

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

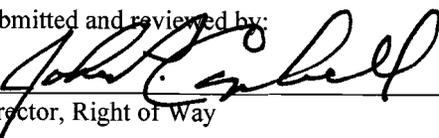
The Texas Transportation Commission (commission) finds it necessary to adopt the repeal of Chapter 21, Subchapter I, Regulation of Signs along Interstate and Primary Highways, §§21.141 - 21.163, and Subchapter K, Control of Signs along Rural Roads, §§21.401 - 21.581; and propose new Subchapter I, Regulation of Signs along Interstate and Primary Highways, Division 1, Signs, §§21.141 - 21.203 and Division 2, Electronic Signs, §§21.251 - 21.260; new Subchapter K, Control of Signs along Rural Roads, §§21.401 - 21.442 and §§21.444 - 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 adopted 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.

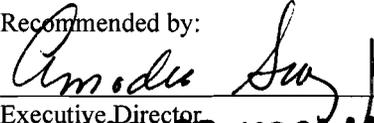
IT IS THEREFORE ORDERED by the commission that the repeal of §§21.141 - 21.163 and §§21.401 - 21.581 and new §§21.141 - 21.203, §§21.251 - 21.260, §§21.401 - 21.442 and §§21.444 - 21.446, and §§21.941 - 21.947 are adopted and are authorized for filing with the Office of the Secretary of State.

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

112630 MAR 31 11

Minute
Number

Date
Passed

Adoption Preamble

1
2 The Texas Department of Transportation (department) adopts the
3 repeal of 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, 21.411, 21.421, 21.431, 21.441, 21.451, 21.461,
7 21.471, 21.481, 21.491, 21.501, 21.511, 21.521, 21.531, 21.541,
8 21.542, 21.551, 21.561, 21.571, 21.572, and 21.581. The
9 department adopts the simultaneous replacement of the repealed
10 subchapters with new Subchapter I, Regulation of Signs along
11 Interstate and Primary Highways, Division 1, Signs, §§21.141 -
12 21.203 and Division 2, Electronic Signs, §§21.251 - 21.260; new
13 Subchapter K, Control of Signs along Rural Roads, §§21.401 -
14 21.446; and new Subchapter Q, Regulation of Directional Signs,
15 §§21.941 - 21.947. The repeal of §§21.141 - 21.163 and
16 §§21.401, 21.411, 21.421, 21.431, 21.441, 21.451, 21.461,
17 21.471, 21.481, 21.491, 21.501, 21.511, 21.521, 21.531, 21.541,
18 21.542, 21.551, 21.561, 21.571, 21.572, and 21.581, new
19 §§21.145, 21.160, 21.162, 21.167, 21.178, 21.183 - 21.189,
20 21.203, 21.252, 21.254, 21.256 - 21.258, 21.401, 21.403 -
21 21.406, 21.411, 21.415, 21.417, 21.419, 21.422, 21.427, 21.430 -
22 21.431, 21.437, 21.438, 21.440, 21.444 - 21.446, and 21.941 -
23 21.947 are adopted without changes to the proposed text as
24 published in the December 3, 2010 issue of the *Texas Register*
25 (35 TexReg 10634) and will not be republished. New §§21.141 -
26 21.144, 21.146 - 21.159, 21.161, 21.163 - 21.166, 21.168 -

1 21.177, 21.179 - 21.182, 21.190 - 21.202, 21.251, 21.253,
2 21.255, 21.259, 21.260, 21.402, 21.407 - 21.410, 21.412 -
3 21.414, 21.416, 21.418, 21.420, 21.421, 21.423 - 21.426, 21.428,
4 21.429, 21.432 - 21.436, 21.439, 21.441, and 21.442 are adopted
5 with changes to the proposed text as published in the December
6 3, 2010 issue of the *Texas Register* (35 TexReg 10634). Section
7 21.443 is not adopted as published in the December 3, 2010 issue
8 of the *Texas Register* (35 TexReg 10634). The effective date of
9 these rules is July 1, 2011.

10

11 EXPLANATION OF ADOPTED REPEALS AND NEW SECTIONS

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

24

25 In addition, the department has made substantive changes to the
26 rules to address four specific areas: fee structure,

1 streamlining current regulations, methods to increase
2 consistency between the primary and rural road programs, and
3 methods to improve consistent enforcement. The department
4 requested input from interested parties on these four issues and
5 any other suggestions on improving existing rules to help
6 formulate these new rules. Several comments were received and
7 used in drafting these revisions.

8

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

18

19 In this preamble, the abbreviation "OAS" is used for "outdoor
20 advertising signs."

21

22 The rules are divided into three subchapters. Subchapter I is
23 then divided into two divisions. Subchapter I, Division 1,
24 Signs, is general sign information for outdoor advertisement on
25 the interstate and primary system. Subchapter I, Division 2,
26 Electronic Signs, is for electronic signs on the interstate and

1 primary system. Originally these two divisions were separate
2 subchapters but due to spacing limitations the department has
3 combined them into one. References to these subchapters have
4 been corrected throughout this rule to address the correct
5 division.

6
7 New §21.141, Purpose, contains the purpose and scope of the
8 subchapter and is the same as the current §21.141.

9
10 New §21.142, Definitions, incorporates a majority of the
11 definitions from the current §21.142 without change. The
12 definitions for "commercial or industrial area," "zoned
13 commercial or industrial area," "unzoned commercial or
14 industrial area," and "commercial or industrial activity" have
15 been moved to separate sections because they provided
16 substantive language regarding the qualifications for a sign
17 permit. This change makes the language easier to understand and
18 find. The new section also changes the definitions of "freeway"
19 by adding toll roads, "intersection" by referencing only
20 intersection by primary roads, "interstate highway system" by
21 more clearly defining which roadways qualify, and visible by
22 clarifying that a person must be able to read the content of the
23 sign. Additional grammatical changes were made in this section
24 to clarify the provisions and remove unnecessary language.

25
26 New §21.143, Permit Required, is primarily the language of the

1 current §21.146(b), but now provides an unambiguous
2 identification of the type of OAS for which a permit is
3 required. The language is altered from the current rule to
4 provide that if any of the advertisement or information content
5 is visible from the main travel lanes of a regulated highway the
6 OAS is required to have a permit unless otherwise exempted under
7 the chapter.

8

9 New §21.144, License Required, provides that a person must hold
10 as outdoor advertisement license to obtain a permit for an OAS.
11 This language is the same as the first part of the current
12 §21.149(a)(1) with minor grammatical changes. There are no
13 substantive changes to the requirement for the OAS license.

14

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

23

24 New §21.146, Exempt Signs, is a revision of the current §21.147
25 and provides descriptions of signs that are exempt from the
26 permitting requirements of the subchapter. This new section

1 provides a detailed listing of the requirements of each type of
2 exempted sign including size, restrictions of location and time
3 of posting if applicable, and content of the sign. This
4 language is needed for clarification. The new section exempts a
5 recorded subdivision's permanent entrance sign that only
6 identifies the subdivision. The new language also allows exempt
7 ranch or farm signs to include the telephone number and Internet
8 website information of the ranch or farm to address current
9 technology trends. New language also requires that an on-
10 premise sign be erected no sooner than one year before the
11 business is open in order to maintain exempt status. This
12 change is needed to clarify that, although the business does not
13 have to be open at the time the sign is installed, the opening
14 must be forthcoming. In addition, the new section changes the
15 size of a nonprofit service club sign from eight square feet to
16 32 square feet to allow for more legible signs. This also
17 aligns the service club sign size to similar sizes of other
18 exempt signs.

19
20 New §21.147, On-Premise Sign, provides the requirements for a
21 sign to qualify as an on-premise sign, for which a permit is not
22 required under the subchapter. The language is substantially
23 the same as current §21.147(b). The new section expands the
24 information that can be displayed on an on-premise sign to
25 include telephone number and the Internet address of the
26 business. New parts of the section require that a sign that

1 advertises the sale or lease of real property on which the sign
2 is located must be removed within 90 days after the date of the
3 transfer of ownership or execution of the lease. This
4 limitation prevents a real estate agent or entity from using
5 such a sign as a means of advertisement for the agent or entity.
6 The new language provides a working definition of "date of
7 closing" a sales or lease transaction to clarify the time that a
8 real estate sign can be posted. The language regarding what can
9 be displayed on an on-premise sign tracks the federal language
10 on this issue.

11
12 New §21.148, Exception to License Requirements for Nonprofit
13 Signs, is substantially the same language as current §21.149(g).
14 The section provides that a nonprofit organization does not have
15 to obtain an OAS license, but must obtain a permit under new
16 §21.149.

17
18 New §21.149, Nonprofit Sign Permit, provides a separate
19 permitting process for nonprofit signs. The new section expands
20 the listing of nonprofit organizations in current §21.147(a)(5)
21 to include a service club, charitable association, religious
22 organization, chamber of commerce, nonprofit museum, or
23 governmental entity. These additions provide more guidance and
24 reflect the current policy of the types of entities that qualify
25 for nonprofit signs. New language also provides for an expanded
26 message to include information pertaining to the meeting,

1 services, events, or location of the nonprofit entity. The
2 department believes that a separate permitting process for
3 nonprofit signs will help clarify the differences between these
4 specific types of signs and general advertising OAS signs.

5
6 New §21.150, Continuance of Nonconforming Signs, is one part of
7 a four section revision of current §21.143. This new section
8 deals with the specifics of the renewal of a permit for a
9 nonconforming sign and provides clear statements as to the
10 standards with which a nonconforming sign must comply. The
11 language provides that to be eligible for a permit renewal, the
12 nonconforming sign must have been lawful on the date it was
13 erected, came under the control of the department, or became a
14 nonconforming sign, and must remain substantially the same as it
15 was on that date. The new section is taken from current
16 §21.143(a) with minor nonsubstantive changes.

17
18 New §21.151, Time Proposed Roadway Becomes Subject to Division,
19 clarifies that a proposed roadway becomes subject to the rules
20 of the division when the environmental clearance and the
21 approved alignment have been obtained from the Federal Highway
22 Administration. If FHWA approval is not needed, the road comes
23 under the chapter when the alignment is approved by the
24 governmental entity responsible for the construction of the
25 roadway. This new section provides a specific point in time in
26 which a roadway becomes subject to these rules. This change is

1 needed to prevent signs from being erected without complying
2 with the permitting requirements. The current language
3 regarding when the road becomes subject to the rules is in the
4 current definitions of freeway and interchange in §21.142(9) and
5 (10).

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

26

1 New §21.153, License Issuance, stipulates that the department
2 will issue a license if the requirements of new §21.152 are
3 satisfied. The new section states that the department may not
4 issue a license to a business entity that is not authorized to
5 conduct business in this state. This differs in wording from
6 the current §21.149(a)(3) which refers to a corporation or
7 limited partnership that is "authorized by the secretary of
8 state to conduct business in the State of Texas."

9

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

13

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

1 holder's complete legal name, mailing address, telephone number,
2 number of licenses being renewed, proof of bond coverage,
3 signature of the license holder or person signing on behalf of
4 the business entity, and any additional information the
5 department considers necessary. Lastly, the new section states
6 that a license is not eligible for renewal if the license holder
7 is not authorized to conduct business in this state. The
8 renewal points of compliance in the new section differ from the
9 current §21.149(b)(2) - (4) only in the correction of grammar.
10 Language is also added to allow a 45-day grace period for
11 renewals with the payment of an additional late fee. The
12 department will not accept a renewal if received more than 45
13 days after the license expires.

14
15 New §21.156, License Fees, and Transportation Code, §391.069 and
16 §394.025, provide that the department may charge fees in an
17 amount that will recover the costs of enforcing the program.
18 Research indicates the current fee structure for the original
19 license application and the annual license renewal has remained
20 unchanged since December 2, 1991 and does not support a revenue
21 neutral program that is in substantial need of modernization in
22 inventory and enforcement procedures paramount to federal
23 compliance issues. To create and maintain an inventory and
24 needed enforcement, the new section sets the original license
25 application fee at \$125, and increases the current renewal fee
26 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 45
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 45
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 then provide an
13 additional notice of the opportunity to file a late renewal.
14 The 45 day grace period was added to prevent the harsh penalty
15 of license revocation for 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 by certified mail and that a new bond
22 must be obtained and filed with the department before the bond
23 cancellation date or the 30th day after the day of the receipt
24 of the notice, whichever is later. This new section is
25 primarily a rewording of current §21.149(d).

