted sign on the same side of the
7 highway; or

8 (6) within five feet of any highway right of way line.

9 (f) A sign, at the time of and after its relocation, must
10 be within 800 feet of at least one recognized commercial or
11 industrial activity about which the sign provides information
12 and that is located on the same side of the highway.

13 (g) The spacing limitations provided in subsection (e) of
14 this section do not apply to on-premise signs or directional or
15 official signs that are exempted from the application of
16 Transportation Code, §391.031.

17 (h) A sign may not be relocated from a road regulated under
18 this subchapter to a rural road regulated by Subchapter K of
19 this chapter (relating to Control of Signs along Rural Roads).

20
21 §21.194. Construction and Appearance of Relocated Sign.

22 (a) A relocated sign must be constructed with the same
23 number of poles and of the same type of materials as the

1 existing sign. A relocated sign may not exceed the maximum
2 height provided by §21.189 of this subchapter (relating to Sign
3 Height Restrictions). The number of sign faces and lighting, if
4 any, of the relocated sign may not exceed the number of faces or
5 lighting, if any, of the existing sign.

6 (b) The size of each of the sign faces of a relocated sign
7 that are visible to approaching traffic may not exceed the
8 smaller of the size of the existing sign face or an area of
9 1,200 square feet, a height of 25 feet, and a length of 60 feet.

10 (c) The sign faces of a relocated sign may be placed back-
11 to-back, side-by-side, stacked, or in "V" type construction with
12 not more than two displays facing any direction, except that if
13 the area of a sign face exceeds 350 square feet, sign faces may
14 not be stacked or placed side-by-side. The sign structure and
15 sign faces are considered one sign.

16

17 §21.195. Relocation of Sign within Municipality.

18 (a) If an existing sign is located within the incorporated
19 boundaries of a municipality that is approved by the department
20 to control outdoor advertising under §21.200 of this subchapter
21 (relating to Local Control) and the sign will be relocated
22 within the incorporated boundaries of the same municipality,
23 permission to relocate the sign must be obtained only from the

1 municipality in accordance with the municipality's sign and
2 zoning ordinances.

3 (b) Permission from the municipality to relocate the sign
4 is required to receive relocation benefits from the department
5 under §21.196 of this subchapter (relating to Relocation
6 Benefits).

7

8 §21.196. Relocation Benefits.

9 (a) Relocation benefits will be paid in accordance with
10 Subchapter G of this chapter (relating to Relocation Assistance
11 and Benefits) for the relocation of a sign under §21.192 of this
12 subchapter (relating to Permit for Relocation of Sign) or
13 §21.195 of this subchapter (relating to Relocation of Sign
14 within Municipality).

15 (b) The owner of an existing sign that is being relocated
16 must enter into a written agreement with the governmental entity
17 that is acquiring the right-of-way in which the sign is located.
18 In the agreement the owner, in consideration of the payment by
19 the governmental entity of relocation benefits, waives and
20 releases any claim for damages against the governmental entity
21 and the state for any temporary or permanent taking of the sign.

22

23 §21.197. Discontinuance of Sign Due to Destruction.

1 (a) If a sign is partially destroyed by a natural force
2 outside the control of the permit holder, including wind,
3 tornado, lightening, flood, fire, or hurricane, the department
4 will determine whether the sign can be repaired without an
5 amended permit.

6 (b) The department may require the permit holder to submit
7 an estimate of the proposed work, including an itemized list of
8 the materials to be used and the manner in which the work will
9 be done. The department will allow the sign to be repaired
10 without an amended permit if the department determines that the
11 damage is not substantial. If the damage is determined to be
12 substantial the sign owner must obtain an amended permit under
13 §21.174 of the subchapter (relating to Amended Permit).

14 (c) The department will cancel the existing permit if it
15 determines the damage to the sign is substantial under
16 subsection (g) of this section and an amended permit is not
17 obtained by the sign owner within one year after the date that
18 the department first became aware of the damage.

19 (d) If a permit is canceled under this section or §21.176
20 of this subchapter (relating to Cancellation of Permit) the
21 remaining sign structure must be dismantled and removed without
22 cost to the state.

23 (e) A sign that is totally or partially destroyed by

1 vandalism or a motor vehicle accident may be rebuilt as
2 described on the most recently approved permit application.

3 (f) If a decision to cancel a permit is appealed, the sign
4 may not be repaired during the appeal process.

5 (g) Damage is considered to be substantial if the cost to
6 repair the sign would exceed 60 percent of the cost to replace
7 it with a sign of the same basic construction using new
8 materials and at the same location.

9

10 §21.198. Order of Removal.

11 (a) If a sign permit expires without renewal or is canceled
12 or if the sign is erected or maintained in violation of this
13 subchapter, the owner of the sign, on a written demand by the
14 department, shall remove the sign at no cost to the state.

15 (b) If the owner does not remove the sign within 30 days of
16 the day that the demand is sent, the department will remove the
17 sign and will charge the sign owner for the cost of removal,
18 including the cost of any court proceedings.

19 (c) The department will rescind a removal demand if the
20 department determines the demand was issued incorrectly.

21

22 §21.199. Destruction of Vegetation and Access from Right of Way
23 Prohibited.

1 (a) A person may not:

2 (1) trim or destroy a tree or other vegetation on the
3 right of way for any purpose related to this subchapter; or

4 (2) erect or maintain a sign from the right of way.

5 (b) The department will initiate enforcement action if the
6 permit holder, or someone acting on behalf of the permit holder,
7 violates this section.

8 (c) Subsection (a)(2) of this section does not apply to the
9 maintenance of a sign if:

10 (1) the state right of way is the only available access
11 for a sign on railroad right of way to which §21.150(b) of this
12 subchapter (relating to Continuance of Nonconforming Signs)
13 applies; and

14 (2) the sign owner notifies the department and obtains
15 approval of the department before accessing the sign for
16 maintenance.

17

18 §21.200. Local Control.

19 (a) The department may authorize a political subdivision to
20 exercise control over outdoor signs in its jurisdiction. If the
21 political subdivision receives approval under this section, it
22 will be listed as a certified city and a permit issued by that
23 political subdivision is acceptable instead of a permit issued

1 by the department within the approved area.

2 (b) To be considered for authorization under this section,
3 the political subdivision must submit to the department:

4 (1) a copy of its sign regulations;

5 (2) a copy of its zoning regulations;

6 (3) information about the number of personnel who will be
7 dedicated to the program and what type of records will be
8 maintained, including whether the political subdivision
9 maintains an inventory of signs that can be provided to the
10 department in an electronic format that is acceptable to the
11 department; and

12 (4) an enforcement plan that includes the removal of
13 illegal signs.

14 (c) The department, after consulting with the Federal
15 Highway Administration, shall determine whether a political
16 subdivision has established and will enforce within its
17 corporate limits standards and criteria for size, lighting, and
18 spacing of outdoor signs consistent with the purposes of the
19 Highway Beautification Act of 1965, 23 United States Code §131,
20 and with customary use. The size, lighting, and spacing
21 requirements of the political subdivision may be more or less
22 restrictive than the requirements of this subchapter as long as
23 the requirements comply with the federal requirements, such as

1 the prohibition of signs over 1,200 square feet in size and
2 spacing of less than 500 feet. The authorization does not
3 include the area in a municipality's extraterritorial
4 jurisdiction.

5 (d) The department may meet with a political subdivision to
6 ensure that it is enforcing the standards and criteria in
7 accordance with subsection (c) of this section.

8 (e) After approval under this section, the political
9 subdivision shall:

10 (1) provide to the department:

11 (A) a copy of each amendment to its sign and zoning
12 regulations when the amendment is proposed and adopted; and

13 (B) a copy of any change to its corporate limits and
14 its extraterritorial jurisdiction, if covered by the approval;

15 (2) annually provide to the department:

16 (A) an electronic copy of the sign inventory; and

17 (B) report of the number of sign permits issued and the
18 status of all pending enforcement actions; and

19 (3) participate in at least one video conference or
20 teleconference sponsored by the department each year.

21 (f) The political subdivision may:

22 (1) set and retain the fees for issuing a sign permit;

23 and

1 (2) establish the period for which a sign permit is
2 effective.

3 (g) The department will conduct an on-site compliance
4 monitoring review every two years.

5 (h) The department may withdraw the approval of a political
6 subdivision given under this section if the department
7 determines that the political subdivision does not have an
8 effective sign control program. The department will consider
9 whether:

10 (1) the standards and criteria of political subdivision's
11 sign regulations continue to meet the requirements of subsection
12 (c) of this section;

13 (2) the political subdivision maintains an accurate sign
14 inventory and annually provides the inventory to the department
15 in an electronic format; and

16 (3) the political subdivision enforces the sign
17 regulations and annually reports enforcement actions as
18 required.

19 (i) The department may reinstate a political subdivision's
20 authority on the showing of a new plan that meets the
21 requirements of subsection (c) of this section.

22

23 §21.201. Fees Nonrefundable. A fee paid to the department

1 under this subchapter is nonrefundable.

2

3 §21.202. Property Right Not Created. Issuance of a permit or
4 license under this subchapter does not create a contract or
5 property right in the permit or license holder.

6

7 §21.203. Complaint Procedures.

8 (a) The department will accept and investigate all written
9 complaints on a specific sign structure, sign company, or any
10 other issue under the jurisdiction of the outdoor advertising
11 program.

12 (b) The complaints can be filed via the department's
13 website or by mail.

14 (c) If the complaint involves a sign structure or a sign
15 company the department will notify the owner of the sign
16 structure or sign company of the complaint and the pending
17 investigation within 15 days of receipt of the complaint. This
18 notification will include a copy of the complaint and complaint
19 investigation procedures.

20 (d) If the complaint included contact information, the
21 department will provide the complainant with a copy of the
22 complaint procedures within 15 days of the receipt of the
23 complaint.

1 (e) If the complaint involves fewer than 10 sign structures
2 the department will investigate the complaint and make a finding
3 within 30 days of the receipt of the complaint. If the
4 complaint involves 10 or more sign structures or is an
5 investigation of a sign company or other outdoor advertising
6 matter the department will make a finding within 90 days of the
7 receipt of the complaint.

8 (f) If the department is unable to meet the deadlines in
9 subsection (e) of this section, the department will notify the
10 complainant, the sign owner, or sign company of the delay and
11 will provide a date for the completion of the investigation.

12 (g) The department will provide the complainant, sign
13 owner, or sign company the findings of the investigation, which
14 will include whether administrative enforcement actions are
15 being initiated.

1 SUBCHAPTER J. REGULATION OF ELECTRONIC SIGNS

2 §21.251. Definition. In this subchapter, "electronic sign"
3 means a sign, display, or device that changes its message or
4 copy by programmable electronic or mechanical processes.

5
6 §21.252. Department Determination. The department has
7 determined that the use of an electronic image on a digital
8 display device is not the use of a flashing, intermittent, or
9 moving light for the purposes of any rule, regulation, and
10 standard promulgated by the department or any agreement between
11 the department and the Secretary of the United States Department
12 of Transportation.

13
14 §21.253. Issuance of Permit.

15 (a) The department will issue a permit for an electronic
16 sign if the application for the permit:

17 (1) satisfies the requirements of this subchapter and
18 Subchapter I of this chapter (relating to Regulation of Signs
19 along Interstate and Primary Highways), as applicable; and

20 (2) has attached to it:

21 (A) a certified copy of the permit issued by the
22 municipality that gives permission for the electronic sign; or

23 (B) if the municipality does not issue permits, a

1 certified copy of written permission for the electronic sign
2 from the municipality.

3 (b) A permit from the department is required for the
4 erection of an electronic sign even if the requested sign
5 location is within a city certified under §21.200 of this
6 chapter (relating to Local Control).

7

8 §21.254. Prohibitions. An electronic sign may not:

9 (1) be illuminated by flashing, intermittent, or moving
10 lights;

11 (2) contain or display animated, moving video, or
12 scrolling advertising;

13 (3) consist of a static image projected on a stationary
14 object; or

15 (4) be a mobile sign located on a truck or trailer.

16

17 §21.255. Location.

18 (a) An electronic sign may be located, relocated, or
19 upgraded only along a regulated highway and within:

20 (1) the corporate limits of a municipality that allows
21 electronic signs under its sign or zoning ordinance; or

22 (2) within the extraterritorial jurisdiction of a
23 municipality described by paragraph (1) of this subsection that

1 under state law has extended its municipal regulation to include
2 that area.

3 (b) Two electronic signs may be located on the same sign
4 structure if each sign face is visible only from a different
5 direction of travel. An electronic sign may not be located
6 within 1,500 feet of another electronic sign on the same highway
7 if facing the same direction of travel.

8
9 §21.256. Modification to Electronic Sign. A sign may be
10 modified to be an electronic sign if a new permit for the
11 electronic sign is obtained from both the municipality in whose
12 jurisdiction the sign is located and the department, except that
13 lighting may not be added to or used to illuminate a
14 nonconforming sign.

15
16 §21.257. Requirements.

17 (a) Each message on an electronic sign must be displayed
18 for at least eight seconds. A change of message must be
19 accomplished within two seconds and must occur simultaneously on
20 the entire sign face.

21 (b) An electronic sign must:

22 (1) contain a default mechanism that freezes the sign in
23 one position if a malfunction occurs; and

1 (2) automatically adjust the intensity of its display
2 according to natural ambient light conditions.

3 (c) If the department finds that an electronic sign causes
4 glare or otherwise impairs the vision of the driver of a motor
5 vehicle or otherwise interferes with the operation of a motor
6 vehicle, the owner of the sign, within 12 hours of a request by
7 the department, shall reduce the intensity of the sign to a
8 level acceptable to the department.

9
10 §21.258. Emergency Information. The owner of an electronic
11 sign shall coordinate with local authorities to display, when
12 appropriate, emergency information important to the traveling
13 public, such as Amber Alerts or alerts concerning terrorist
14 attacks or natural disasters. Emergency information messages
15 must remain in the advertising rotation according to the
16 protocols of the agency that issues the information.

17
18 §21.259. Contact Information.

19 (a) The owner of an electronic sign shall provide to the
20 department contact information for a person who is available to
21 be contacted at any time and who is able to turn off the
22 electronic sign promptly if a malfunction occurs or is able to
23 accommodate an emergency notification request from a local

1 authority under §21.258 of this subchapter (relating to
2 Emergency Information).

3 (b) The department will share the contact information with
4 the appropriate local authority that has jurisdiction over the
5 location of the electronic sign.

6
7 §21.260. Application of Other Rules. The requirements and
8 other provisions of Subchapter I of this chapter (relating to
9 Regulation of Signs along Interstate and Primary Highways) apply
10 to an electronic sign, except that if this subchapter conflicts
11 with a provision of Subchapter I, this subchapter controls.

1 SUBCHAPTER K. CONTROL OF SIGNS ALONG RURAL ROADS

2 §21.401. Purpose. This subchapter is established to regulate
3 the orderly and effective display of outdoor advertising along
4 rural highways and roads located outside corporate limits of
5 cities, towns, and villages.

6

7 §21.402. Definitions. The following words and terms, when used
8 in this subchapter, shall have the following meanings, unless
9 the context clearly indicates otherwise.

10 (1) Commission--The Texas Transportation Commission.

11 (2) Department--The Texas Department of Transportation.

12 (3) Erect--To construct, build, raise, assemble, place,
13 affix, attach, embed, create, paint, draw, or in any way bring
14 into being or establish.

15 (4) Main-traveled way--The through traffic lanes
16 exclusive of frontage roads, auxiliary lanes, and ramps.

17 (5) Off-premise sign--A sign displaying advertising copy
18 that pertains to a business, person, organization, activity,
19 event, place, service, or product not principally located or
20 primarily manufactured or sold on the premises on which the sign
21 is located.

22 (6) Permit--The authorization granted for the erection of
23 a sign, subject to this subchapter and Transportation Code,

1 Chapter 394.

2 (7) Person--An individual, association, partnership,
3 limited partnership, trust, corporation, or other legal entity.

4 (8) Portable sign--A sign designed to be mounted on a
5 trailer, bench, wheeled carrier, or other non-motorized mobile
6 structure or on skids or legs.

7 (9) Rural road--A road, street, way, highway,
8 thoroughfare, or bridge that is located in an unincorporated
9 area and is not privately owned or controlled, any part of which
10 is open to the public for vehicular traffic, and over which the
11 state or any of its political subdivisions have jurisdiction.

12 (10) Sign--A thing that is designed, intended, or used to
13 advertise or inform, including a sign, display, light, device,
14 figure, painting, drawing, message, plaque, placard, poster,
15 billboard, logo, or symbol.

16 (11) Sign face--The part of the sign that contains the
17 advertising or information contents and is distinguished from
18 other parts of the sign and another sign face by borders or
19 decorative trim. The term does not include a lighting fixture,
20 apron, or catwalk unless it displays a part of the advertising
21 or information contents of the sign.

22 (12) Sign structure--All of the interrelated parts and
23 materials, such as beams, poles, braces, apron, catwalk, and

1 stringers, that are used, designed to be used, or intended to be
2 used to support or display a sign face.

3

4 §21.403. Prohibited Signs.

5 (a) A sign may not be erected or maintained on a tree or
6 painted or drawn on a rock or other natural feature.

7 (b) A sign may not be erected or maintained within the
8 right of way of a public roadway or an area that would be within
9 the right of way if the right of way boundary lines were
10 projected across an area of railroad right of way, utility right
11 of way, or road right of way that is not owned by the state or a
12 political subdivision.

13 (c) A sign may not be erected or maintained on a highway or
14 part of a highway designated under Transportation Code,
15 §391.252.

16 (d) A sign may not be erected or contain a display that
17 imitates or resembles any official traffic sign, signal, or
18 device.

19

20 §21.404. Permit Required. A person may not erect or cause to
21 be erected an off-premise sign, other than an exempt sign, that
22 is visible from the main-traveled way of a rural road without
23 first having obtained a permit under this subchapter.