26

1 New §21.158, License Revocation, provides that the department
2 will revoke a license and in a restatement of §21.149(d) will
3 not issue any permits or transfer existing permits under the
4 license if the surety bond is not provided in the proper period,
5 the surety bond is terminated, the license holder has not
6 responded to previous final enforcement actions, or the license
7 holder has a number of violations under the subchapter, new
8 Subchapter J, or Transportation Code, Chapter 391, in
9 combination. The section is restructured as a percentage system
10 of 10% of the number of valid permits held by a licensee who
11 holds more than 1,000 sign permits; 20% of the valid permits if
12 the licensee holds 500-999 sign permits; 25% of the valid
13 permits for 100-499; and 30% of the valid permits if the
14 licensee holds less than 100 permits. The department will send
15 notice of the revocation clearly stating the reasons for the
16 action, the effective date of the action, and the right and
17 procedures for the license holder to request an administrative
18 hearing. The format of the notice is a rewording of current
19 §21.149(f)(1). The new section also restates current
20 §21.149(f)(2) but provides 45 days to request an administrative
21 hearing instead of the current 10 days. The language also now
22 states that the notice is presumed to be received five days
23 after mailing. The 45-day period in the new section provides
24 additional time for a business entity to determine whether to
25 request a hearing. The new section restates current
26 §21.149(f)(3) by providing that the administrative hearings will

1 be conducted in accordance with 43 TAC Chapter 1, Subchapter E,
2 Procedures in Contested Case. The rule is changed to require
3 multiple violations to correspond with the seriousness of the
4 penalty. The department has the ability to go after the
5 individual permits for specific violations and believes that a
6 license should be revoked only if the license holder is showing
7 a disregard for the rules evidenced by multiple violations.

8
9 New §21.159, Permit Applications, addresses the permit
10 application process. Current §21.150 contains all aspects of
11 the permit process from eligibility through conversions of
12 permits. The new section adds clarity and ease of understanding
13 by dividing current §21.150 into separate functional processes
14 beginning with new §21.159, which includes restatements of
15 requirements for obtaining a permit that are primarily the same
16 requirements found in current §21.150(b). These requirements
17 include submitting an application on a form prescribed by the
18 department with the information from current §21.150(b), such as
19 name and address of the applicant, the applicant's signature,
20 the proposed location and description of the sign, the legal
21 name and address of the owner of the designated site and
22 verification of the nonprofit status of the applicant if
23 applicable.

24
25 New §21.159 strengthens minimal application requirements by
26 stating that the applicant must provide written evidence in the

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

17

18 Additional strengthening of minimal permit application
19 requirements in §21.159 include having the application
20 notarized, requiring a sketch that shows the location of the
21 sign structure support poles, and providing the exact location
22 of the sign faces in relation to the sign structure, the means
23 of access to the sign, the distance from buildings, landmarks,
24 right of way line, other signs, and distinguishable features of
25 the landscape. All of these requirements help the department
26 review the applications in a timely manner.

1
2 New §21.160, Applicant's Identification of Proposed Site,
3 requires the applicant to identify the location of the proposed
4 sign structure by setting a stake or marking the concrete at the
5 proposed location. The new section adds language regarding
6 marking a concrete location to address the situation in which
7 the proposed location is in an area that cannot be marked by a
8 stake. Other than the additional language regarding concrete
9 markings, only minor grammatical and formatting changes were
10 made from the language of current §21.150(b)(6).

11
12 New §21.161, Withdrawal of Site Owner's Consent, restates the
13 portion of current §21.150(b)(2) addressing the withdrawal of a
14 site owner's consent to allow an OAS on the property. The
15 restatement includes language that the site owner's consent
16 operates for the life of the lease or until the site owner
17 delivers a written statement to the department that the consent
18 has been withdrawn in accordance with the terms of the lease
19 agreement or through a court order. The land owner must also
20 notify the sign owner that the consent has been withdrawn. This
21 notice demonstrates to the department that all parties are aware
22 of the issue. In addition, the new section adds that if the
23 sign owner is disputing the lease termination, the sign owner
24 must provide documentation establishing that fact for the
25 department to stay cancellation proceedings. Requiring
26 documentation enables the department to verify that the dispute

1 is being addressed. The department will not proceed on the
2 cancellation until a settlement signed by both parties or a
3 court order resolving the matter is received. This will allow
4 the sign owner and the land owner an opportunity to settle the
5 matter without the department's involvement.

6
7 New §21.162, Permit Application for Certain Preexisting Signs,
8 provides that the owner of an existing sign that becomes subject
9 to Transportation Code, Chapter 391, because of a new highway or
10 a change in a highway's designation must apply for a permit
11 within 60 days after notification by the department. This
12 revises current §21.150(n) which requires a permit application
13 to be filed within 30 days. The department has provided the
14 additional 30 days to provide the sign owner ample time to
15 submit the application before the department initiates an
16 enforcement action. In addition, the department will send
17 notification to the sign owner by certified mail to ensure
18 receipt and to have a specific date for any enforcement actions.

19
20 New §21.163, Permit Application Review, restates current
21 §21.150(c) indicating permit applications will be considered in
22 the order of their receipt and if the application is incomplete
23 or incorrect, it will lose its priority position. If during the
24 review process of the application another application for the
25 same site or a conflicting site is received, that application
26 will be held until a final decision on the previously received

1 application is final. The department will notify the applicant
2 that the application is being held. The new section specifies
3 when a decision on an application is final to avoid confusion of
4 when the department will consider a subsequent application for
5 the same or a conflicting sign location. The new section adds
6 language identifying the review process to include a review of
7 the application document and a site inspection that will include
8 verification of measurements for compliance with spacing and
9 locations requirements.

10

11 New §21.164, Decision on Application, provides that in both the
12 approval and denial of a permit application, the department will
13 send a copy of the approved or denied application to the
14 applicant within 45 days of receipt of the application. If the
15 decision cannot be made within 45 days the department will
16 notify the applicant of the delay and provide an estimate for
17 when the decision will be made. This will ensure that the
18 department continues to maintain a focus on reviewing
19 applications. In the case of approval, a sign permit plate will
20 be included with the copy, and in the case of denial, a written
21 notice stating the reason for denial will be included. The new
22 section eliminates unnecessary language in the portion of
23 current §21.150(b)(5) relating to the notice of an approved
24 application. The rule also contains new language requiring the
25 department to notify the land owner of an application denial.
26 The land owner has no standing to contest the decision unless

1 land owner is also the sign owner. The notice is purely
2 informational so that the land owner is aware of the status of
3 the application.

4
5 New §21.165, Sign Permit Plate, is a revision of current
6 §21.150(b)(5) and (f). The new section provides direction for
7 placement of the sign permit plate on the sign structure and
8 expands the language to require that if a permit plate becomes
9 lost, stolen, or illegible, the sign owner must complete a
10 department form for the replacement along with a replacement
11 fee. New wording strengthens the visibility requirement that
12 the sign permit plate be visible from the closest right of way
13 at all times, which ensures that the plate is visible from the
14 closest area with public access. The new section incorporates a
15 revision of current §21.150(i)(11) by stating that failure to
16 apply for a replacement plate within 60 days of notification or
17 fail to attach in conformance with the applicable requirements
18 may result in the cancellation of the permit.

19
20 New §21.166, Sign Location Requirements, provides that a permit
21 will not be issued for an OAS unless it is located along a
22 roadway subject to Transportation Code, Chapter 391 within a
23 zoned or unzoned commercial or industrial area. The new section
24 has minor grammatical changes from current §21.150(b)(4).

25
26 New §21.167, Erection and Maintenance from Private Property,

1 provides that a permit will not be issued for an OAS unless the
2 sign can be both erected and maintained from private property.
3 This is a restatement with minor rewording of current §21.161(a)
4 and strengthens current §21.161(b) by changing "erected or
5 maintained" to "erected and maintained" from private property.

6
7 New §21.168, Conversion of Certain Authorization to Permit,
8 provides language for the conversion of an off-premise OAS to a
9 permit under the subchapter when a highway regulated under
10 Transportation Code, Chapter 394 regarding rural roads becomes
11 subject to Transportation Code, Chapter 391 related to regulated
12 highways. A fee for the original application for a permit is
13 not required and a sign permit plate will be issued at no
14 charge. If the sign owner has prepaid registration fees under
15 the rural roads rules, the outstanding balance will be credited
16 to the sign owner's annual renewal fee. The new section makes
17 additional grammatical changes, clarifies provisions, and
18 removes unnecessary language from current §21.150(m).

19
20 New §21.169, Notice of Sign Becoming Subject to Regulation,
21 provides notification that the owner of a sign that has become
22 subject to Transportation Code, Chapter 391 must obtain an OAS
23 license. The section provides that the department will send
24 written notification by certified mail, or if the sign owner
25 cannot be determined, the department will post the notice on the
26 sign for 45 days. The sign owner will have 60 days to submit an

1 OAS license application. This language adds grammatical
2 changes, and clarifies and removes unnecessary language from
3 current §21.150(n).
4
5 New §21.170, Appeal Process for Permit Denials, provides that if
6 a permit application is denied, the applicant may file for an
7 appeal with the executive director. The appeal must be in
8 writing and contain a copy of the denied application, statements
9 as to why the denial is believed to be in error, and supporting
10 documentation for the appeal. The written appeal must be
11 received by the department within 45 days after the date the
12 denial notice was received by the applicant. The final
13 determination will be sent to the applicant and will contain the
14 reason for the denial of the appeal or a decision that the
15 permit will be issued. The new section reenacts the basic
16 language of current §21.162. However, the new section
17 strengthens the language by providing a maximum period of 45
18 days in which the applicant may submit the appeal. The current
19 rule was silent regarding the period for appeal. By providing a
20 period to request an appeal the department is able to have a
21 specific date that the denial is final if no appeal is
22 requested. This allows the department to move forward on other
23 permit applications for the same or conflicting locations. The
24 rule also states that the department will make a decision on the
25 appeal within 60 days. If the department is unable to make a
26 decision the department will notify the applicant of the delay.

1 This language is needed to provide the sign owner some guidance
2 on how long the appeal process will take.

3
4 New §21.171, Permit Expiration, provides that an OAS permit is
5 valid for one year or automatically expires if the license under
6 which the permit was issued expires or is revoked by the
7 department. The new section is a reenactment of current
8 §21.150(h) with minor grammatical changes and removal of
9 unnecessary language.

10
11 New §21.172, Permit Renewals, provides that an OAS permit must
12 be renewed before the date on which it expires and is eligible
13 for renewal if the sign continues to meet all applicable
14 requirements of new Subchapter I and Transportation Code,
15 Chapter 391. The renewal must be filed on the department's
16 renewal application form and be accompanied by the scheduled
17 renewal fee. Eligibility for the annual renewal requires that
18 the sign be erected, to the extent that the sign includes a sign
19 face, before the anniversary of the date the original permit was
20 issued. The new section provides a maximum of 45 days after the
21 date of expiration in which a late renewal will be accepted by
22 the department along with an additional late fee penalty. The
23 department has not always been consistent through out the
24 districts regarding the acceptance of late renewals. This
25 additional grace period is provided so that the sign owner is
26 alerted that there is a specific date after which the sign

1 cannot be renewed. The language also provides that the
2 department will send out renewal notifications 30 days prior to
3 the expiration. If the permit is not renewed the department
4 will send a notice of the opportunity to submit a late renewal
5 with the payment of a late fee. The department believes these
6 notices will improve the timeliness of the permit renewals. The
7 new section rephrases current §21.150(d)(1) and adds a 45-day
8 late period in which a late renewal application can be received.

9
10 New §21.173, Transfer of Permit, provides that with the written
11 approval of the department, one or more OAS permits may be
12 transferred from one business entity to another assuming both
13 entities hold a valid OAS license and that the appropriate
14 department forms are completed and are accompanied by a
15 prescribed transfer fee. The ability to transfer permits
16 extends from one nonprofit organization to another assuming the
17 sign will be maintained as a nonprofit sign. A nonprofit
18 organization is also allowed to convert a nonprofit permit to a
19 regular permit if the transferee holds an OAS license for the
20 county in which the sign is located. The department will not
21 approve the transfer of a permit if cancellation of the permit
22 is pending or has been abated awaiting the outcome of an
23 administrative hearing. The section allows for a statewide
24 transfer policy. Other than the statewide transfer policy the
25 new section differs from current §21.150(e) only in grammatical
26 changes and removal of unnecessary language.

1
2 New §21.174, Amended Permit, provides new language that
3 strengthens the overall OAS permit process by allowing an
4 applicant to submit an application to amend a permit to make
5 changes to the illumination of a sign, configuration of a
6 multiple faced sign, size of the face, or location of the sign,
7 to make customary maintenance or substantial changes under new
8 §21.191, or to change a static sign face to an electronic face.
9 This new section will allow a degree of flexibility missing from
10 the current rules without a loss of compliance control.
11 Nonconforming signs are not eligible for an amended permit
12 except to perform customary maintenance. The language allows
13 the department to develop a form and require the information
14 from the original application that is applicable to an amended
15 permit. However, the original signatures of the land owner and
16 the city representative will not be required. All the
17 information required on an original application is not necessary
18 to amend the permit and the department needs the flexibility to
19 require only the information that is needed based on the reason
20 for amending the permits. The section includes the same 45-day
21 requirement as in §21.164. In addition, the section includes
22 the ability for the department to waive the requirement that the
23 amended permit be submitted prior to changes to the sign in the
24 event of a national disaster. This will give the department
25 flexibility to handle events such as a hurricane or major flood
26 in a more expedient manner.

1

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

14

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

22

23 To create and maintain a statewide electronic inventory and
24 produce enforcement results needed to maintain a modern,
25 efficient, responsive program, new §21.175 increases the fees
26 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
26 notices and monitoring the renewal process.