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§21.405. Exemptions. The following are exempt from the requirements of this subchapter:

(1) a sign, the erection and maintenance of which is allowed under the highway beautification provisions of the Transportation Code, Chapter 391;

(2) a sign in existence before September 1, 1985, that was properly registered and maintains a valid registration under §21.407 of this subchapter (relating to Existing Off-Premise Signs);

(3) a sign that has as its purpose the protection of life and property;

(4) a directional or other official sign authorized by law, including a sign pertaining to a natural wonder or scenic or historic attraction;

(5) a sign or marker giving information about the location of an underground electric transmission line, telegraph or telephone property or facility, pipeline, public sewer, or waterline;

(6) a sign erected by a governmental entity;

(7) a sign erected solely for and relating to a public election, but only if:

(A) the sign is on private property;

1 (B) the sign is erected after the 91st day before the
2 election and is removed before the 11th day after the election;

3 (C) the sign is constructed of lightweight material;

4 (D) the surface area of the sign is not larger than 50
5 square feet; and

6 (E) the sign is not visible from the main-traveled way
7 of an interstate or federal-aid primary highway;

8 (8) an off-premise directional sign for a small business,
9 as defined by Government Code, §2006.001, that is on private
10 property and is no larger than 50 square feet;

11 (9) a sign that is required by the Railroad Commission of
12 Texas at the principal entrance to or on each oil or gas
13 producing property, well, tank, or measuring facility to
14 identify or to locate the property, that is no larger in size
15 than is necessary to comply with the Railroad Commission's
16 regulations, and that has no advertising or information content
17 other than the name or logo of the company and the necessary
18 directions;

19 (10) a sign that shows only the name of a ranch on which
20 livestock are raised or a farm on which crops are grown and the
21 directions to, telephone number, or internet address of the
22 ranch or farm and that has a sign face that does not exceed an
23 area of 32 square feet; and

1 (11) a sign identifying the name of a recorded
2 subdivision located at an entrance to the subdivision or on
3 property owned by or assigned to the subdivision, home owners
4 association, or other entity associated with the subdivision.

5

6 §21.406. Exemptions for Certain Populous Counties.

7 (a) This subchapter does not apply to an off-premise
8 portable sign in an unincorporated area of a county with a
9 population of 2.4 million or more, according to the most recent
10 federal census, if the county either prohibits or regulates the
11 location, height, size, anchoring, or use of such a portable
12 sign.

13 (b) This subchapter does not apply to an on-premise sign in
14 an unincorporated area of a county with a population of 2.4
15 million or more or a county that borders such a county if:

16 (1) the county has adopted an ordinance to regulate on-
17 premise signs; or

18 (2) the commissioner's court of the county, by order, has
19 authorized the commission to regulate on-premise signs in the
20 unincorporated area of the county in accordance with a municipal
21 or county regulation.

22

23 §21.407. Existing Off-Premise Signs.

1 (a) A sign that existed before September 1, 1985 and that
2 was registered not later than December 30, 1985 does not require
3 a permit issued under this subchapter as long as the
4 registration remains valid.

5 (b) The sign registration is valid only for the location
6 indicated on the original registration application and only for
7 the sign described on that application.

8 (c) The sign registration must be renewed on or before
9 January 1 of the year of its expiration.

10 (d) The registration will automatically terminate if:

11 (1) the sign is removed for any reason other than to
12 change the advertising;

13 (2) the registration is not renewed; or

14 (3) the sign is replaced with another structure.

15 (e) To renew the registration, the holder must:

16 (1) file a written request, on the form prescribed by the
17 department;

18 (2) submit a renewal fee of \$10 per year for a period of
19 up to five years; and

20 (3) display the registration number on the sign structure
21 in numerals with a minimum height of two inches and a minimum
22 width of one inch.

23 (f) The registration allows for routine and customary

1 repairs and maintenance as provided under §21.434 of this
2 subchapter (relating to Repair and Maintenance), but substantial
3 changes are not authorized for existing signs. An amended
4 permit under §21.423 (relating to Amended Permit) must be
5 obtained prior to performing any customary repairs or
6 maintenance.

7 (g) The owner of an off-premise sign that was in existence
8 before September 1, 1985 and not duly registered or the
9 registration for which was timely renewed shall remove the sign
10 at the owner's expense upon written notification by the
11 department, unless it is an exempt sign.

12 (h) The registration of a sign may be transferred upon
13 filing with the department, on a form prescribed by the
14 department, a request for the transfer and payment of the
15 transfer fee.

16
17 §21.408. Continuance of Nonconforming Signs.

18 (a) Notwithstanding other provisions of this subchapter,
19 the department will renew a permit for a nonconforming sign only
20 if the sign structure:

21 (1) was lawful on the later of the date it was erected or
22 became subject to the control of the department; and

23 (2) remains substantially the same as it was on the later

1 of the date it was erected or became subject to the department's
2 control.

3 (b) A nonconforming sign may not be:

4 (1) removed for any reason, other than a request by a
5 governmental entity; or

6 (2) substantially changed, as described by §21.434 of
7 this subchapter (relating to Repair and Maintenance).

8

9 §21.409. Permit Applications.

10 (a) To obtain a permit for a sign, a person must file an
11 application in a form prescribed by the department. The
12 application at a minimum must include:

13 (1) the complete name and address of the applicant;

14 (2) the original signature of the applicant;

15 (3) the proposed location and description of the sign;

16 (4) the complete legal name and address of the owner of
17 the designated site;

18 (5) a statement of whether the requested sign is located
19 within an incorporated city or a city's extraterritorial
20 jurisdiction;

21 (6) the site owner's or the owner's authorized
22 representative's signature on the application demonstrating
23 consent to the erection and maintenance of the sign and right of

1 entry onto the property of the sign location by the department
2 or its agents;

3 (7) information that details how and the location from
4 which the sign will be erected and maintained; and

5 (8) additional information the department considers
6 necessary to determine eligibility.

7 (b) The application must be:

8 (1) notarized;

9 (2) filed with the department's division responsible for
10 the Outdoor Advertising Program in Austin; and

11 (3) accompanied by the fee prescribed by §21.424 of this
12 subchapter (relating to Permit Fees).

13 (c) The application must include a sketch that shows:

14 (1) the location of the poles of the sign structure;

15 (2) the exact location of the sign faces in relation to
16 the sign structure;

17 (3) the means of access to the sign; and

18 (4) the distance from the buildings, landmarks, right of
19 way line, other signs, and other distinguishable features of the
20 landscape.

21

22 §21.410. Site Owner's Consent; Withdrawal.

23 (a) A site owner's consent to the erection and maintenance

1 of the sign and access to the site by the department or its
2 agent is provided with a permit application under §21.409 of
3 this subchapter (relating to Permit Applications). The consent
4 operates for the life of the lease or until the owner delivers
5 to the department and the sign owner a written statement that
6 permission for the maintenance or inspection by the department
7 or its agents of the sign has been withdrawn and documentation
8 showing that the lease allowing the sign has been terminated in
9 accordance with the terms of the lease agreement or through a
10 court order.

11 (b) If the sign owner provides documentation that the sign
12 owner is disputing the lease termination in court, the
13 department will not cancel the permit until a court order
14 settling the dispute is delivered to the department.

15

16 §21.411. Applicant's Identification of Proposed Site.

17 (a) An applicant for a permit for a new sign must identify
18 the proposed site of the sign by setting a stake or marking the
19 concrete at the proposed location of the center pole of the sign
20 structure or if there is no center pole, at each pole of the
21 sign structure.

22 (b) At least two feet of a stake must be visible above the
23 ground.

1 (c) A stake or marking may not be moved or removed until
2 the application is denied or, if approved, until the sign has
3 been erected.

4

5 §21.412. Permit Application Review.

6 (a) The department will consider permit applications in the
7 order of the receipt of the applications.

8 (b) If an application is returned to an applicant because
9 it is not complete or has incorrect information, the application
10 loses its priority position.

11 (c) The department will hold an application that is for the
12 same site as or a conflicting site with that of an application
13 that the department previously received until the department
14 makes a final decision on the previously received application or
15 returns it to the applicant. For the purposes of this
16 subsection, the date of a final decision on an application is:

17 (1) the date of the final decision on an appeal under
18 §21.418 of this subchapter (relating to Appeal Process for
19 Permit Denials); or

20 (2) if an appeal is not filed within the period provided
21 by §21.418 of this subchapter, on the 21st day after the date
22 the denial notice was received under §21.413 of this subchapter
23 (relating to Decision on Application).

1 (d) The department will review the permit application for
2 completeness and compliance with all requirements of this
3 subchapter. Measurements will be taken at the site to determine
4 if the sign placement meets the spacing and location
5 requirements.

6

7 §21.413. Decision on Application.

8 (a) The department will make a decision on an application
9 within 45 days of the date of receipt of the application. If
10 the decision cannot be made within the 45 day period the
11 department will notify the applicant of the delay providing the
12 reason for the delay, and provide an estimate of when the
13 decision will be made.

14 (b) If the application is approved, the department will
15 issue a permit for the sign by sending a copy of the approved
16 application and a sign permit plate to the applicant.