1
2 New §21.176, Cancellation of Permit, provides that a permit will
3 be cancelled if the sign is removed; not maintained in
4 accordance with the subchapter or Transportation Code, Chapter
5 391; damaged beyond repair; abandoned; not built at the location
6 described in the application; repaired or altered without
7 obtaining an amended permit; built by an applicant who uses
8 false information; located on property owned by a person who
9 withdraws permission; erected, repaired, or maintained in
10 violation of the rules on destruction of vegetation and access
11 from the highway right of way; or does not have a permit plate
12 properly attached. The department will provide written
13 notification of the cancellation to the sign owner that includes
14 the reason for the cancellation, the effective date of
15 cancellation, and the procedures for and right of the permit
16 holder to request an administrative hearing. The written
17 request for the hearing must be delivered to the department
18 within 45 days after the date the notice of cancellation is
19 received by the sign owner. The hearing will be conducted in
20 accordance with rules for standard contested case procedures.
21 These provisions are found in current §21.150(i). In addition
22 to the current language, the new section expands the provisions
23 to include violations leading to cancellation authority when the
24 repair or alteration have been conducted without obtaining an
25 amended permit as now required under §21.174. The new section
26 also provides for a voluntary cancellation process. This allows

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

18
19 Of all compliance issues relating to the program, the
20 identification of the land use and activity of the area being
21 recognized as commercial or industrial is of paramount
22 importance. New §21.177, Commercial or Industrial Area,
23 clarifies that a commercial or industrial area can be either a
24 zoned or unzoned area and references specific definitions for
25 both zoned and unzoned commercial or industrial areas to be
26 found in new §21.178 and §21.179.

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

16
17 New §21.179, Unzoned Commercial or Industrial Area, provides
18 guidance for sign location in areas that are not zoned by a
19 local municipality. The proposed site for an OAS in an area
20 that is not zoned must be located on the same side of the
21 highway and within 800 feet of at least two adjacent recognized
22 commercial or industrial activities that are not used
23 predominately for residential purposes. The two commercial or
24 industrial activities must be within 200 feet of the highway
25 right of way and part of the permanent building in which the
26 activity is conducted must be visible from the main-traveled

1 way. To be considered adjacent, the two activities' regularly
2 used buildings, parking lots, storage, or processing areas of
3 the activities may not be separated by roads, streets, a vacant
4 lot, or undeveloped area more than 50 feet wide. Two activities
5 that occupy the same building qualify as adjacent activities if
6 each activity has at least 400 square feet of floor space
7 dedicated to that activity, are activities that are customarily
8 allowed only in a zoned commercial or industrial area, are
9 separated by a dividing wall constructed from floor to ceiling,
10 have access to the restroom facilities for all hours the
11 business is staffed, and can operate independently of one
12 another. In this scenario, two separate product lines offered
13 by one business are not considered to be two activities. The
14 criterion used to determine whether an area is not predominantly
15 used for residential purposes is that not more than 50 percent
16 of the area (when considered as a whole) is used for residential
17 purposes. Roads and streets are considered to be used for
18 residential purposes if residential property is located on both
19 sides of the road or street. The area considered an unzoned
20 commercial or industrial area is the total of actual or
21 projected frontage of the commercial or industrial activities
22 plus 800 feet on each of the roadway frontage to a depth of 660
23 feet. The length of an unzoned commercial or industrial area is
24 measured from the outer edge of the regularly used building,
25 parking lot, storage, or processing area of the activities and
26 along or parallel to the edge of the highway pavement.

1
2 New §21.179 revises and combines certain language from current
3 §21.142(31), the definition for unzoned commercial or industrial
4 activity, and §21.144(a) and (b) regarding measurements for
5 these types of areas. The new section corrects grammar and
6 eliminates redundant and unnecessary language. The new section
7 strengthens the requirements relating to the dividing wall
8 between two activities occupying the same buildings and the
9 independent operation of the activities. These changes were
10 needed to address interpretation problems with the current rule.
11 The department wanted to clarify that the activities must
12 actually be distinct from one another and not conducted by the
13 same business. The requirement that there be a floor to ceiling
14 wall will eliminate confusion caused by the current language of
15 a dividing wall. The section also clarifies that the businesses
16 must be capable of being independent. In addition, language was
17 added to grandfather the permits issued under the previous
18 rules. With the changes made to the rules, the current
19 billboards might not be eligible. Providing the language to
20 eliminate the need for previous permits to comply with the new
21 restrictions will mean that this change does not create
22 nonconforming signs. The prior signs will continue to be
23 eligible for changes and full maintenance.

24

25 New §21.180, Commercial or Industrial Activity, provides the
26 requirements for qualifying as a commercial or industrial

1 activity. The section states that a commercial or industrial
2 activity is an activity customarily allowed only in a zoned area
3 and is conducted in a building or structure that has an indoor
4 restroom, running water, functioning electrical connections,
5 adequate heating, and permanent flooring, other than dirt,
6 gravel, or sand, is visible from the traffic lanes of the main-
7 traveled way, is not primarily used as a residence, has at least
8 400 square feet of its interior floor space devoted to the
9 activity, and has been open for business for six months. The
10 new section lists activities that are not considered to be
11 commercial or industrial, including agricultural activities of
12 various types, seasonal activities, the operation or maintenance
13 of certain activities or structures, and activities created
14 primarily or exclusively to qualify an area under §21.179. The
15 new section revises language from current §21.142(2) by
16 correcting grammar and the elimination of redundant and
17 unnecessary language. The new section requires the business to
18 employ at least one individual at the activity site for a
19 minimum of 25 hours a week. The sections also require that the
20 employee be at the site at least five days a week. The 25 hours
21 can be spread over the five days in any manner as long as the
22 hours are posted. This is a change from the current rule that
23 required 30 hours a week or at least 5 days per week. Under the
24 current rule a business could qualify if a person showed up at
25 the business site for any amount of time as long as the person
26 did it five days a week. This requirement was difficult for the

1 department to observe and confirm compliance. In addition, the
2 floor space requirement for the business was increased from 300
3 to 400 square feet and the length the business is open is
4 increased to six months in an attempt to eliminate business
5 created for the sole purpose on obtaining an OAS. The new
6 language provides for a more enforceable standard and also helps
7 to eliminate businesses created solely to have the site meet the
8 requirements. The language of the section also deletes the
9 requirement for a telephone to recognize the emergence of
10 reliance on cellular technology. Language was added so that the
11 new extended hours, the larger square footage, length of time
12 the business must be open for business, and the square footage
13 for residence portion will only affect the issuance of new
14 permits. The department will not use the new requirements to
15 change the status of a current sign.

16

17 New §21.181, Abandonment of Sign, provides that a sign is
18 considered abandoned if it goes without advertising for 365
19 consecutive days or longer or if it needs to be repaired or is
20 overgrown by trees or other vegetation. The department does not
21 have to show that the sign has been without advertisement for
22 each of the 365 days and can initiate the cancellation process
23 if the department has evidence from four separate occasions that
24 supports that conclusion. Small temporary signs, such as garage
25 sale or campaign signs, located on private property that are
26 attached to the structure do not constitute advertising for the

1 purpose of these rules. Payment of property taxes or retention
2 of a sign as a balance sheet asset will not be considered in
3 determining whether a sign's permit will be canceled. If the
4 location of an abandoned sign is conforming, a permit may be
5 issued to anyone who submits an application that meets the
6 requirements of the subchapter after cancellation of the prior
7 permit is final. The new section restates current §21.156(b)
8 while correcting grammar and removing unnecessary language. In
9 addition, the new section strengthens the current rule by
10 expanding the specifics of the abandonment of a sign for 365
11 consecutive days by stating that the department can initiate the
12 cancellation process without proof of abandonment for each of
13 the 365 days. Other support, such as photographs of the sign on
14 four separate occasions, can be used to make the determination
15 of the sign being abandoned. The new section also deletes
16 language stating that a sign permit that has not been renewed
17 may be considered abandoned. This language conflicted with
18 current §21.150(j) which authorized the removal of a sign for
19 which the permit has expired. Deleting this language clarifies
20 that the department may move for removal of such a sign without
21 using the cancellation process. In addition, the section now
22 includes a requirement that the department will notify the sign
23 owner before the cancellation and provide 60 days for the sign
24 owner to correct the issue. This will create a more effective
25 enforcement program. Under the current process the department
26 initiates the cancelation procedures at the time of notification

1 and has often dismissed or settled the case when the sign
2 company begins to place advertising on the sign.
3
4 New §21.182, Sign Face Size and Positioning, provides for the
5 maximum sign face size and the types of sign configurations.
6 The size of a single face of a sign may not exceed 672 square
7 feet, 25 feet in height, and 60 feet in length, including the
8 border and trim. Temporary protrusions may be added to a sign
9 provided that the protruding area does not exceed 35 percent of
10 the sign face and the total sign face area, including the
11 protrusions, does not exceed 907 square feet. Measurements of
12 the area are taken by the smallest square, rectangle, triangle,
13 circle, or combination that encompasses the entire sign face.
14 Signs may have more than one face on a structure and may be
15 placed back-to-back, side-by-side, stacked, or in "V" shape
16 construction but not more than two faces may be presented in
17 each direction. Two sign faces, facing the same direction, may
18 not exceed the maximum sign face area when measured together.
19 Two sign faces facing the same direction may be presented as one
20 face as long as the size limitations are not exceeded. The
21 determination of fees is based on each face of a sign. In the
22 case of two sign faces covered to make one face, fees are based
23 on the original number of two faces. The new section uses
24 corrected grammar and removes unnecessary language in a
25 restatement of current §21.152 as it relates to limits for size,
26 number, direction of visibility, height, length, and temporary

1 protrusions for sign faces. The new section removes current
2 §21.182(g), which states that a sign may be permanently enlarged
3 without a new permit by up to 10%, because this provision relies
4 totally on self-reporting and provides errors in record
5 management related to compliance with sign limitations.

6
7 New §21.183, Signs Prohibited at Certain Locations, provides
8 that a sign may not be located in a place that creates a safety
9 hazard. The new section is a restatement of current §21.153(a)
10 with only minor grammatical changes.

11
12 New §21.184, Location of Signs Near Parks, provides that a sign
13 may not be located within 1,500 feet of a public park that is
14 adjacent to a regulated highway on either side of a nonfreeway
15 primary system highway and on the side of a highway adjacent to
16 the public park if the highway is on the interstate or freeway
17 primary system. The new section is a restatement of current
18 §21.153(b). The rule also adds a provision that provides that a
19 separate measurement can be taken from a park that does not abut
20 the highway. If a park does not abut the highway a sign cannot
21 be within a 250 foot radius from the park. The measurement is
22 taken from the center pole of the proposed sign structure.

23
24 New §21.185, Location of Signs Near Certain Facilities, provides
25 location restrictions for intersections, interchanges, rest
26 areas, entrance ramps, and exit ramps. A sign may not be

1 erected outside of the incorporated city limits of a
2 municipality in an area that is adjacent to or within 1,000 feet
3 of these facilities. The new section clarifies current
4 §21.153(c) in the language describing how the 1,000 feet
5 limitation is measured perpendicular and along the highway right
6 of way in relation to the distance from interchanges,
7 intersection, rest areas, ramps and acceleration and
8 deceleration lanes. The clarification includes identifying the
9 distance measurements from interchanges and intersections to be
10 from the point of widening at the intersection of the right of
11 way of the intersecting roadways. For rest areas, ramps, and
12 acceleration and deceleration lanes the measurements are taken
13 from the point of pavement widening at the beginning of the
14 entrance or exit ramp and from the point that the pavement
15 widening ends at the conclusion of the entrance or exit ramp.
16 Further, the new section identifies and clarifies the "area
17 adjacent to" an interchange, intersection, rest area, ramp or
18 acceleration and deceleration lane in which a sign cannot be
19 erected.

20

21 New §21.186, Location of Signs Near Right of Way, provides that
22 no part of the sign face may be within five feet of the highway
23 right of way. The new section revises current §21.153(h) and is
24 different only in the deletion of unnecessary language.

25

26 New §21.187, Spacing of Signs, provides that signs on the same

1 side of a regulated freeway and the freeway frontage roads
2 outside of incorporated municipal boundaries may not be erected
3 closer than 1,500 feet apart. A municipality's extraterritorial
4 jurisdiction is not considered to be within its boundaries. On a
5 nonfreeway primary system highway outside of incorporated
6 municipal boundaries the spacing limitation is 750 feet apart
7 and includes the areas of the extraterritorial jurisdiction. On
8 a nonfreeway primary system highway within the boundaries of an
9 incorporated municipality, the spacing limitation is further
10 reduced to 300 feet apart and does not include the
11 extraterritorial jurisdiction in which the spacing limitations
12 would default to 750 feet. In all cases, the measurements
13 between signs are taken along the highway right of way
14 perpendicular to the center of the signs. The new section
15 restates current §21.153(d), (e), and (f) but clarifies the
16 spacing limitations to extraterritorial jurisdictions of
17 incorporated municipal boundaries. The new section also
18 includes an exception to spacing limitations between signs that
19 are separated by buildings, natural surroundings, or other
20 obstructions that cause only one sign located within the
21 specified area to be visible at any one time, which is in
22 current §21.153(g).

23
24 New §21.188, Wind Load Pressure, provides that an original
25 application and an application for the renewal of an OAS must
26 include a certification that the sign will withstand specific

1 wind load pressure based on the size of the sign. The new
2 section is a restatement of current §21.157 with only minor
3 reorganization, grammatical changes, and removal of unnecessary
4 language. The wind load pressure remains the same.