17 (c) If the application is not approved, the department will
18 send a copy of the denied application and a notice that states
19 the reason for the denial.

20 (d) If an application is denied, the department will notify
21 the landowner indentified on the permit application of the
22 denial. The notice is for informational purposes only, and does
23 not convey any rights to the landowner. The landowner may not

1 appeal the denial unless the landowner is also the applicant.

2

3 §21.414. Sign Permit Plate.

4 (a) The sign owner shall securely attach the sign permit
5 plate to the part of the sign structure that is nearest to the
6 rural road and visible from the main-traveled way not later than
7 the 30th day after the date that the sign is erected.

8 (b) The sign permit plate may not be removed from the sign.

9 (c) The sign permit plate must remain visible from the
10 main-traveled way at all times.

11 (d) If a sign permit plate is lost or stolen or becomes
12 illegible, the sign owner must submit to the department a
13 request for a replacement plate in a form prescribed by the
14 department accompanied by the replacement plate fee prescribed
15 by §21.424 of this subchapter (relating to Permit Fees).

16 (e) Failure to apply for a replacement permit or attach the
17 plate to the sign structure as required in subsection (a) of
18 this section within 60 days of the date of written notification
19 from the department that the permit plate is not visible or
20 attached may result in an enforcement action under §21.425 or
21 §21.426 of this subchapter (relating to Cancellation of Permit
22 and Administrative Penalties, respectively).

23

1 §21.415. General Sign Location Requirements. The department
2 will not issue a permit under this subchapter unless the sign
3 for which application is made is located along a roadway to
4 which Transportation Code, Chapter 394 applies and is within 800
5 feet of a recognized commercial or industrial activity located
6 on the same side of the roadway.

7

8 §21.416. Commercial or Industrial Activity.

9 (a) For the purposes of this subchapter, a commercial or
10 industrial activity is an activity that:

11 (1) is customarily allowed only in a zoned commercial or
12 industrial area; and

13 (2) is conducted in a permanent building or structure
14 affixed to the real property that:

15 (A) has an indoor restroom, running water, functioning
16 electrical connections, and permanent flooring, other than dirt,
17 gravel, or sand;

18 (B) is visible from the traffic lanes of the main-
19 traveled way;

20 (C) is not primarily used as a residence; and

21 (D) has at least 400 square feet of its interior floor
22 space devoted to the activity.

23 (b) The following are not commercial or industrial

1 activities:

2 (1) agricultural, forestry, ranching, grazing, farming,
3 and related activities, including the operation of a temporary
4 wayside fresh produce stand;

5 (2) an activity that is conducted only seasonally;

6 (3) an activity that has not been conducted at its
7 present location for at least 180 days;

8 (4) an activity that is not conducted by at least one
9 person who works for the business at the activity site for at
10 least 25 hours per week on at least five days per week and for
11 which the hours during which the activity is conducted are
12 posted at the activity site;

13 (5) the operation or maintenance of:

14 (A) an outdoor advertising structure;

15 (B) a recreational facility, such as a campground, golf
16 course, tennis court, wild animal park, or zoo, other than the
17 related activities conducted in a building or structure that
18 meets the requirements of subsection (a)(2) of this section and
19 the parking facilities for that building or structure;

20 (C) an apartment house or residential condominium;

21 (D) a public or private preschool, secondary school,
22 college, or university, other than a trade school or corporate
23 training campus;

1 (E) a quarry or borrow pit, other than the related
2 activities conducted in a building or structure that meets the
3 requirements of subsection (a)(2) of this section and the
4 parking facilities for that building or structure;

5 (F) a cemetery; or

6 (G) a place that is primarily used for worship;

7 (6) an activity that is conducted on a railroad right of
8 way; and

9 (7) an activity that is created primarily or exclusively
10 to qualify an area as an unzoned commercial or industrial area.

11 (c) For the purposes of this section, a building is not
12 primarily used as a residence if more than 50 percent of the
13 building's square footage is used solely for the business
14 activity.

15 (d) A sign is not required to meet the requirements of
16 subsection (a)(2)(C) of this section (as clarified by subsection
17 (c) of this section), (a)(2)(D), (b)(3), or (b)(4) of this
18 section to maintain conforming status if the permit for the sign
19 was issued before the effective date of this section.

20

21 §21.417. Erection and Maintenance from Private Property. The
22 department will not issue a permit for a sign unless it can be
23 erected or maintained from private property.

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§21.418. Appeal Process for Permit Denials.

(a) If a sign permit is denied, the applicant may file a request with the executive director for an appeal.

(b) The request for appeal must:

(1) be in writing;

(2) contain:

(A) a copy of the denied permit application;

(B) a statement of why the denial is believed to be in error; and

(C) evidence that supports the issuance of the application, such as drawings, surveys, or photographs; and

(3) be received within 20 days after the date the denial notice was received.

(c) The executive director or the executive director's designee, who may not be below the level of assistant executive director, will make a final determination on the appeal. If the final determination is that the permit is denied, the executive director or the executive director's designee will send the final determination to the applicant stating the reason for denial. If the final determination is that the application be approved, the department will issue the permit in accordance with §21.413 of this subchapter (relating to Decision on

1 Application).

2 (d) If the executive director or the designee is unable to
3 make a final determination on the appeal within the 90-day
4 period under subsection (c) of this section, the department will
5 notify the applicant by mail of the delay and provide an
6 estimated time in which a final determination will be made.

7

8 §21.419. Board of Variance.

9 (a) A board of variance is established. The executive
10 director shall appoint the members of the board. A majority of
11 the members constitutes a quorum.

12 (b) The board of variance may make minor exceptions to this
13 subchapter if the board determines that a substantial injustice
14 would result unless the minor exceptions were granted. The
15 board of variance may establish appropriate conditions and
16 safeguards for granting the variance.

17 (c) The board of variance will meet and consider variance
18 requests as needed.

19 (d) The board of variance will provide 10 days notice of
20 the meeting to all applicants requesting a variance.

21 (e) An applicant may request a variance from the board of
22 variance if the applicant believes that the applicant meets the
23 requirements of subsection (b) of this section.

1 (f) The board of variance will consider evidence from all
2 parties present at the meeting prior to making a determination
3 on the requested variance.

4

5 §21.420. Permit Expiration.

6 (a) A permit is valid for one year.

7 (b) A permit automatically expires on the date that the
8 sign for which the permit was issued is acquired by the state.

9

10 §21.421. Permit Renewals.

11 (a) To continue in effect, a permit must be renewed.

12 (b) A permit is eligible for renewal if the sign for which
13 it was issued continues to meet all applicable requirements of
14 this subchapter and Transportation Code, Chapter 394.

15 (c) To renew the permit, the permit holder must file with
16 the department a written application in a form prescribed by the
17 department accompanied by the applicable fees prescribed by
18 §21.424 of this subchapter (relating to Permit Fees). The
19 application must be received by the department before the 31st
20 day after the date of the permit expiration.

21 (d) A permit may not be renewed if the sign for which it
22 was issued is not erected before the first anniversary of the
23 date the permit was issued.

1

2 §21.422. Transfer of Permit.

3 (a) A sign permit may be transferred only with the written
4 approval of the department.

5 (b) To transfer one or more sign permits, the permit holder
6 must send to the department a written request in a form
7 prescribed by the department accompanied by the prescribed
8 transfer fee prescribed by §21.424 of this subchapter (relating
9 to Permit Fees).

10 (c) If the request is approved, the department will send to
11 the transferor and to the transferee a copy of the approved
12 permit transfer form.

13 (d) The department will not approve the transfer of a
14 permit if cancellation of the permit is pending or has been
15 abated awaiting the outcome of an administrative hearing.

16

17 §21.423. Amended Permit.

18 (a) To perform customary maintenance or to make substantial
19 changes to the sign or sign structure under §21.434 of this
20 subchapter (relating to Repair and Maintenance), a permit holder
21 must submit an amended permit application.

22 (b) The amended permit application must be submitted on a
23 form prescribed by the department that provides the information

1 required under §21.409 of this subchapter (relating to Permit
2 Applications) that is applicable to an amended permit and
3 indicates the change from the information in the original
4 application for the sign permit.

5 (c) The new sign face size, configuration, or location must
6 meet all applicable requirements of this subchapter.

7 (d) The holder of a permit for a nonconforming sign may
8 apply for an amended permit to perform eligible customary
9 maintenance under §21.434 of this subchapter. An amended permit
10 will not be issued for a substantial change, as described by
11 §21.434(c) of this subchapter, to a nonconforming sign.

12 (e) Making a change to a sign that requires an amended
13 permit without first obtaining an amended permit is a violation
14 of this subchapter and will result in an administrative
15 enforcement action.

16 (f) The department will make a decision on an amended
17 permit application within 45 days of the date receipt of the
18 amended permit application. If the decision cannot be made
19 within the 45 day period the department will notify the
20 applicant of the delay, provide the reason for the delay, and
21 provide an estimate for when the decision will be made.

22

23 §21.424. Permit Fees.