5

6 New §21.189, Sign Height Restrictions, provides that the maximum
7 height of an OAS is 42.5 feet and is measured from the grade
8 level of the centerline of the main-traveled way closest to the
9 sign at a point perpendicular to the sign location. A roof sign
10 with a solid face surface may not exceed 24 feet above the roof
11 level. A roof sign with an open sign face in which the open
12 area between individual letter or shapes is not less than 40
13 percent of the total gross area of the sign face may not at any
14 point exceed 40 feet above the roof level. The lowest point of
15 a projecting roof sign must be at least 14 feet above grade.

16 The new section is basically a restatement of current §21.158
17 with grammatical changes and removal of unnecessary language.
18 However, it does include a clarification that the frontage road
19 is not the main traveled way of a controlled access highway.
20 This clarification is needed to ensure that all parties
21 understand the starting point for the measurement of height.

22

23 New 21.189, also includes a provision that exempts renewable
24 energy devices from the height restriction. This will allow a
25 sign company to install wind turbines or solar panels to the
26 sign structure above the sign face. This provision does not

1 allow any portion of the sign face to exceed the height
2 restriction of 42 ½ feet.

3

4 New §21.190, Lighting of and Movement on Signs, provides that a
5 sign may not contain or be illuminated by flashing,
6 intermittent, moving lights, or animated or scrolling displays
7 except for public service information such as time, date,
8 temperature, weather, or similar information. If lights are
9 part of or used to illuminate a sign, they must be shielded,
10 directed, and positioned from all parts of the traveled ways of
11 a regulated highway and may not have an intensity or brilliance
12 that would cause vision impairment of a driver on a regulated
13 highway or interfere with the driver's operation of a vehicle.
14 In addition, no more than four luminaries can be used per
15 direction of the sign face or faces. The department has
16 received numerous complaints regarding the lights of the sign
17 and at this time the department has determined that four lights
18 adequately illuminate a sign. Lights or illumination on a sign
19 may not obscure or interfere with the effectiveness of an
20 official traffic sign, device, or signal. The same limitations
21 are applied to a temporary protrusion on a sign, except that it
22 may be animated only if it does not create a safety hazard to
23 the traveling public. Reflective paint or reflective disks may
24 be used on a sign face only if they do not create the illusion
25 of flashing or moving lights or cause an undue distraction to
26 the traveling public. Neon lights may be used on sign faces

1 only if the light does not flash and does not cause undue
2 distraction and if the permit for the sign specifies that the
3 sign is an illuminated sign. Electronic temporary protrusions
4 that display alphabetical or numerical characters only are not
5 prohibited as long as the display consists of a stationary
6 image, does not change more than four times every 24 hours, and
7 the change occurs within two minutes. The department identifies
8 this type of protrusion as being part of the sign face similar
9 to a cut out or other design feature. The remaining new section
10 is a restatement of current §21.154 with grammatical changes and
11 removal of unnecessary language.

12

13 New §21.191, Repair and Maintenance, provides the process by
14 which an OAS may be maintained and repaired. The new language
15 breaks the section into three parts, routine maintenance,
16 customary maintenance, and substantial changes. Routine
17 maintenance allows for the replacement of minor parts as long as
18 the replacement part materials are the same type as those being
19 replaced and that the basic design or structure of the sign is
20 not altered, changing existing lighting to more energy efficient
21 lighting, and changing the sign face structure using similar
22 materials. It also addresses such issues as changing the
23 advertising message, cleaning, painting, nailing, welding, or
24 the replacement of nuts and bolts. Routine maintenance can be
25 performed without an amended permit. Under customary
26 maintenance a sign owner can add a catwalk and replace half the

1 poles in a 12 month period. These changes require an amended
2 permit. These are basically the current rules regarding normal
3 maintenance under §21.143(b) with the addition of upgrading the
4 lighting and adding a catwalk. The use of energy efficient
5 lighting regardless of whether there is an initial change in the
6 casing used for the lighting will be allowed as routine
7 maintenance and is allowed for nonconforming signs. The
8 department recognizes a benefit in allowing energy efficient
9 lights on all billboards. The department also recognizes the
10 safety benefits of adding a catwalk. This addition will require
11 an amended permit but is authorized for non-conforming signs.
12 Under substantial changes the sign owner can make major changes
13 to the sign structure as long as the sign structure remains in
14 compliance with all other requirements of the subchapter. These
15 changes are the current language of §21.143(c). Substantial
16 changes can only be performed on conforming signs and an amended
17 permit is required to make the change. The amended permit
18 eliminates the potential inequity of a sign owner losing the
19 site between the time an existing permit was cancelled and a new
20 permit was filed in order to comply with "substantial" changes
21 in the current rule. The new section also excludes language in
22 current §21.143(c)(1)(I) that classifies making repairs that
23 exceed 60 percent of the cost to erect a new sign of the same
24 type at the same location a substantial change. Determining the
25 cost of the repairs that exceeded the 60 percent level requires
26 a level of self-reporting and response that is burdensome to

1 sign owners. Removing the language from the new section means
2 that all "substantial" repairs and maintenance can be
3 administratively handled by using the new amended permit
4 application. This section also addresses a problem with
5 continual maintenance and repair of nonconforming signs. Under
6 the new section, nonconforming signs may only receive routine or
7 customary maintenance. A nonconforming sign can obtain an
8 amended permit to perform customary maintenance. This change
9 will allow the department to monitor the maintenance and improve
10 compliance with these provisions.

11
12 New §21.192, Permit for Relocation of Sign, allows the
13 relocation of an OAS that is legally erected and maintained and
14 that will be within the highway right of way as a result of a
15 construction project. If the sign is completely located in the
16 highway right of way, the relocation of the sign requires a new
17 permit and departmental approval of the new relocation site,
18 including the new sign site's compliance with all local codes,
19 ordinances, and applicable laws. An amended permit will be used
20 for the relocation of a sign if it will be partially located
21 within the highway right of way as the result of a construction
22 project. The new section restates current §21.160(c) making
23 grammatical changes and removing unnecessary language. The new
24 section revises and expands current §21.160(f) by correcting
25 grammar, removing unnecessary language, and adding the use of an
26 amended permit for signs that will only be partially located

1 (otherwise known as a bisection) within the new right of way
2 resulting from a construction project. Again, this change
3 provides a more efficient and equitable means for sign owners to
4 complete administrative documents for relocation and decreases
5 the department's response time without lessening quality
6 compliance control. The new rule also establishes a time frame
7 in which the new application must be submitted. The current
8 rules do not provide such a period and that failure has caused
9 administrative problems because the department cannot close out
10 the prior sign file. The rule sets the period at 36 months.
11 The department believes this is adequate time for the sign owner
12 to determine a new location for the sign. Language is also
13 added to inform the sign owner that the permit must continue to
14 be renewed to remain eligible for relocation privileges. The
15 continuation of the sign permit allows the department to
16 continue to track the sign during the extended time period.
17
18 New §21.193, Location of Relocated Sign, provides the relaxed
19 location provisions for a relocated sign. The new section
20 expands on new §21.192 by specifying in detail the requirements
21 of the actual location of the sign relocated as a result of a
22 highway construction project. To receive a permit under the
23 relocation provisions, the sign must first be relocated to the
24 remaining parcel of land in which the sign was situated before
25 relocation. If that location is not economically or physically
26 feasible the sign can be relocated to any location that meets

1 the provisions of the subsection that provide for relaxed
2 spacing requirements. The 50 mile provision has been removed as
3 it is not necessary to limit the location within 50 miles. The
4 50 miles was originally used as it relates to the reimbursement
5 provisions. The sign owner can only be reimbursed for 50 miles
6 of the move but the new rules allow the sign owner the
7 opportunity to move the sign further in order to avoid
8 condemnation. The sign may not be relocated to a place where it
9 would cause a driver to be unduly distracted, obscure or
10 interfere with the effectiveness of an official traffic sign,
11 signal, or device, or a driver's view of approaching, merging,
12 or intersecting traffic. A sign located along a regulated
13 highway on an interstate or freeway primary system may not be
14 relocated to a place that is within 500 feet of a public park,
15 interchange, intersection at grade, rest area, ramp, or ramp's
16 acceleration or deceleration lane. For relocation on a highway
17 on the interstate or freeway primary system, the sign may not be
18 closer than 500 feet to another permitted OAS on the same side
19 of the highway. For a highway on the nonfreeway primary system
20 and outside of the incorporated limits of a municipality, the
21 sign may not be closer than 100 feet to another permitted sign
22 on the same side of the highway or within five feet of any
23 highway right of way line. After relocation, the sign must be
24 within 800 feet of at least one recognized commercial or
25 industrial activity about which it provides information and that
26 is located on the same side of the highway. The spacing

1 limitations for relocated signs do not apply to on-premise
2 signs, directional signs, or official signs exempted from the
3 Transportation Code. The new section revises current
4 §21.160(b)(5) and (7) and the spacing limitations of
5 §21.160(b)(8) with reorganization, grammatical corrections, and
6 removal of unnecessary language, but it does not change the
7 reduced spacing limitations for relocated signs. The rule also
8 provides that a sign cannot be relocated from a primary road to
9 a road subject to the rural road program, preventing the
10 movement of the signs into rural areas.

11
12 New §21.194, Construction and Appearance of Relocated Sign,
13 provides that a relocated sign must be constructed with the same
14 number of poles and of the same type of materials as the
15 existing sign. The number of sign faces and lighting may not
16 exceed that of the existing sign. The size of each of the sign
17 faces of a relocated sign visible to approaching traffic may not
18 exceed the smaller of the size of the existing sign face or an
19 area of 1,200 square feet, a height of 25 feet, and a length of
20 60 feet. Configuration of the relocated sign faces may be back-
21 to-back, side-by-side, stacked, or in "V" construction with not
22 more than two displays facing any direction. The exception is
23 that if the area of a sign face exceeds 350 square feet, sign
24 faces may not be stacked or placed side-by-side. The sign
25 structure and sign faces are considered to be one sign except
26 for the computation of fees. The new section revises current

1 §21.160(c)(6),(9), and (10) with corrected grammar and removal
2 of unnecessary language. It does not change the general size,
3 configuration, or construction requirements expressed in the
4 current rule. This new section excludes the language of
5 §21.160(c)(6) that required the sign to be placed in the same
6 relative position as to the line of sight, because the provision
7 is unnecessary and set a subjective standard that was difficult
8 to enforce.

9
10 New §21.195, Relocation of Sign within Municipality, provides
11 that to relocate a sign from a location within a certified city
12 to another location within the same city only requires the
13 permission of the city. The new section revises current
14 §21.160(g) by correcting grammar and removing unnecessary
15 language. Nothing in the new section dilutes the local control
16 of a certified city.

17
18 New §21.196, Relocation Benefits, provides that relocation
19 benefits will be paid in accordance with 43 TAC Chapter 21,
20 Subchapter G for the relocation of an OAS displaced by a highway
21 transportation project. To receive the relocation benefits, the
22 sign owner must enter into a written agreement with the
23 governmental entity that is acquiring the right of way in which
24 the sign is located. By so doing, the sign owner, in
25 consideration of eligible relocation benefits, waives and
26 releases any claim for damages against the governmental entity

1 and the state for any temporary or permanent taking of the sign.
2 The new section restates current §21.160(c)(11) and revises
3 current §21.160(e).
4
5 New §21.197, Discontinuance of Sign Due to Destruction, provides
6 for the repair or permit cancellation of a sign that is
7 partially destroyed by an occurrence outside the control of the
8 permit holder, including vandalism, motor vehicle wreck, or
9 natural forces such as wind, tornado, lightening, flood, fire or
10 hurricane. The department will determine whether the sign can
11 be repaired without an amended permit under the rules for
12 customary maintenance. The permit holder must submit an
13 estimate of the proposed work, including an itemized list of the
14 materials to be used and the manner in which the work will be
15 done. For an act of nature, if the department determines the
16 damage is substantial, cost of the repairs to the sign exceed 60
17 percent of the replacement costs, an amended permit will be
18 required. If the licensee does not request an amended permit,
19 the department may move to cancel the existing permit. If the
20 permit is cancelled, the remaining sign structure must be
21 dismantled and removed at the owner's expense. If a decision to
22 cancel the permit is appealed, the sign may not be repaired
23 during the appeal process. The new section restates current
24 §21.156(a) and adds authority for the owner to rebuild the sign
25 if the sign is destroyed by vandalism or a motor vehicle wreck.
26 In addition, new language is added to address instances of

1 destruction by natural forces. If a sign in an area that
2 receives a disaster declaration is damaged the sign can be
3 repaired prior to approval by the department, if it is repaired
4 within 180 days and the sign owner can show that the damages
5 would not be considered substantial. This will allow sign
6 owners the ability to repair their signs quickly and will
7 prevent an influx of requests that could not be handled in a
8 timely manner by current department staffing levels.