1 (a) The amounts of the fees related to permits under this
2 subchapter are:

3 (1) \$100 for an original or amended permit for a sign;

4 (2) \$75 for the renewal of a permit;

5 (3) \$25 for the transfer of a permit up to a maximum of
6 \$2,500 for a single transaction regardless of the location of
7 the sign; and

8 (4) \$25 for a replacement sign permit plate.

9 (b) In addition to the \$75 annual renewal fee, an
10 additional late fee of \$100 is required for a renewal of a
11 permit that is received before the 31st day after the permit
12 expiration date.

13 (c) A fee prescribed by this section is payable by check,
14 cashier's check, or money order. If a check or money order is
15 dishonored upon presentment, the permit, renewal, or transfer is
16 void.

17

18 §21.425. Cancellation of Permit.

19 (a) The department will cancel a permit for a sign if the
20 sign:

21 (1) is removed, unless the sign is removed and re-erected
22 at the request of a political subdivision;

23 (2) is not maintained in accordance with this subchapter

1 or Transportation Code, Chapter 394;

2 (3) is damaged beyond repair, as determined under §21.439
3 of this subchapter (relating to Discontinuance of Sign Due to
4 Destruction);

5 (4) is abandoned, as determined under §21.427 of this
6 subchapter (relating to Abandonment of Sign);

7 (5) is erected after the effective date of this section
8 and is not built within 10 feet of the location described in the
9 permit application or is built within ten feet of the location
10 described in the permit application but at a location that does
11 not meet all spacing requirements of this chapter or in
12 accordance with the sketch or other assertions contained in the
13 permit application;

14 (6) is repaired or altered without obtaining a required
15 amended permit under §21.423 of this subchapter (relating to
16 Amended Permit);

17 (7) is built by an applicant who uses false information
18 on a material issue of the permit application;

19 (8) is erected, repaired, or maintained in violation of
20 §21.441 of this subchapter (relating to Destruction of
21 Vegetation and Access from Right of Way Prohibited);

22 (9) has been made more visible by the permit holder
23 clearing vegetation from the highway right of way in violation

1 of §21.441 of this subchapter;

2 (10) is in an unzoned commercial or industrial area and
3 the department has evidence that an activity supporting the
4 unzoned commercial or industrial area was created primarily or
5 exclusively to qualify the area as an unzoned commercial or
6 industrial area and that no business has been conducted at the
7 activity site within one year; or

8 (11) does not have the permit plate properly attached
9 under §21.414 of this subchapter (relating to Sign Permit
10 Plate).

11 (b) Before initiating an enforcement action under this
12 section, the department will notify a sign owner in writing of a
13 violation of subsection (a)(5) or (11) of this section and will
14 give the sign owner 60 days to correct the violation and provide
15 proof of the correction to the department.

16 (c) Upon determination that a permit should be canceled,
17 the department will mail a notice of cancellation to the address
18 of the record license holder. The notice must state:

19 (1) the reason for the cancellation;

20 (2) the effective date of the cancellation;

21 (3) the right of the permit holder to request an
22 administrative hearing on the cancellation; and

23 (4) the procedure for requesting a hearing and the period

1 for filing the request.

2 (d) A request for an administrative hearing under this
3 section must be in writing and delivered to the department
4 within 20 days after the date that the notice of cancellation is
5 received.

6 (e) If timely requested, an administrative hearing will be
7 conducted in accordance with 43 TAC Chapter 1, Subchapter E
8 (relating to Procedures in Contested Case) and the cancellation
9 will be abated until the cancellation is affirmed by order of
10 the commission.

11 (f) A permit holder may voluntarily cancel a permit by
12 submitting a request in writing after the sign for which the
13 permit was issued has been removed. Subsections (c) - (e) of
14 this section do not apply to a permit voluntarily cancelled
15 under this subsection.

16 (g) The department will notify the landowner indentified on
17 the permit application of a cancellation enforcement action.
18 The notice is for informational purposes only, and does not
19 convey any rights to the landowner. The landowner may not appeal
20 the cancellation unless the landowner is also the permit holder.

21

22 §21.426. Administrative Penalties.

23 (a) The department may impose administrative penalties

1 against a person who intentionally violates Transportation Code,
2 Chapter 394 or this subchapter.

3 (b) The amount of the administrative penalty may not exceed
4 the maximum amount of a civil penalty that may be imposed under
5 Transportation Code, §394.081 and will be based on the following:

6 (1) \$150 for a violation of a permit plate requirement
7 under §21.414 of this section (relating to Sign Permit Plate);

8 (2) \$250 for a violation of;

9 (A) a registration requirement of §21.407 of this
10 section (relating to Existing Off-Premise Signs); or

11 (B) erecting the sign at the location other than the
12 location specified on the application, except that if the actual
13 sign location does not conform to all other requirements the
14 department will seek cancellation of the permit;

15 (3) \$500 for:

16 (A) maintaining or repairing the sign from the state
17 right of way; or

18 (B) performing customary maintenance on any sign or
19 substantial maintenance on a conforming sign without first
20 obtaining an amended permit; or

21 (4) \$1000 for erecting a sign from the right of way.

22 (c) In addition to the penalties assessed under subsection
23 (b) of this section, the department may seek to recover the cost

1 of repairing any damage to the right of way done by the sign
2 owner or on the sign owner's behalf.

3 (d) Before initiating an enforcement action under this
4 section, the department will notify the sign owner in writing of
5 a violation of subsection (b)(1) or (2)(B) of this section and
6 will give the sign owner 60 days to correct the violation and
7 provide proof of the correction to the department.

8 (e) Upon determination to seek administrative penalties the
9 department will mail a notice of the administrative penalties to
10 the last known address of the permit holder. The notice must
11 clearly state:

12 (1) the reasons for the administrative penalties;

13 (2) the amount of the administrative penalty; and

14 (3) the right of the holder of the permit to request an
15 administrative hearing.

16 (f) A request for an administrative hearing under this
17 section must be made in writing and delivered to the department
18 within 20 days after the date of the receipt of the notice.

19 (g) If timely requested, an administrative hearing shall be
20 conducted in accordance with 43 TAC Chapter 1, Subchapter E
21 (relating to Procedures in Contested Case), and the imposition
22 of administrative penalties will be abated unless and until that
23 action is affirmed by order of the commission.

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§21.427. Abandonment of Sign.

(a) The department may consider a sign abandoned and cancel the sign's permit if:

(1) the sign face is blank or without legible advertising or copy for a period of 365 consecutive days or longer; or

(2) the sign needs to be repaired or is overgrown by trees or other vegetation.

(b) Small temporary signs, such as garage sale signs or campaign signs, that are attached to the structure do not constitute legible advertising or copy for the purpose of ending the period under subsection (a)(1) of this section.

(c) The department will not consider the payment of property taxes or the retention of a sign as a balance sheet asset in determining whether the sign permit should be canceled under this section.

(d) The department may initiate the cancellation process if the department has evidence that supports the fact that the sign face has been blank or has been without legible advertisement or copy for 365 days, such as photographs showing that, on at least four dates throughout the 365-day period, the sign was in the same condition or was degrading. Evidence is not required for each of the 365 days.

1 (e) If the location of the abandoned sign is allowed under
2 this subchapter, the department may issue a permit for the sign
3 site to anyone who submits an application that meets the
4 requirements of this subchapter. The department will not issue
5 a permit for an abandoned sign that is located in a place that
6 does not meet the requirements of this subchapter.

7 (f) For the purposes of this section "copy" includes any
8 advertisement that the sign is available for lease.

9 (g) A multi-face sign is not abandoned unless all sign
10 faces may be considered abandoned under this section.

11 (h) Before initiating the cancellation process under this
12 section, the department will provide notice to the sign owner
13 and land owner as identified on the permit application of the
14 abandonment determination and allow the sign owner 60 days to
15 correct the issue.

16

17 §21.428. Sign Face Size and Positioning.

18 (a) An on-premise sign, other than an on-premise wall sign,
19 may not be erected that has a face area exceeding 400 square
20 feet, including cutouts but excluding uprights, trim, and apron.

21 (b) An off-premise sign face may not exceed:

22 (1) 672 square feet in area;

23 (2) 25 feet in height; and

1 (3) 60 feet in length.

2 (c) For the purposes of subsection (b) of this section,
3 border and trim are included as part of the sign face.

4 (d) Notwithstanding the area limitation provided by
5 subsection (b)(1) of this section, one or more temporary
6 protrusions may be added to a sign, provided that:

7 (1) the sign face, including the protrusions, meets the
8 height and length limitations of subsection (b) of this section;

9 (2) the area of the protrusion does not exceed 25 percent
10 of the area indicated on the sign permit; and

11 (3) the sign face, including the area of the protrusions,
12 does not exceed 807 square feet in area.

13 (e) The area is measured by the smallest square, rectangle,
14 triangle, circle, or combination that encompasses the entire
15 sign face.

16 (f) A sign may not be erected that has more than two faces
17 fronting a particular direction of travel on the main-traveled
18 way.

19 (g) A sign erected in a back-to-back or V-type
20 configuration, may have only one face fronting a particular
21 direction of travel.

22 (h) A sign face that exceeds 336 square feet in area,
23 including cutouts, may not be stacked on or placed side by side

1 with another sign face. Two sign faces may not be stacked or
2 placed side by side if combined they exceed 672 square feet in
3 area.

4 (i) A sign face may consist of commercial electronic
5 variable message signs (CEVMS), otherwise referred to as
6 rotating slat signs or tri-vision signs, provided that the
7 rotation is completed within one second and the message is
8 stationary for at least 10 seconds following a rotation.

9 (j) If a sign is built with a smaller face than the size
10 shown on the permit application or if the face is reduced in
11 size after it is built, an amended permit will be required to
12 increase the size of the face.

13

14 §21.429. Spacing of Signs.

15 (a) An off-premise sign having a sign face area of at least
16 301 square feet may not be located within 1,500 feet of another
17 off-premise sign on the same side of the roadway.

18 (b) An off-premise sign having a sign face area of at least
19 100 but less than 301 square feet may not be located within 500
20 feet of another off-premise sign having a sign face within that
21 range or within 1500 feet of an off-premise sign that has a sign
22 face of at least 301 square feet and is on the same side of the
23 roadway.

1 (c) An off-premise sign having a face area of less than 100
2 square feet may not be located within 150 feet of another off-
3 premise sign having a sign face of less than 100 square feet,
4 within 500 feet of a sign with a face area of at least 100 but
5 less than 301 square feet, or within 1500 feet of an off-premise
6 sign with a face area of at least 301 square feet that is on the
7 same side of the roadway.

8 (d) Two signs located at the same intersection do not
9 violate this section if they:

10 (1) are located so that their messages are not directed
11 toward traffic flowing in the same direction; and

12 (2) are not visible from the main-traveled way of an
13 interstate or federal-aid primary highway.

14 (e) For the purposes of this section, the space between
15 signs is measured between points along the right of way of the
16 roadway perpendicular to the center of the signs.

17 (f) The spacing requirements of this section do not apply
18 to signs separated by buildings, natural surroundings, or other
19 obstructions in a manner that causes only one of the signs to be
20 visible within the specified spacing area.

21 (g) An off-premise sign may not be erected within five feet
22 of a rural road right-of-way line.

23 (h) An off-premise sign must be erected within 800 feet of

1 at least one recognized commercial or industrial activity. The
2 commercial or industrial activity must be on the same side of
3 the rural road as the sign.

4 (i) Distance from the commercial or industrial activity is
5 measured from the outer edges of the regularly used buildings,
6 parking lots, storage facilities, or processing areas of the
7 commercial or industrial activity. Measurements are not made
8 from the property line unless the property lines coincide with
9 the regularly used portions of the activity.

10 (j) A sign may not be located in a place that creates a
11 safety hazard, including a location that:

12 (1) is likely to cause a driver to be unduly distracted;

13 (2) obscures or interferes with the effectiveness of an
14 official traffic sign, signal, or device; or

15 (3) obstructs or interferes with the driver's view of
16 approaching, merging, or intersecting roadway or rail traffic.

17 (k) A sign may not be located in an area that is adjacent
18 to or within 1,000 feet of a rest area, an interchange, or
19 intersection at grade.

20 (l) The distance from a rest area is measured along the
21 right of way line from the outer edges of the rest area boundary
22 abutting the right of way.

23 (m) The center of a sign may not be located within 250 feet

1 of the nearest point of the boundary of a public park.

2 (n) This subsection applies only if a public park boundary
3 abuts the right of way of a regulated highway. A sign may not
4 be located within 1,500 feet of the boundary of the public park,
5 as measured along the right of way line from the nearest common
6 point of the park's boundary and the right of way. This
7 limitation applies on both sides of the rural road.

8

9 §21.430. Multiple Faced Signs.

10 (a) For spacing purposes, multiple faced off-premise signs
11 under common ownership, whether double-faced, back-to-back, or
12 of V-type construction, are considered to be one sign and the
13 combined face area of the signs will be used to determine
14 spacing requirements provided the sign faces are:

15 (1) physically contiguous;

16 (2) connected by the same structure or by cross-bracing;

17 or

18 (3) located not more than 15 feet apart at their nearest
19 point.

20 (b) For computing sign face area under §21.428 of this
21 subchapter (relating to Sign Face Size and Positioning) each
22 sign face of a double-faced, back-to-back, or V-type sign is
23 considered to be a separate sign.

1 (c) If a nonconforming sign has two sign faces fronting the
2 same direction of travel, the sign face area of both signs will
3 be used to determine the sign spacing requirements.

4
5 §21.431. Wind Load Pressure. An application for new sign
6 permit or a permit renewal must include a certification signed
7 by the applicant that the proposed or existing sign will
8 withstand wind load pressures in pounds per square foot as set
9 out in the following table.

10 Figure: §21.431

Wind Load Pressure in Pounds per Square Foot	
Height, in feet above ground, as measured above the average level of the ground adjacent to the structure	Pressure, pounds per square foot
0 - 5	0
6 - 30	20
31 - 50	25
51 - 99	35
100 - 199	45
200 - 299	50
300 - 399	55
400 - 500	60
501 - 800	70

11

12 §21.432. Height Restrictions.

13 (a) A sign may not be erected that exceeds an overall
14 height of 42-1/2 feet.

15 (b) A roof sign that has a solid sign face surface may not

1 at any point exceed 24 feet above the roof level.

2 (c) A roof sign that has an open sign face in which the
3 uniform open area between individual letter or shapes is not
4 less than 40 percent of the total gross area of the sign face
5 may not at any point exceed 40 feet above the roof level.

6 (d) The lowest point of a projecting roof sign or a wall
7 sign must be at least 14 feet above grade.

8 (e) For the purposes of this section, height is measured
9 from the grade level of the centerline of the main-traveled way
10 closest to the sign, at a point perpendicular to the sign
11 location.

12

13 §21.433. Lighting.

14 (a) A sign may not contain or be illuminated by any
15 flashing, intermittent, or moving light except that this
16 subsection does not apply to a sign that only provides public
17 service information, such as time, date, temperature, or
18 weather.

19 (b) Except for a relocated sign, any new sign may be
20 illuminated but only by:

21 (1) upward lighting of no more than four luminaries per
22 direction of the sign face or faces of the structure; or

23 (2) downward lighting of no more than four luminaries per

1 direction of the sign face or faces of the structure.

2 (c) Lights that are a part of or illuminate a sign:

3 (1) must be shielded, directed, and positioned to prevent
4 beams or rays of light from being directed at any portion of the
5 traveled ways of a regulated rural road;

6 (2) may not be of such intensity or brilliance as to
7 cause vision impairment of a driver of any motor vehicle on a
8 regulated rural road or otherwise interfere with the driver's
9 operation of a motor vehicle; and

10 (3) may not obscure or interfere with the effectiveness
11 of an official traffic sign, device, or signal.

12 (d) A temporary protrusion on a sign may be animated only
13 if it does not create a safety hazard to the traveling public.
14 A temporary protrusion may not be illuminated by flashing or
15 moving lights or enhanced by reflective material that creates
16 the illusion of flashing or moving lights.

17 (e) Reflective paint or reflective disks may be used on a
18 sign face only if the paint or disks do not:

19 (1) create the illusion of flashing or moving lights; or

20 (2) cause an undue distraction to the traveling public.

21 (f) A neon light may be used on a sign face only if:

22 (1) the light does not flash;

23 (2) the light does not cause an undue distraction to the

1 traveling public; and

2 (3) the permit for the sign specifies that the sign is an
3 illuminated sign.

4 (g) This subchapter does not prohibit a temporary
5 protrusion that displays only alphabetical or numerical
6 characters and that satisfies this subsection and the
7 requirements of §21.428 of this subchapter (relating to Sign
8 Face Size and Positioning) relating to a temporary protrusion.
9 The display on the temporary protrusion may be a digital or
10 other electronic display, but if so:

- 11 (1) it must consist of a stationary image;
12 (2) it may not change more frequently than twice in any 24 hour period; and
13 (3) the process of any change of display must be completed within one minute.

14

15 §21.434. Repair and Maintenance.

16 (a) The following are considered to be routine maintenance
17 activities that do not require an amended permit:

- 18 (1) the replacement of nuts and bolts;
19 (2) nailing, riveting, or welding;
20 (3) cleaning and painting;
21 (4) manipulation of the sign structure to level or plumb
22 it;
23 (5) changing of the advertising message; and

1 (6) the replacement of minor parts if the materials of
2 the minor parts are the same type as those being replaced and
3 the basic design or structure of the sign is not altered.

4 (b) The following are considered to be customary
5 maintenance activities that may be made but require an amended
6 permit prior to the initiation of such an activity:

7 (1) changing all or part of the sign face structure but
8 only if materials similar to those of the sign face being
9 replaced are used;

10 (2) upgrading existing lighting for an energy efficient
11 lighting system;

12 (3) replacement of poles, but only if not more than one-
13 half of the total number of poles of the sign structure are
14 replaced in any 12 month period and the same material is used
15 for the replacement poles; and

16 (4) adding a catwalk to the sign structure.