9

10 New §21.198, Order of Removal, provides that if a sign permit
11 expires without renewal or is canceled or if the sign is erected
12 or maintained in violation of the rules, the department will
13 send a written demand to the sign owner requiring the sign be
14 removed at no cost to the state. Failure of the owner to remove
15 the sign within 30 days allows the department to remove the sign
16 and charge the sign owner for the cost of the removal including
17 the cost of any court proceedings. The new section revises
18 current §21.150(j) and strengthens the position of the state by
19 allowing the department to remove the sign at the sign owner's
20 expense if the owner fails to remove the sign after notice. The
21 30-day time period was added to provide notice to all parties of
22 the timeframe the department will use to remove the sign.
23 Without a specific timeframe the department was not consistent
24 in processing removals throughout the state. This section also
25 adds authority for the department to rescind a removal notice
26 sent in error in order to correct mistakes before the court

1 settlement process.
2
3 New §21.199, Destruction of Vegetation and Access from Right of
4 Way Prohibited, prohibits a person from destroying trees or
5 vegetation on the right of way for any purpose related to a sign
6 or erecting or maintaining a sign from the right of way. The
7 section provides that any of these actions will result in
8 cancelation of the sign's permit whether the violator was the
9 sign owner, permit holder, or someone acting on behalf of the
10 permit holder. The language also states that it is not a
11 violation to trim the portion of the tree or vegetation that
12 encroaches onto private property at the private property line.
13 The trimming must be done from the private property and must not
14 damage the vegetation or the tree that is within the right of
15 way. The new section clarifies current §21.161 by creating a
16 violation for these actions that is enforceable by the
17 department. Under the current rule the department has had
18 difficulties enforcing the provisions. In addition, language
19 was added to clarify use of right of way for signs in railroad
20 right of way. Until March 1986 the department allowed signs in
21 certain portions of railroad right of way which is also now
22 considered portions of the state right of way. These signs are
23 grandfathered and some are still in existence. Due to the
24 location, use of highway right of way is often the only option
25 for repairs. In these situations the department will allow
26 access to state highway right of way only if the sign owner

1 obtains prior approval from the department.

2

3 New §21.200, Local Control, provides the guidelines for the
4 department to authorize political subdivisions to exercise
5 control over off-premise outdoor advertising signs within their
6 incorporated boundaries. The section requires that a city
7 request approval from the department by providing a copy of its
8 sign and zoning regulations, information about the number of
9 personnel who will be dedicated to the program, the types of
10 records that the political subdivision will keep, including an
11 electronic inventory of signs, and an enforcement plan that
12 includes removal of illegal signs. The political subdivision
13 may use more or less restrictive requirements than state rules
14 regarding the size, lighting, and spacing of signs. The
15 department will consult with the Federal Highway Administration
16 to decide whether the political subdivision's program is
17 consistent with the purposes of the Highway Beautification Act
18 of 1965. If approved, the political subdivision will be listed
19 and monitored by the department. The department may de-certify
20 a political subdivision if it violates its accepted regulatory
21 responsibilities and the department may reinstate the approval
22 if the political subdivision demonstrates a new plan that meets
23 the requirements of these rules. The new section revises
24 current §21.151 by making grammatical corrections, removing
25 unnecessary language, and changing current §21.151(d) to require
26 the documents be sent annually to the department and requiring

1 the city to participate in conferences regarding OAS
2 regulations. Centralization will provide a higher level of
3 administrative efficiency for control and consolidation of data,
4 public complaints, and investigation of enforcement activities.

5
6 New §21.201, Fees Nonrefundable, provides that all fees paid to
7 the department under the rules are nonrefundable. This new
8 section combines current §21.149(c)(2) and §21.150(g)(4), under
9 which license and permit fees are nonrefundable.

10

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

17

18 New §21.203, Complaint Procedures, outlines the current
19 compliant process for all outdoor advertising signs. The
20 department will accept and investigate all written complaints.
21 The department will notify the sign owner of the pending
22 investigation and will provide all parties the results of the
23 investigation. This language is included in the rule to provide
24 timelines and the specific process.

25

26 New Division 2, Electronic Signs, §§21.251 - 21.260, revises

1 current §21.163. The new sections divide current §21.163 into
2 10 sections to provide consistency with the organization and
3 revisions in new Subchapter I and provide a greater level of
4 efficiency for finding and understanding the rules.

5
6 New §21.251, Definition, restates the definition of an
7 electronic sign found in current §21.142(8) as a sign, display,
8 or device that changes its message or copy by programmable
9 electronic or mechanical processes.

10
11 New §21.252, Department Determination, provides that the use of
12 an electronic image on a digital display is not the use of a
13 flashing, intermittent, or moving light for the purposes of any
14 rule, regulation, or standard promulgated by the department or
15 any agreement between the department and the Secretary of
16 Transportation of the United States. Support of the federal
17 assurance for the rules of the state pertaining to off-premise
18 electronic outdoor advertising signs was obtained on November
19 19, 2007 by written correspondence from the Federal Highway
20 Administration. The new section is a restatement of current
21 §21.163(a).

22
23 New §21.253, Issuance of Permit, provides that an electronic
24 sign requires a permit like any other OAS. The new section
25 states that the application for the permit must satisfy the
26 requirements of new Subchapter J and the applicable parts of

1 Subchapter I. A certified copy of a permit issued by the
2 municipality that has gives permission for the erection of an
3 electronic sign must accompany the application. If the
4 municipality in which the electronic sign will be located does
5 not require the issuance of municipal permits for electronic
6 signs, a certified copy of the written permission from the
7 municipality for the erection of the electronic sign must
8 accompany the application. The new section restates current
9 §21.163(h) without a change in substance.

10

11 New §21.254, Prohibitions, provides that electronic signs may
12 not be illuminated by flashing, intermittent, or moving lights,
13 contain or display animated, moving video, or scrolling
14 advertising, consist of a static image projected upon a
15 stationary object, or be a mobile sign located on a truck or
16 trailer. The new section restates current §21.163(b) without a
17 change in substance.

18

19 New §21.255, Location, provides the location requirements for
20 electronic signs. Electronic signs may be located, relocated,
21 or upgraded only along regulated highways within the corporate
22 limits of a municipality that allows electronic signs under its
23 sign or zoning ordinances or within the extraterritorial
24 jurisdiction of a municipality that under state law has extended
25 its municipal regulation to include that area. Electronic signs
26 may not be located within 1,500 feet of another electronic sign

1 on the same side of a regulated highway. The new section
2 eliminates the confusion of whether an electronic sign structure
3 can have back to back electronic faces by clearly stating that
4 two electronic signs may not be located on the same sign
5 structure.

6
7 New §21.256, Modification to Electronic Sign, provides that a
8 sign may be modified to be an electronic sign if a new permit
9 for the new electronic sign is obtained from both the
10 municipality in whose jurisdiction the sign is located and the
11 department. However, lighting may not be added to or used to
12 illuminate a nonconforming sign. The new section restates
13 current §21.163(d).

14
15 New §21.257, Requirements, requires each message on an
16 electronic sign to be displayed for at least eight seconds and
17 the change of message must be completed within two seconds and
18 be made simultaneously on the entire sign face. The sign must
19 contain default mechanism that freezes the sign in one position
20 if a malfunction occurs and automatically adjusts the intensity
21 of its display according to natural ambient light conditions.
22 If the department finds that the sign causes glare, impairs
23 vision of drivers, or interferes with the operation of a motor
24 vehicle, the sign owner is required to reduce the intensity of
25 the sign to a level acceptable to the department within 12 hours
26 of request by the department. The new section addresses the

1 safety issue concerns of the use of electronic signs and is a
2 combination of current §21.163(e)(2) and (3), §21.163(f), and
3 §21.163(g). The current section limits an electronic sign to
4 one electronic face and creates an almost impossible
5 interpretation of "one direction" at an interchange or
6 intersection. The department has determined that there is not a
7 greater safety risk in having a back to back electronic sign
8 than allowing two signs on opposite sides of the highway facing
9 opposite directions. Accordingly, the department has removed
10 the limitation.

11
12 New §21.258, Emergency Information, requires the owner of an
13 electronic sign to coordinate with local authorities to display
14 emergency information important to the traveling public, such as
15 Amber Alerts and alerts concerning terrorist attacks or natural
16 disasters. Emergency information messages must remain in the
17 advertising rotation according to the protocols of the agency
18 that issues the information. The section provides for the
19 dissemination of important safety information to the traveling
20 public without a cost to the taxpayers. Provision of the
21 emergency information has the potential of saving lives and
22 provides instantaneous communication tools previously not
23 available to the citizens particularly in metropolitan areas.
24 The new section restates current §21.163(g)(1).

25
26 New §21.259, Contact Information, requires the owner of an

1 electronic sign to provide the department with contact
2 information for a person who is available to be contacted at any
3 time and who is able to turn off the electronic sign promptly if
4 a malfunction occurs. New language is added to provide that the
5 contact information will also be provided to the local authority
6 to accommodate the emergency information posting requirement.
7 This change will eliminate the need of passing the emergency
8 information through the department to the sign owner. The
9 remainder of the new section restates current §21.163(g)(2).

10

11 New §21.260, Application of Other Rules, provides that
12 provisions of new Subchapter I also apply to electronic signs,
13 unless there is a conflict with new Subchapter J, in which
14 event, new Subchapter J controls. The new section restates the
15 substance of current §21.163(i).

16

17 New §21.401, Purpose, introduces new Subchapter K, Control of
18 Signs along Rural Roads. This section restates current §21.401
19 and provides the purpose of the chapter, which is the regulation
20 of signs along rural roads.

21

22 New 21.402, Definitions, provide the definitions for the new
23 subchapter. The new section restates the definitions from
24 current §21.411 with minor grammatical changes. The definition
25 for "sign structure" is added to address other changes in
26 Subchapter K regarding maintenance and repair. The definition

1 for "small business" and "on-premise" are deleted from the new
2 section as unnecessary. On-premise signs are discussed in
3 §21.442.

4

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

9

10 New §21.404, Permit Required, provides the requirement of a
11 permit for an off-premise sign. This section contains the
12 substance of current §21.441(a).

13

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

1

2 New §21.406, Exemptions for Certain Populous Counties, provides
3 the exceptions found in Transportation Code, §394.061 and
4 §394.063. The language is a restatement of current §21.421(c)-
5 (e) with minor grammatical changes.

6

7 New §21.407, Existing Off-Premise Signs, exempts certain signs
8 that were in existence before September 1, 1985 from the permit
9 requirement. The language restates current §21.431 with minor
10 changes, except that an amended registration is required to
11 perform customary maintenance to the sign. This change is
12 needed to ensure that the sign is not altered more than what is
13 allowed under customary maintenance.

14

15 New §21.408, Continuance of Nonconforming Signs, is added for
16 consistency between the rural and primary road programs. The
17 language is the same as §21.150 and provides that a
18 nonconforming sign can be renewed as long as it remains in
19 substantially the same condition as the sign was on the day it
20 became nonconforming. This language is added to place into the
21 rule a policy the department has been implementing in this
22 program.

23

24 New §21.409, Permit Application, provides a detailed listing of
25 the information that must be included on the permit application.
26 This language expands current §21.441(b) to include the

1 requirements under §21.159 that are applicable to rural road
2 permits. The department's intent is to streamline the programs
3 and have consistent requirements for both programs, when
4 appropriate, to eliminate confusion. The new application
5 requirements include written evidence of the right of entry to
6 the sign location.

7
8 New §21.410, Site Owner's Consent; Withdrawal, provides the
9 process for the owner of the land to withdraw consent for the
10 sign. This language is not included in current Subchapter K,
11 but department policy allows the land owner to withdrawal
12 consent for signs regulated under that subchapter. The language
13 of this section is similar to the language of §21.161.

14
15 New §21.411, Applicant's Identification of Proposed Site,
16 requires the applicant to identify the location of the sign with
17 a stake or a mark depending on the ground surface. This
18 language is not included in current §21.441, however, it is
19 currently a part of the application process. This language
20 mirrors the language in new §21.160 to maintain consistency
21 between the two programs.

22
23 New §21.412, Permit Application Review, provides the process by
24 which the department will review and evaluate permit
25 applications. The new section expands the general provisions in
26 current §21.441(b)(3) by defining when a decision on an

1 application is final, clarifying the process for competing sign
2 applications, and stating that the department will complete a
3 site inspection. The language is consistent with §21.163 to
4 provide for consistent processing of all applications.

5
6 New §21.413, Decision on Application, provides the actions the
7 department will take for approved and denied applications. This
8 language revises current §21.441(b)(4) and is consistent with
9 new §21.164.

10
11 New §21.414, Sign Permit Plate, requires the attachment of a
12 permit plate to the sign structure. The language expands
13 current §21.441(b)(4) by providing procedures for obtaining a
14 replacement permit plate and the consequences for failing to
15 properly attach the permit plate to the sign structure. These
16 provisions are added to conform the two sign programs.

17
18 New §21.415, General Sign Location Requirements, provides
19 general information for sign locations. The section provides
20 that permits will only be issued for signs located on rural
21 roads and within 800 feet of a recognized commercial or
22 industrial activity. These provisions state the requirements of
23 Transportation Code, Chapter 394.

24
25 New §21.416, Commercial or Industrial Activity, provides the
26 requirements for an activity to qualify as a commercial or

1 industrial activity for purposes of the OAS program. The
2 language originated from current §21.411(13) but is amended to
3 conform with new §21.180. The new language strengthens
4 compliance aspects relating to amount of time the activity must
5 be staffed by an employee. These changes will provide for
6 better enforcement of the provisions and should help to
7 eliminate the problem of a sham business being used to meet the
8 sign location requirements. The language also deletes the
9 requirement of a landline telephone to recognize the emergence
10 of cellular technology. The provisions are consistent with
11 §21.180 and provide for consistent definition of a business
12 activity for both programs.