17 (c) The following are examples of substantial changes that
18 may be made but require an amended permit application before the
19 initiation of such an activity:

20 (1) adding lights to an unilluminated sign or adding more
21 intense lighting to an illuminated sign whether or not the
22 lights are attached to the sign structure;

23 (2) changing the number of poles in the sign structure;

1 (3) adding permanent bracing wires, guy wires, or other
2 reinforcing devices;

3 (4) changing the material used in the construction of the
4 sign structure, such as replacing wooden material with metal
5 material;

6 (5) adding faces to a sign or changing the sign
7 configuration;

8 (6) increasing the height of the sign;

9 (7) changing the configuration of the sign structure,
10 such as changing a "V" sign to a stacked or back to back sign,
11 or a single face sign to a back-to back sign; and

12 (8) moving the sign structure or sign face in any way
13 unless the movement is made in accordance with §21.435 of this
14 subchapter (relating to Permit for Relocation of Sign).

15 (d) To add a catwalk to a sign structure the catwalk must
16 meet Occupational Safety and Health Administration guidelines.

17

18 §21.435. Permit for Relocation of Sign.

19 (a) A sign may be relocated in accordance with this
20 section, §21.436 of this subchapter (relating to Location of
21 Relocated Sign), and §21.437 of this subchapter (relating to
22 Construction and Appearance of Relocated Sign) if the sign is
23 legally erected and maintained and will be within the highway

1 right of way as a result of a construction project.

2 (b) To relocate a sign under this section, the permit
3 holder must obtain a new permit under §21.409 of this subchapter
4 (relating to Permit Applications), but the permit fee is waived.

5 (c) To receive a new permit to relocate a sign, the permit
6 holder must submit a new permit application that identifies that
7 the application is for the relocation of an existing sign due to
8 a highway project. The new location must meet all local codes,
9 ordinances, and applicable laws.

10 (d) Notwithstanding other provisions of this section, if
11 only a part of a sign will be located within the highway right
12 of way as a result of the construction project, the sign owner
13 may apply to amend an existing permit for the sign to authorize:

14 (1) the relocation of the sign face of a monopole sign
15 that would overhang the proposed right of way from that location
16 to the land on which the sign's pole is located;

17 (2) the relocation of the poles and sign face of a
18 multiple sign structure that are located in the proposed right
19 of way from the proposed right of way to the land on which the
20 other poles of the sign structure are located; or

21 (3) a reduction in the size of a sign structure that is
22 located partially in the proposed right of way, so that the sign
23 structure and sign face are removed from the proposed right of

1 way.

2 (e) A permit for the relocation of a sign must be submitted
3 within 18 months from the earlier of the date the original sign
4 was removed or the date the original sign was required to move.
5 Upon written request by the permit holder the department shall
6 grant an additional six months to submit an application.

7

8 §21.436. Location of Relocated Sign.

9 (a) To receive a new permit for relocation, an existing
10 sign must be relocated to one of the following locations, as
11 listed in order of priority:

12 (1) on the same parcel of land on which the existing sign
13 is located in a location that is allowed under this section and
14 that is within 50 feet of a line drawn through the center point
15 of the existing sign structure and perpendicular to the edge of
16 the highway right of way nearest to the existing sign; or

17 (2) on a part of the same parcel of land on which the
18 sign was situated before relocation in a location that is
19 allowed under this section.

20 (b) If the sign owner can demonstrate that both of the
21 locations under subsection (a) of this section are not
22 physically or economically feasible for a sign structure, the
23 sign owner, on approval by the department, may relocate the sign

1 to any other location that is allowed under this section. The
2 owner is not entitled to additional relocation benefits under
3 §21.438 of this subchapter (relating to Relocation Benefits) if
4 the sign structure is relocated further than 50 miles from the
5 location of the existing sign.

6 (c) The location of the relocated sign must be within the
7 required distance of a commercial or industrial activity as
8 described by §21.416 of this subchapter (relating to Commercial
9 or Industrial Activity).

10 (d) A sign may not be relocated to a place where it:

11 (1) is likely to cause a driver to be unduly distracted
12 in any way;

13 (2) will obscure or otherwise interfere with the
14 effectiveness of an official traffic sign, signal, or device; or

15 (3) will obstruct or interfere with the driver's view of
16 approaching, merging, or intersecting motor vehicle or rail
17 traffic.

18 (e) A sign may not be relocated from a rural road to a
19 highway that is subject to Subchapter I of this chapter
20 (relating to Regulation of Signs along Interstate and Primary
21 Highways).

22 (f) Spacing requirements of §21.429(a) - (c) of this
23 subchapter (relating to Spacing of Signs) apply to signs

1 relocated under this section.

2 (g) A sign may not be relocated to a place that is:

3 (1) within 500 feet of a public park that is adjacent to
4 a rural road on either side of the roadway

5 (2) within 500 feet of an interchange, intersection at
6 grade, or rest area; or

7 (3) within five feet of any highway right of way line.

8

9 §21.437. Construction and Appearance of Relocated Sign.

10 (a) A relocated sign must be constructed with the same
11 number of poles and of the same type of materials as the
12 existing sign. A relocated sign may not exceed the maximum
13 height provided by §21.432 of this subchapter (relating to
14 Height Restrictions). The number of sign faces and lighting, if
15 any, of the relocated sign may not exceed the number of faces or
16 lighting of the existing sign.

17 (b) The size of each of the sign faces of a relocated sign
18 that are visible to approaching traffic may not exceed the size
19 of the existing sign face.

20 (c) The sign faces of a relocated sign may be placed back-
21 to-back, side-by-side, stacked, or in "V" type construction with
22 not more than two displays facing any direction, except that if
23 the area of a sign face exceeds 350 square feet, sign faces may

1 not be stacked or placed side-by-side. The sign structure and
2 sign faces are considered one sign.

3

4 §21.438. Relocation Benefits.

5 (a) Relocation benefits will be paid in accordance with
6 Subchapter G of this chapter (relating to Relocation Assistance
7 and Benefits) for the relocation of a sign under §21.435 of this
8 subchapter (relating to Permit for Relocation of Sign).

9 (b) The owner of an existing sign that is being relocated
10 must enter into a written agreement with the governmental entity
11 that is acquiring the right-of-way in which the sign is located.
12 In the agreement the owner, in consideration of the payment by
13 the governmental entity of relocation benefits, waives and
14 releases any claim for damages against the governmental entity
15 and the state for any temporary or permanent taking of the sign.

16

17 §21.439. Discontinuance of Sign Due to Destruction.

18 (a) If a sign is partially destroyed by a natural force
19 outside the control of the permit holder, including wind,
20 tornado, lightning, flood, fire, or hurricane, the department
21 will determine whether the sign can be repaired without an
22 amended permit.

23 (b) The department may require the permit holder to submit

1 an estimate of the proposed work, including an itemized list of
2 the materials to be used and the manner in which the work will
3 be done. The department will allow the sign to be repaired
4 without an amended permit if the department determines that the
5 damage is not substantial. If the damage is determined to be
6 substantial the sign owner must obtain an amended permit under
7 §21.423 of the subchapter (relating to Amended Permit).

8 (c) The department will cancel the existing permit if it
9 determines the damage to the sign is substantial under
10 subsection (g) of this section and an amended permit is not
11 obtained by the sign owner within one year after the date that
12 the department first became aware of the damage.

13 (d) If a permit is canceled under this section or §21.425
14 of this subchapter (relating to Cancellation of Permit) the
15 remaining sign structure must be dismantled and removed without
16 cost to the state.

17 (e) A sign that is totally or partially destroyed by
18 vandalism or a motor vehicle accident may be rebuilt as
19 described on the most recently approved permit application.

20 (f) If a decision to cancel a permit is appealed, the sign
21 may not be repaired during the appeal process.

22 (g) Damage is considered to be substantial if the cost to
23 repair the sign would exceed 50 percent of the cost to replace

1 it with a sign of the same basic construction using new
2 materials and at the same location.

3

4 §21.440. Order of Removal.

5 (a) If a sign permit expires without renewal or is canceled
6 or if the sign is erected or maintained in violation of this
7 subchapter, the owner of the sign, on a written demand by the
8 department, shall remove the sign at no cost to the state.

9 (b) If the owner does not remove the sign within 30 days of
10 the day that the demand for removal is sent, the department will
11 remove the sign and will charge the sign owner for the cost of
12 removal, including the cost of any court proceedings.

13 (c) The department will rescind a removal demand if the
14 department determines the demand was issued incorrectly.

15

16 §21.441. Destruction of Vegetation and Access from Right of Way
17 Prohibited.

18 (a) A person may not:

19 (1) destroy a tree or other vegetation on the right of
20 way for any purpose related to this subchapter; or

21 (2) erect or maintain a sign from the right of way.

22 (b) The department will initiate an enforcement action if
23 the permit holder, or someone acting on behalf of the permit

1 holder, violates this section.

2

3 §21.442. On-Premise Signs.

4 (a) A business may not maintain more than five on-premise
5 signs on a frontage of a single rural road at a single business
6 location.

7 (b) A permit under 21.404 (relating to Permit Required) is
8 not required to erect an on-premise sign.