13

14 New §21.417, *Erection and Maintenance from Private Property*,
15 provides that the department will not issue a sign permit if the
16 sign cannot be erected and maintained from private property.
17 This language is added to be consistent with the language in new
18 §21.167.

19

20 New §21.418, *Appeal Process for Permit Denials*, adds an appeal
21 of a permit denial to the executive director. This provision
22 was added to be consistent with the procedures authorized under
23 the primary road program. The current rules authorize an appeal
24 to the Board of Variance if a sign cannot meet the requirements
25 of the subchapter but the owner feels that an injustice will
26 result if the sign is not authorized, but not an appeal to

1 ensure consistent application of the rules throughout the state.
2 Sign owners are using the variance process to argue that the
3 permit met all requirements but had been wrongly denied by the
4 department. The appeal process is established to mirror the
5 current process for primary roads and matches the language in
6 new §21.170. The new section provides a 45-day request period,
7 which will provide a specific date to finalize an application if
8 an appeal is not requested.

9

10 New §21.419, Board of Variance, establishes the board and
11 outlines the responsibility of the board. This section contains
12 the substance of current §21.531 with only minor grammatical
13 changes.

14

15 New §21.420, Permit Expiration, provides the date that a permit
16 expires. This language restates current §21.441(c)(1)
17 maintaining the one-year validity period.

18

19 New §21.421, Permit Renewals, provides the renewal process for
20 OAS permits. The language expands current §21.441(c) to include
21 a period for acceptance of late renewals. The new language adds
22 a requirement that the OAS permit must be renewed within 45 days
23 of its expiration. Currently, the rules are silent on this and
24 the department has applied inconsistent policies across the
25 state. By adding a specific deadline the department is putting
26 the industry on notice that permits must be renewed in a timely

1 fashion or the sign is subject to removal. In addition, the
2 section also states that the department will send notice to the
3 permit holder 30 days prior to the expiration and a reminder
4 notice within 20 days after the expiration date if the permit
5 holder fails to renew the permit. This language mirrors the
6 language under the primary program.

7

8 New §21.422, Transfer of Permit, provides the requirements for
9 transferring permits. The language restates current §21.441(d)
10 and is consistent with new §21.173. New language prohibits the
11 transfer of a permit if there is a pending cancellation
12 proceeding regarding the permit, so that the cancellation
13 process can proceed without the necessity of changing the
14 parties involved.

15

16 New §21.423, Amended Permit, provides a new amended permit
17 process. This language corresponds to new §21.174 and provides
18 the ability to amend an existing permit to make specific
19 changes. This process will eliminate the need to cancel the
20 existing permit and subsequently apply for a new permit for the
21 same location or sign. The current process is an administrative
22 burden on all parties and this new section provides for a more
23 streamlined procedure.

24

25 New §21.424, Permit Fees, provides the fees under Subchapter K.
26 Transportation Code, §394.025 requires the commission by rule to

1 prescribe a fee to issue a permit in an amount the commission
2 determines is sufficient to enable the commission to recover the
3 costs of enforcing the orderly and effective display of outdoor
4 advertising along rural roads.

5

6 As explained under §21.175 of this preamble, the department has
7 determined the cost to run an effective revenue neutral OAS
8 program under new §21.423. The fee for an original application
9 is raised from \$96 per sign to \$100. The renewal is raised from
10 \$40 per sign to \$75. The rule also adds the \$100 late fee for a
11 permit renewal received within 30 days of the expiration. These
12 fees are the same as those under §21.175 for the interstate and
13 primary highway program.

14

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

25

26 New §21.426, Administrative Penalties, provides the process for

1 imposing administrative penalties. The section contains the
2 substance of current §21.542 and §21.572. In addition this
3 section establishes a penalty matrix. The department has
4 reviewed the violations and set a specific dollar amount for
5 certain violations. A permit plate violation is set at \$150 per
6 violation, the lowest penalty available under Transportation
7 Code, §394.081. A registration or location violation is set at
8 \$250 per violation. The rule makes it a \$500 penalty for
9 maintenance from the right of way or performing maintenance
10 without obtaining an amended permit. It is a \$1000 penalty, the
11 highest amount authorized under the statute, for erecting the
12 sign from the right of way. The Sunset Commission review for
13 the 2009 legislative session recommended that the department
14 develop a penalty matrix and the department believes it will
15 help eliminate some of the contested cases by offering a set
16 penalty for the violation.

17

18 New §21.427, Abandonment of Sign, establishes when the
19 department will consider a sign abandoned and initiate a
20 cancellation action. The language restates current §21.571 with
21 grammatical changes and matches the language in new §21.181 to
22 maintain consistency with the primary highway program.

23

24 New §21.428, Sign Face Size and Positioning, provides
25 information about size and height limitations for off-premise
26 signs. The language is a restatement of current §21.471 with

1 minor grammatical changes. The size restrictions remain the
2 same. This section also includes language that is in new
3 §21.182 regarding how the sign face size is calculated.
4 Although this measurement calculation is not part of current
5 Subchapter K it is consistent with current policies on
6 determining size of the sign face. Subsection (i), regarding
7 the requirement of an amended permit to change the size of the
8 sign face, is added to ensure consistency with the primary
9 highway program.

10

11 New §21.429, Spacing of Signs, clarifies the spacing
12 requirements for signs on rural roads provided by Transportation
13 Code, §394.045. The current rule and statute provide that small
14 signs may be erected closer together than large signs, which may
15 create a compliance problem if there is a larger pre-existing
16 sign. Under current §21.451, a sign of over 301 square feet in
17 size may not be erected closer than 1,500 feet from another off-
18 premise sign. However, a sign of less than 301 square feet may
19 be erected 501 feet from the larger sign. This creates a
20 problem if the pre-existing sign is damaged by an outside force
21 and is required to be replaced. It would no longer be eligible
22 for a permit at that location because it may not be erected
23 within 1,500 feet of the smaller sign. The change to the
24 language clarifies that the department will not permit a new
25 smaller sign that will in turn create a nonconforming sign out
26 of a pre-existing larger sign. The section provides that it is

1 the spacing distance of the larger of the two signs in question
2 that dictates the spacing requirement. Additional language is
3 added to this section to make it consistent with new §21.187
4 regarding the spacing requirements for an OAS on a primary road
5 when those spacing requirements are applicable to rural roads.
6 The spacing from intersections is not included as this spacing
7 restriction is not necessary for the intersections of rural
8 roads.

9
10 New §21.430, Multiple Faced Signs, provides the process for
11 determining the size of the sign face of a multiple-faced sign,
12 which is used to determine the spacing requirements. The
13 language restates current §21.481 with grammatical changes.

14
15 New §21.431, Wind Load Pressure, provides the amount of wind
16 pressure that signs must be able to withstand. The language
17 restates current §21.441(b)(2)(B) with minor non-substantive
18 changes.

19
20 New §21.432, Height Restrictions, provides the restrictions for
21 the height of the sign and sign structure and how the height of
22 the sign is measured. The language restates current §21.461
23 with grammatical and formatting changes and adds language to
24 make it consistent with §21.189.

25
26 New §21.433, Lighting, provides the types of lighting that can

1 be used for an OAS. The current rules lack specific guidelines
2 on lighting. These provisions are consistent with the language
3 in new §21.190. The inclusion of this language in Subchapter K
4 will address an issue that is overlooked in the current rules
5 and provide consistency with the primary road program. This
6 section also includes the language regarding temporary
7 protrusions to mirror that of §21.190, Lighting and Movement on
8 Signs.

9
10 New §21.434, Repair and Maintenance, provides new guidelines for
11 maintaining and repairing an OAS. The new language is the same
12 as new §21.191 to ensure consistent procedures for all signs.
13 As stated in the discussion under new §21.191, the current
14 language was difficult to enforce and relied too heavily on
15 self-reporting to maintain compliance. The new section provides
16 guidance on what qualifies as routine maintenance and customary
17 maintenance and what is a substantial change.

18
19 New §21.435, Permit for Relocation of Sign, provides for the
20 relocation of a sign that must be removed because of a road
21 construction project. The current rules do not contain such a
22 provision. With the increase in population, many rural roads
23 are being widened to accommodate more vehicles. The department
24 has seen an increase in the number of requests for the
25 relocation of rural road signs. This section, which is modeled
26 after the current primary highway program and the language in

1 new §21.192, provides that the permit holder must obtain a new
2 permit for the new location, unless only a portion of the sign
3 will be located in the highway right of way after the
4 construction project, in which event the permit holder may apply
5 for an amended permit to adjust the sign to be entirely on
6 private property.

7
8 New §21.436, Location of Relocated Sign, provides the order of
9 priority for the location of a relocated sign and tracks new
10 §21.193. The same priority order is used as in the primary
11 highway program. Because the rural road program only requires
12 one business activity to qualify as an unzoned commercial or
13 industrial area there is not a reduction in that requirement.
14 The rules also do not reduce the spacing requirements regarding
15 the spacing between two OAS structures as the spacing is set by
16 statute. In addition, the section specifically states that a
17 sign may not be relocated from a rural road to a highway on the
18 primary system. The relocation provision for signs on the
19 primary system should be reserved for relocations from that
20 system to ensure that there will be adequate spacing for those
21 relocated signs.

22
23 New §21.437, Construction and Appearance of Relocated Sign,
24 provides the requirements for materials and size of a relocated
25 sign to match the language of new §21.194. The section provides
26 that the relocated sign must be constructed with the same type

1 of material and number of poles as the existing sign. The
2 section also requires that the new sign may not be larger than
3 the existing sign and should be placed in the same relative line
4 of sight if possible. These provisions are based on the
5 existing primary highway relocation provisions and are used to
6 maintain consistency between the programs.

7

8 New §21.438, Relocation Benefits, identifies the relocation
9 benefits that a sign owner may be entitled to. The section
10 requires a written agreement that includes a release for claims
11 against the government entity for any temporary or permanent
12 taking of the sign. This language is the same as new §21.196
13 and is included to maintain consistency between the programs.

14

15 New §21.439, Discontinuance of Sign Due to Destruction, provides
16 for the repair or cancellation process for signs that are
17 partially destroyed by an occurrence outside the control of the
18 permit holder. The section tracks the language of new §21.197
19 and contains new provisions regarding destruction caused by
20 vandalism, motor vehicle accidents, and additional natural
21 forces. The current §21.511 is also expanded to address the new
22 cancellation process for failure to obtain an amended permit and
23 repair the damaged sign.

24

25 New §21.440, Order of Removal, provides the authority for the
26 department to order the removal of an OAS. The section restates

1 current §21.156 with grammatical changes. In addition, the
2 language includes a 30-day period in which the sign owner must
3 remove the sign, which provides the department with a definite
4 time for proceeding with its next action. Language also
5 authorizes the department to rescind a removal notice if the
6 demand was issued incorrectly. The new language is added to
7 maintain consistency with language that is being added to new
8 §21.198.

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

19
20 New §21.442, On-Premise Signs, provides the requirements for on-
21 premise signs on rural roads and revises current §21.501. The
22 language is consistent with §21.147 to maintain uniformity
23 between the programs.

24
25 New §21.443 is removed as a result of comments received. It
26 does not address permitting issues and is a basic restatement of

1 the statute and thus it is unnecessary.

2

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

7

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

12

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

18

19 New Subchapter Q, Regulation of Directional Signs, §§21.941 -
20 21.947, revises current §21.155, regarding directional signs.
21 This organizational change eliminates potential confusion
22 between a directional sign, which does not require a license or
23 permit, and off-premise outdoor advertising signs. Current
24 §21.155 is divided into seven sections providing for easier
25 location of particular provisions.

26

1 New §21.941, Description of Directional Sign, provides the
2 definition of a directional sign in language similar to that of
3 current §21.155(c). A directional sign may only contain a
4 message that identifies an attraction or activity meeting the
5 requirements of this section or provide directional information,
6 such as mileage, route numbers, or exit numbers useful to the
7 traveling public in locating the attraction or activity. A
8 directional sign may not contain descriptive words, phrases, or
9 pictorial or photographic representations of the activity or its
10 environs.

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

20
21 New §21.943, Eligibility, provides the eligibility requirements
22 for a directional sign. The sign must be for a privately owned
23 activity or attraction that is of national or regional interest
24 to the traveling public or must be a natural phenomenon, scenic
25 attraction, outdoor recreational area, or scientific, historic,
26 educational, cultural, or religious site. The department will

1 determine whether the attraction or activity satisfies the
2 requirements and may use among other resources, the National
3 Register of Historic Places and the "Texas State Travel Guide."
4 The new section is a restatement of current §21.155(d) without a
5 change of substance.

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

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

17
18 New §21.946, Location and Spacing, provides that a directional
19 sign may not be located within 2,000 feet of an interchange,
20 intersection at grade along the interstate or other primary
21 system highway, a rest area, park, or scenic area. A
22 directional sign may not obscure or otherwise interfere with the
23 effectiveness of an official traffic sign, signal, or device,
24 interfere with a driver's view of approaching, merging, or
25 intersecting traffic, be erected on a tree or painted or drawn
26 on a rock or other natural feature, or be located in a rest

1 area, parkland, or scenic area. The distance between two
2 directional signs facing the same direction of travel may not be
3 less than one mile. Further, not more than three directional
4 signs relating to the same attraction or activity and facing the
5 same direction may be erected along a single route that is
6 approaching the attraction or activity. A directional sign
7 located adjacent to the interstate highway system must be within
8 75 air miles of the attraction or activity and within 50 air
9 miles if located adjacent to a highway on the primary system.
10 The new section restates current §21.155(e)(2), (3), and (7) and
11 (h).

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

23
24 COMMENTS

25 Comments on the proposed repeal of §§21.141 - 21.163, and
26 §§21.401 - 21.581 and new §§21.141 - 21.203, §§21.251 - 21.260,

1 §§21.401 - 21.446, and §§21.941 - 21.947 were received from H.
2 Chris Stokes, Lamar Advertising (Lamar); Michael H. Poole, Media
3 Outdoor Displays (Media Outdoor); Richard Rothfelder, Rothfelder
4 & Falick, LLP (Rothfelder); Brett E. Gilbreath, SignAd Outdoor
5 Advertising Company (SignAd); Lacye D. Odam (Odam); Leona
6 Stabler, Texas Sign Association (TSA); Michael A. Morrill, Metro
7 Outdoor Advertising (Metro); Drew Cartwright, Quorum Media
8 Group, LLC (Quorum Media); Curtis Ford, ACME Partnership, LP
9 (ACME); Douglas Cooper, Southwest Outdoor Advertising, Inc.
10 (Southwest); Tim Anderson, Outdoor Advertising Association of
11 Texas (OAA); M. Cullum Thompson, Jr. and J. Charles Cooper,
12 Outdoor Signs (Outdoor); Jim Henry, Crossland Acquisition, Inc.
13 (Crossland); Kimberly L. Kiplin, Texas Lottery Commission
14 (Lottery Commission); James Ramsey, Impact Outdoor Advertising
15 Co. (Impact); Margaret Lloyd, Scenic America (Scenic America);
16 Carroll Shaddock, Scenic Texas, Inc. (Scenic Texas); Al Smith
17 (Smith); David Oesper, Southwest Texas Section, International
18 Dark-Sky Association (SW TX Dark-Sky); Travis County Judge Sam
19 Biscoe and Travis County Commissioners Court (Travis County);
20 Benjamin Jones, Texas Section, International Dark-Sky
21 Association (TX Dark-Sky); Star Carey, Wildlife Preserve
22 (Wildlife); Paul A. Rohlf's, Budget Signs in San Antonio (Budget
23 Signs); Joel Heine, Daktronics (Daktronics); Robert Betz,
24 Federal Health Sign Company (Federal Health); Pete Sitterle,
25 Comet Signs (Comet); Kenneth Peskin, International Sign
26 Association (International Sign); Todd Kercheval, Texas Property

1 Rights Association (TPRA); and John Lewis, Lewis Signs (Lewis).

2

3 COMMENT: SignAd and Lamar commented on the definition of
4 intersection in §21.142. They argued that it should not include
5 all intersections of the road as this would include every minor
6 road that ended at the edge of the frontage road. Lamar
7 requested that the department only include roadways regulated by
8 this subchapter and Sign Ad requested that the department only
9 include roads that fully intersect each other.

10

11 RESPONSE: The department agrees with these comments and has
12 changed the definition of intersection to state that it is a
13 junction of two roadways that are on the primary system. This
14 definition is consistent with department's previous
15 interpretation with the current rule.

16

17 COMMENT: Lamar requested a clarification of the definition of
18 public park in §21.142 and §21.402 to include only school
19 playgrounds that are open to the public.

20

21 RESPONSE: The department disagrees with the comment. The
22 department does not believe it is unreasonable for the
23 definition of public park to include school playgrounds
24 regardless of whether anyone other than school children have
25 access to the area.

26

1 COMMENT: Rothfelder commented that the definition of
2 nonconforming in §21.142 and §21.402 is too narrow.

3
4 RESPONSE: The department agrees with the comment and has
5 changed the definition to include a sign that becomes
6 nonconforming due to a changed condition. This language is
7 included in the current definition and will allow the department
8 to continue with current procedures.

9
10 COMMENT: Lamar complains that in §21.143 two different standards
11 apply for permits - one inside municipality, one outside
12 municipality - and would prefer the standard for outside a
13 municipality be used. Lamar also questions the visibility
14 requirement as being subjective which leads to inconsistent
15 enforcement.

16
17 RESPONSE: The department agrees in part to this comment and has
18 amended the definition of visible in §21.142 to require that a
19 person be able to read the sign. The definition complies with
20 the department's federal and state agreement and provides a more
21 enforceable standard. As to the two standards issue, the
22 department does not have the authority to eliminate one of the
23 standards. The standards are simply a restatement of
24 Transportation Code, §391.031 and are included in the rules for
25 convenience.

26

1 COMMENT: Rothfelder complains that §21.145(b) regarding the
2 extension of right of way is not readily understandable and
3 subject to interpretation with unintended consequences.

4

5 RESPONSE: The department disagrees with this comment.
6 Subsection (b) explains what happens when railroad tracks cross
7 a regulated highway. In some instances the state does not own
8 the right of way surrounding the railroad crossing. However,
9 the department wants to maintain the same right of way line
10 through the property. This language is part of the current
11 rules and has been enforced by the department with few problems
12 and is necessary to maintain federal compliance.

13

14 COMMENT: Odam requests that signs for non-profit clubs in
15 §21.146 be increased to 32 square feet from the current 8 square
16 feet size.

17

18 RESPONSE: The department agrees with this comment and has
19 amended the rule to allow non-profit club signs to be a maximum
20 of 32 square feet. This makes this type of sign more consistent
21 with other exempt signs and improves the legibility of these
22 signs.

23

24 COMMENT: TSA, Daktronics, and Budget Signs commented on the
25 qualifications for on-premise signs in §21.147 and §21.442.
26 They requested a change in subsection (d) regarding brand and

1 trade name advertising.

2

3 RESPONSE: The department agrees with the comments and has
4 changed the language of this section to track the language from
5 23 U.S.C. §750.709. The department's attempt to clarify
6 principally at 51% and provide guidelines for electronic on-
7 premise signs was clearly confusing based on the number of
8 comments.

9

10 COMMENT: Metro requested a change to §21.150(a)(1) and §21.408
11 regarding the continuation of nonconforming signs requesting the
12 language state "control of this new subchapter" and not "control
13 of the department."

14

15 RESPONSE: The department agrees in part and has added language
16 to address issues of a sign becoming nonconforming due to
17 changes to these rules. However, the department cannot remove
18 the language regarding time that a sign comes under control of
19 the department because this addresses signs on highways that are
20 added to the primary system and become subject to the rules
21 after the sign has been erected.

22

23 COMMENT: Lamar commented on §21.150(c)(1) and requested that the
24 sign owner be able to temporarily remove a sign for utility
25 installation.

26

1 RESPONSE: The department agrees with this comment; however this
2 does not require a change. The language of the rule allows for
3 the sign to be removed and re-erected at the request of any
4 condemning authority which includes a utility. For consistency,
5 the department has also changed the language in §21.408 to match
6 §21.150 and address the issues of this comment with regard to
7 rural road signs.

8
9 COMMENT: Rothfelder commented on §21.150(c)(1) stating that this
10 subsection is nonsense, he doesn't understand why a
11 nonconforming sign cannot be removed, and that signs should be
12 grandfathered.

13
14 RESPONSE: The department agrees in part and has changed the
15 language to say that a nonconforming sign cannot be removed and
16 re-erected. For consistency, the department has also changed
17 the language in §21.408 to match this change in §21.150 and
18 address the issues of this comment with regard to rural road
19 signs. The department did not intend to imply that a
20 nonconforming sign could never be removed. The department,
21 however, does not agree that a sign should be grandfathered,
22 which would allow the sign to hold its conforming status. The
23 rules do allow for certain grandfathered status but the changes
24 to the rules do not give a blanket conforming status.

25
26 COMMENT: ACME and Quorum Media commented on the new language

1 regarding when a road becomes subject to the rules under §21.151
2 and §21.446. ACME believes the rules should include a road only
3 when money and funding is acquired or when it's eminent the
4 roadway will be built or restored. Quorum commented that it is
5 irresponsible for the department to regulate and control a
6 proposed roadway prior to securing funding.

7
8 RESPONSE: The department disagrees with these comments. The
9 rule now states that a road comes under this subchapter when
10 environmental clearance and the approved alignment have been
11 obtained. The department has expended money on the road at this
12 time and believes this is the best time to initiate sign
13 regulation. Once the alignment is established sign companies
14 can begin obtaining leases and the department needs to be able
15 to issue permits at that time to ensure compliance with all the
16 spacing and other requirements.

17
18 COMMENT: ACME commented on §21.154 and believes that a license
19 should be allowed to be transferred to a qualified entity.

20
21 RESPONSE: The department disagrees with this comment. The
22 permits held by a licensee can be transferred but the license is
23 issued to a particular entity that has met all the licensing
24 requirements. The department cannot transfer the license to
25 another entity without going through the full licensing process.
26 There is no benefit to the state or the program to allow a

1 license to be transferred if the department must go through all
2 that is required to issue the license without obtaining the
3 license fee.

4

5 COMMENT: Lamar commented on §21.155 and would like the license
6 to be valid for three years.

7

8 RESPONSE: The department's licensing system cannot accommodate
9 multiple year renewals at this time. The department agrees that
10 a multi-year license would be a benefit to the program and is
11 working to update the system to accommodate this change. When
12 the system is available the department will revisit this issue
13 and consider multi-year license options.

14

15 COMMENT: ACME commented on §21.156 and believes a license should
16 not be voidable without the opportunity to cure.

17

18 RESPONSE: The department agrees with comment, however, this
19 does not require a change to the language as the rule provides
20 for this request. The department used the term "voidable"
21 instead of "void" at the request of the committee. With the
22 term void the license would not be valid due to the issuance of
23 a bad check or money order. Under the term voidable the
24 department must take some action to render the license invalid.

25

26 COMMENT: ACME commented on §21.157 and requested that the

1 department send notices by certified mail.

2

3 RESPONSE: The department agrees with this comment and has added
4 language to require certified mail for all notices throughout
5 the rule that trigger some action by the department or provide
6 for a timed response from the permit or license holder. By
7 using certified mail there is no longer a reason to have a
8 presumed receipt clause so section §21.157(b) is deleted. The
9 department will know the date the letter was received and will
10 be able to initiate the time-period based on that information.

11

12 COMMENT: Metro, ACME, Quorum Media, Rothfelder, and Southwest
13 all commented on §21.158 regarding the number of violations a
14 license holder must commit for the department to initiate
15 revocation proceedings. Metro suggested a schedule of the
16 number of permits to the number of violations as percentages of
17 permits: 1-50, 30%; 51-250, 20%; 251-500, 10%; 500+, 5%. ACME
18 believes that one violation translating to revocation is onerous
19 and unreasonable. Southwest and Quorum stated that the ten
20 percent rule is grossly unfair to small operator. Rothfelder
21 stated that only "outstanding" violations should be considered
22 and that due process be followed.

23

24 RESPONSE: The department agrees that ten percent does make
25 licensees that hold fewer permits at a disadvantage and has
26 changed the rule. The department created a graduated system to

1 provide for more equal assessments. Under the changed section a
2 licensee who has more than 1000 permits must have violations
3 equaling at least 10 percent prior to enforcement action; a
4 licensee with 500-999 permits, 15 percent; licensee with 100-499
5 permits, 20 percent; and if the licensee has less than 100
6 permits then they must have violations equaling 25 percent of
7 the number of permits held. The department feels this system
8 responds to the concerns of the commenters while still providing
9 the department adequate authority to take action against a
10 license holder with compliance issues. The rule was also
11 changed to clarify that only final violation enforcement actions
12 will be included in the calculation. Violations that are still
13 pending in the hearing process will not be used to take
14 revocation actions.

15
16 COMMENT: Quorum commented on §21.158(c) requesting additional
17 time to request an appeal to accommodate small sign companies
18 with less administrative staff.

19
20 RESPONSE: The department agrees with this comment and has
21 extended the time to request an administrative hearing from 20
22 days to 45 days as requested. The department agrees that it can
23 take time for a sign company to compile the information
24 necessary to make the determination as to whether to request an
25 appeal. The department also added language stating that the
26 department will send the notice by certified mail as requested

1 by ACME regarding §21.157. This change also includes the
2 removal of subsection (d) regarding the presumption of receipt.

3
4 COMMENT: Lamar and SignAd commented on §21.159(d)(7) and §21.409
5 regarding the requirement that the applicant provide a document
6 from the city that provides the applicable portion of the zoning
7 map. SignAd is concerned with being able to obtain the map.

8
9 RESPONSE: The department disagrees that an alternative is
10 necessary. The zoning map provides important information on the
11 location of the sign and the city is required to comply with
12 requests for documents.