9 (c) An on-premise sign is a sign that:

10 (1) is located on the real property of a business and
11 consists only of:

12 (A) the name, logo, trademark, telephone number, and
13 internet address of that business; or

14 (B) an identification of that business's principal and
15 accessory products or services offered on the property; or

16 (2) only advertises the sale or lease of the real
17 property on which the sign is located and is removed within 90
18 days after the date of the closing of the real property
19 transaction.

20 (d) For the purposes of this section, a sign is located on
21 the real property of a business if:

22 (1) the real property on which the sign is located and
23 the real property on which the activity of the business is

1 conducted are one contiguous tract that is under common
2 ownership; or

3 (2) the sign is located on the real property of a
4 commercial development and the businesses of the development
5 share the sign structure of that sign.

6 (e) For the purpose of subsection (d)(1) of this section,
7 real property is not considered to be a part of one contiguous
8 tract if the real property on which the sign is located is:

9 (1) separated from the real property on which the
10 business activity is located by a road or highway or by another
11 business;

12 (2) devoted to a separate purpose unrelated to the
13 advertised business activity;

14 (3) held under an easement or other lesser property
15 interest than the property interest in the land on which the
16 business activity is located; or

17 (4) is a narrow strip or other configuration of land that
18 cannot be put to any reasonable use related to the advertised
19 business activity other than for signing purposes.

20 (f) A sign is not an on-premise sign if:

21 (1) brand name or trade name advertising regarding a
22 product or service that is only incidental to the business
23 activity covers more than 50 percent of the area of a static

1 sign face or for an electronic sign, as defined by §21.251 of
2 this chapter (relating to Definition), if brand name or trade
3 name advertising is displayed 50 percent or more of the time
4 during any five minute period;

5 (2) the sign advertises activities that are not conducted
6 on the premises; or

7 (3) the sign provides rental income to the owner of the
8 real property on which it is located, unless the owner of the
9 real property receives the income from an on-premise business
10 for the use of the sign.

11 (g) For the purposes of this subsection:

12 (1) the date of the closing of a sales transaction is the
13 date that legal title to a property is conveyed to a purchaser
14 for property under a contract to buy; and

15 (2) the date of the closing of a lease transaction is the
16 date that the landlord and tenant enter into a binding lease of
17 a property.

18

19 §21.443. On-Premise Sign Erectors.

20 (a) Any person engaged primarily in the business of
21 erecting signs that advertise companies located or products sold
22 on the premises on which the signs are erected must file with
23 the director of the right of way division on behalf of the

1 commission a surety bond that is in the amount of at least
2 \$100,000 and payable to the commission to reimburse the
3 department for the cost of removing a sign unlawfully erected or
4 maintained by the person. The bond must be in a form prescribed
5 by the department and must remain in effect at all times that
6 the person remains primarily engaged in the business of erecting
7 such a sign.

8 (b) If a person files with the department an affidavit that
9 states that the person is not engaged primarily in the business
10 of erecting on-premise signs, the statement in the affidavit
11 will be accepted as factual unless probative evidence to the
12 contrary is received by the department.

13 (c) A person may not be exempted from the bond requirement
14 of this section.

15

16 §21.444. Fees Nonrefundable. A fee paid to the department
17 under this subchapter is nonrefundable.

18

19 §21.445. Property Right Not Created. Issuance of a permit
20 under this subchapter does not create a property right in the
21 permit holder.

22

23 §21.446. Time Proposed Roadway Becomes Subject to Subchapter.

1 For the purposes of this subchapter, a proposed roadway becomes
2 a roadway and a proposed interchange becomes an interchange:

3 (1) when environmental clearance and the approved
4 alignment have been obtained from the Federal Highway
5 Administration; or

6 (2) if environmental clearance and approved alignment
7 from the Federal Highway Administration are not required for a
8 proposed roadway, when the alignment is approved by the
9 department or other political subdivision responsible for
10 constructing the roadway.

1 SUBCHAPTER Q. REGULATION OF DIRECTIONAL SIGNS

2 §21.941. Description of Directional Sign. A directional sign
3 is a sign that contains only a message that identifies an
4 attraction or activity that meets the requirements of this
5 section and provides directional information, such as mileage,
6 route number, or exit number, useful to the traveler in locating
7 the attraction or activity. A directional sign may not contain
8 descriptive words or phrases or pictorial or photographic
9 representations of the activity or its environs.

10
11 §21.942. Requirements for Erection and Maintenance of Sign.

12 (a) Before a person may erect a directional sign, the
13 person must obtain the approval of the department. A license or
14 permit issued under Subchapter I or Subchapter K of this chapter
15 (relating to Regulation of Signs along Interstate and Primary
16 Highways and Control of Signs along Rural Roads, respectively)
17 is not required for the erection or maintenance of a directional
18 sign.

19 (b) To obtain the approval the person must file an
20 application on a form prescribed by the department that shows
21 the location, message content, construction, and dimensions of
22 the sign.

23 (c) No fee is required for the application or approval.

1

2 §21.943. Eligibility.

3 (a) To be eligible for a directional sign, a privately
4 owned activity or attraction must be of national or regional
5 interest to the traveling public and must be:

6 (1) a natural phenomenon;

7 (2) a scenic attraction;

8 (3) an historic, educational, cultural, scientific, or
9 religious site; or

10 (4) an outdoor recreational area.

11 (b) The department may determine whether an attraction or
12 activity satisfies the requirements of subsection (a) of this
13 section. In making the determination the department may use
14 among other resources the National Register of Historic Places
15 and the "Texas State Travel Guide" published by the State of
16 Texas.

17

18 §21.944. Size of Sign. A sign, including its border and trim
19 but excluding its supports, may not exceed:

20 (1) an area of 150 square feet;

21 (2) a height of 20 feet; or

22 (3) a length of 20 feet.

23

1 §21.945. Condition of Sign.

2 (a) A directional sign must be structurally safe and
3 maintained in good repair.

4 (b) A directional sign may not be obsolete.

5 (c) A directional sign may not move or have animated or
6 moving parts.

7

8 §21.946. Location and Spacing.

9 (a) A directional sign may not be located within 2,000 feet
10 of:

11 (1) an interchange or intersection at grade along the
12 interstate system or other primary system, as measured from the
13 nearest point of the beginning, ending, or pavement widening at
14 the exit from or entrance to the main-traveled way; or

15 (2) a rest area, park, or scenic area.

16 (b) A directional sign may not:

17 (1) obscure or otherwise interfere with the effectiveness
18 of an official traffic sign, signal, or device;

19 (2) obstruct or interfere with a driver's view of
20 approaching, merging, or intersecting traffic;

21 (3) be erected on a tree or painted or drawn on a rock or
22 other natural feature; or

23 (4) be located in a rest area, parkland, or scenic area.

1 (c) Two directional signs facing the same direction of
2 travel may not be spaced less than one mile apart.

3 (d) Not more than three directional signs relating to the
4 same attraction or activity and facing the same direction of
5 travel may be erected along a single route approaching the
6 attraction or activity.

7 (e) A directional sign located adjacent to the interstate
8 highway system must be within 75 air miles of the attraction or
9 activity. A sign located adjacent to the primary highway system
10 must be within 50 air miles of the attraction or activity.

11

12 §21.947. Lighting of Sign.

13 (a) A directional sign may not contain, include, or be
14 illuminated by flashing, intermittent, or moving lights.

15 (b) Lights that are a part of or illuminate a directional
16 sign:

17 (1) must be shielded so that beams or rays of light are
18 not being directed at any portion of the traveled way of an
19 interstate or primary highway; and

20 (2) may not be of such intensity or brilliance that they:

21 (A) impair the vision of the driver of a motor vehicle
22 on an interstate or primary highway or otherwise interfere with
23 the driver's operation of the motor vehicle; or

1 (B) obscure or interfere with the effectiveness of an
2 official traffic sign, device, or signal.

- 1 §21.162. Appeal Process for Permit Denials.
- 2 §21.163. Electronic Signs.

Repeals

- 1 SUBCHAPTER K. CONTROL OF SIGNS ALONG RURAL ROADS
- 2 §21.401. Purpose.
- 3 §21.411. Definitions.
- 4 §21.421. Exemptions.
- 5 §21.431. Registration of Existing Off-Premise Signs.
- 6 §21.441. Permit for Erection of Off-Premise Sign.
- 7 §21.451. Spacing Requirements.
- 8 §21.461. Height Restrictions.
- 9 §21.471. Face Restrictions.
- 10 §21.481. Multiple Faced Signs.
- 11 §21.491. Location of Signs.
- 12 §21.501. Number of On-Premise Signs.
- 13 §21.511. Replacement or Repair of Sign.
- 14 §21.521. On-Premise Sign Erectors.
- 15 §21.531. Board of Variance.
- 16 §21.541. Revocation of Permits.
- 17 §21.542. Administrative Penalties.
- 18 §21.551. Prohibited Signs.
- 19 §21.561. Removal of Sign.
- 20 §21.571. Discontinuance of Signs.
- 21 §21.572. Notice and Appeal.
- 22 §21.581. Property Right Not Created.