13
14 COMMENT: ACME and Outdoor commented on 21.159(c) and want to be
15 able to obtain a permit regardless of the municipality's
16 ordinance or obtain the state permit first as most cities
17 require the state permit to issue the city permit.

18
19 RESPONSE: The department disagrees in part with the request to
20 change the language. The rule already provides that if the city
21 will not issue a permit without a state permit the department
22 will issue the permit first. There is no need for an additional
23 alternative. However, to clarify the department has removed the
24 requirement that the city ordinance state that the state permit
25 must be issued prior to issuance of the city's permit to
26 accommodate a city that has more specific procedures than those

1 adopted in their ordinance.

2

3 COMMENT: Southwest commented on §21.159(a)(5) and states that it
4 is unreasonable to have to specify that the sign will be located
5 in the extraterritorial jurisdiction (ETJ) of the city unless
6 the city specifically regulates signs inside their ETJ.

7

8 RESPONSE: The department disagrees. The sign company should
9 know the specifics regarding the location of where the sign will
10 be placed. It is not unreasonable to require the sign company
11 to inform the department of whether the sign is in the ETJ of a
12 city. This information is important to determining if the
13 location is eligible for a sign.

14

15 COMMENT: OAA and Lamar commented on §21.159(a)(6) and
16 §21.409(a)(6) and want "owner of recorded easement" added as an
17 authorized signature.

18

19 RESPONSE: The department disagrees with these comments and will
20 continue to require the land owner or their representative to
21 sign the permit.

22

23 COMMENT: Lamar and the OAA commented on §21.161 and §21.410
24 regarding the withdrawal of the site owner's consent. Lamar
25 requested that the entire section be deleted and OAA requested
26 "in court" be removed from subsection (b).

1

2 RESPONSE: The department agrees in part to the request and has
3 removed the requirement that the dispute be resolved by a court
4 order. However, the department believes that the land owner
5 should have an avenue to report that they have withdrawn consent
6 for the sign and has left the language in the section.

7

8 COMMENT: ACME and Quorum Media commented on §21.163 and §21.412
9 regarding permit application review. Each requested a more
10 precise option for submitting applications including a request
11 for an electronic application system.

12

13 RESPONSE: The department disagrees in part and is not making any
14 changes to the rule. However, the department is looking at
15 developing a new electronic system that will allow the applicant
16 to submit an electronic application. The department will
17 revisit this issue if that system becomes available.

18

19 COMMENT: Southwest, Outdoor, and SignAd commented on §21.164 and
20 §21.413 and stated that subsection (d) creates a conflict
21 between applicant and landowner and that the department should
22 allow the applicant to inform the landowner.

23

24 RESPONSE: The department disagrees with the comment and will
25 maintain the landowner notification. Landowner rights were
26 discussed during the committee and the members agreed to the

1 notifications.

2

3 COMMENT: Quorum commented on §21.164 and §21.413 and requested
4 that the department make a decision on the application within 30
5 days instead of 45 days.

6

7 RESPONSE: The department disagrees with this comment and will
8 maintain the 45 day notice requirement. The department intends
9 to handle the applications as quickly as possible and has made
10 it a performance measure for employees. However, with the size
11 of the state it will often take some time to schedule the site
12 inspections.

13

14 COMMENT: OAA commented on §21.164 and §21.413 requesting that
15 the denial notice in subsection (c) state all reasons for denial
16 because the application fee is paid for as a complete
17 inspection.

18

19 RESPONSE: The department disagrees with the need for this
20 change. The department intends to provide a full review for
21 each application. State compliance would be jeopardized if the
22 department were required to issue a permit because a field agent
23 failed to state a reason for denial in the denial letter. The
24 department will continue to conduct training for the field staff
25 in application review and notice requirements to minimize any
26 deficiencies in this area.

1

2 COMMENT: Metro commented on §21.165 and §21.414 regarding the
3 permit plate and requested a change from main traveled way to
4 nearest access or frontage road or adjacent public roadway.
5 Metro also requested a change from 30 days to 180 days on the
6 posting requirement and wants the cancellation changed to
7 issuance of a violation.

8

9 RESPONSE: The department agrees in part and has changed the
10 language regarding where the permit plate must be attached to
11 the sign structure. The change states that the plate must be
12 attached so that it is visible from the closest right of way.
13 This change will allow the plate to be visible from the closest
14 area that provides public access. The department disagrees with
15 the request to extend the time-frame for when the plate must be
16 attached to the structure. The rule requires 60 days not 30
17 days as noted in the comment and the department believes that 60
18 days is sufficient time to display the plate. As to the
19 violation issue, the department does not have statutory
20 authority for penalties, thus the only current enforcement
21 action is cancellation. If the statute is amended to give the
22 department other enforcement options the department will revisit
23 this issue along with other violation issues and consider a
24 penalty matrix like that included in §21.426 regarding rural
25 road violations.

26

1 COMMENT: Quorum commented on §21.170 regarding the appeal
2 process for permit denials and requested 45 days instead of 20
3 days to request an appeal, would like the department to respond
4 within 45 days instead of 90, and if the appeal is approved,
5 wants notice as to how many days before the permit will be
6 issued.

7
8 RESPONSE: The department agrees in part and has changed the
9 language to allow 45 days to request an appeal. The department
10 agrees that it could take more than 20 days to prepare for the
11 appeal. The department has also reduced the time for the
12 response to 60 days. The department does not believe that 45
13 days is adequate time to review the permit application and
14 conduct a second site inspection if one is necessary. If the
15 permit is approved the department processes the application at
16 that time and does not feel the rules need to include language
17 saying the department will provide a specific date of permit
18 issuance. For consistency, the department has also amended the
19 language in §21.418 to match this change in §21.170 and address
20 the issues of this comment for rural road signs.

21
22 COMMENT: Rothfelder commented on §21.170 and requested the
23 ability to plead their case in person claiming the department
24 just rubberstamps the initial decision.

25
26 RESPONSE: The department disagrees with this comment. Due

1 process does not require an in-person hearing on the denial of
2 an application. The department believes that an applicant can
3 provide written arguments for any issues with the permit denial
4 and that the opportunity for review provides the necessary
5 oversight to correct any mistakes made by the staff in the
6 initial application decision.

7

8 COMMENT: Crossland commented on §21.171 regarding the expiration
9 of a permit and stated that it believes the language is
10 confusing. The language is confusing as it does not represent
11 current procedures.

12

13 RESPONSE: The department agrees with this comment and has
14 removed the language that says a permit expires if the sign is
15 acquired by the state. The department does not purchase signs
16 or permits but rather provides the opportunity to relocate if
17 the land where the billboard is located is purchased. For
18 consistency, the department has also changed the language in
19 §21.420 to match this change in §21.171 and address the issues
20 of this comment for rural road signs.

21

22 COMMENT: Metro commented on §21.172 and §21.421 and requested
23 that the department provide a 30 day notice prior to permit
24 expiration and a second notice 10 days after the expiration
25 regarding the extended renewal period.

26

1 RESPONSE: The department agrees with the comment and has added
2 language to state that the department will provide a renewal
3 notice to the permit holder 30 days prior to the expiration and
4 a second notice within 20 days of the expiration. With these
5 notice requirements the department had to extend the renewal
6 grace period to 45 days to allow staff adequate time to
7 determine that the renewal was not received and send the second
8 notice.

9
10 COMMENT: Lamar commented on §21.172 and requested that permits
11 be paid annually starting in January.

12
13 RESPONSE: The department disagrees with this comment at this
14 time. The department's system will not accommodate multi-year
15 permits. Changes to the system that will allow multi-year
16 permits are being considered and if achieved the department will
17 revisit this issue.

18
19 COMMENT: Rothfelder commented on §21.172(b) and stated that the
20 language created problems for nonconforming signs and also
21 requested renewal notices.

22
23 RESPONSE: The department disagrees with the comment on
24 §21.172(b). That subsection requires that the sign must
25 continue to meet all applicable requirements to be eligible for
26 renewal. The language under §21.150 regarding nonconforming

1 signs provides guidance for how a sign maintains its
2 nonconforming status. As long as the sign continues to meet the
3 applicable requirement for nonconforming signs the sign is
4 eligible for renewal. As to the notice the department agrees
5 and has added the notice requirement as discussed in the
6 previous comment.

7

8 COMMENT: Odam commented on §21.172 and recommended adding
9 language specifying to what extent a sign must be built to
10 qualify as built within the first year.

11

12 RESPONSE: The department agrees with the comment and has added
13 language to state that the sign must be fully constructed. The
14 department believes this change will clarify that the full sign
15 structure must be erected for the sign to be eligible for
16 renewal. For consistency, the department has also changed the
17 language in §21.420 to match this change in §21.172 and address
18 the issues of this comment for rural road signs.

19

20 COMMENT: Metro Outdoor Advertising commented on §21.173 and
21 §21.422 requesting language to state that if a sign is in
22 compliance and transfer is requested prior to permit expiration
23 or cancellation the transfer will be approved.

24

25 RESPONSE: The department disagrees that the language is
26 necessary. The rule sets out all the issues the department will

1 review to determine if the permit can be transferred. The
2 request asks the department to disregard pending cancellation
3 proceedings. The department does not want to initiate new
4 cancellation procedures if the permit is transferred during the
5 proceedings nor does the department want to bring in a new party
6 after the proceedings have begun. A license holder should not
7 be able to preempt a cancellation by transferring the permit.

8

9 COMMENT: Rothfelder commented and requested that the transfer
10 form include the date thru which permit has been renewed.

11

12 RESPONSE: The department agrees with this request and will add
13 this information to the form. This request does not require a
14 change to the rule.

15

16 COMMENT: SignAd, Metro, and Quorum all commented on the new
17 amended permit process of §21.174 and §21.423. Quorum, Metro,
18 and SignAd argued that the amended permit is overbearing and
19 that 45 days for review is excessive for signs needing
20 maintenance.

21

22 RESPONSE: The department agrees in part with these comments and
23 has changed the language in §21.174 and §21.423. The department
24 does not agree with shortening the time for the review of the
25 amended permit and the language remains at 45 days. The review
26 of the amended permit will require coordination with field staff

1 for the on-site inspection and a review of the permit file by
2 division staff.

3

4 The department agrees that for some customary maintenance an
5 amended permit is not necessary. To make this revision the
6 department amended §21.191 and §21.434 regarding repair and
7 maintenance by moving changes to the sign face and upgrading
8 lighting to routine maintenance which does not require an
9 amended permit. However, the department does not agree that the
10 amended permit will be a hardship to the sign companies. The
11 current rules require that the sign company file a new permit
12 application to make changes to the sign structure. This process
13 should streamline the process.

14

15 COMMENT: Lamar requested that §21.174(b) and §21.423 be
16 stricken or rewritten to make the department track the number of
17 poles with a simple form and also requested an expedited process
18 for times of natural disaster.

19

20 RESPONSE: The department agrees and has added an expedited
21 process for amended permits if the location of the sign is in an
22 area affected by a natural disaster. The expedited process
23 allows the department to waive the requirement that the permit
24 be issued prior to the changes. Under the new language the sign
25 owner must submit the amended permit within 60 days of making
26 the repairs. To ensure compliance the department maintains the

1 ability to enforce violations if the sign owner does not submit
2 the amended permit as required or makes changes that were not
3 authorized for the sign. As to tracking the number of poles,
4 the rule requires an amended permit for customary maintenance
5 which includes replacing poles. The rules state that the
6 department can require the application information applicable
7 for an amended permit. The department may consider different
8 amended permit forms for various purposes and will consider the
9 suggestion when developing the forms.

10

11 COMMENT: Rothfelder commented on §21.174 and argued that the
12 amended permit process is too extreme and that non-conforming
13 sign owners should still be allowed to install energy efficient
14 lighting.

15

16 RESPONSE: The department disagrees with this comment for the
17 reasons stated above and the rules as drafted allow the
18 placement of updated energy efficient lights on nonconforming
19 signs.

20

21 COMMENT: OAA and Lamar commented on §21.174(b) and §21.423(b)
22 and requested that the landowner's and city representatives
23 signature be excluded as requirements for amended permit.

24

25 RESPONSE: The department agrees and has amended the language to
26 specifically state that the signatures of the landowner and city

1 representative will not be required for an amended permit.

2

3 COMMENT: SignAd commented on §21.176 and §21.425 and stated that
4 subsection (g) created a conflict between the applicant and the
5 landowner and that the department should allow the applicant to
6 inform the landowner so that the department does not interfere
7 with the contractual obligations of the parties.

8

9 RESPONSE: The department disagrees with this comment.
10 Throughout the committee process the topic of landowner
11 notifications were discussed and agreed on by the committee
12 members. The notice does not give the landowner any rights and
13 is strictly to keep them informed of the process. Requiring the
14 sign company to issue the notice would just add one more item to
15 the review process and would be creating a requirement that if
16 violated could lead to enforcement proceedings. Instead of
17 creating these types of situations the department agreed to
18 supply the notifications.

19

20 COMMENT: ACME commented on §21.176 and §21.425 and stated that
21 the requirements are onerous and unreasonable requirements
22 because they don't allow for an opportunity to cure and would
23 like a definition of "maintained" in subsection (a)(2).

24

25 RESPONSE: The department disagrees with these comments. The
26 rules provide an opportunity to cure under the provisions that

1 corrections can be made. The opportunity to cure is not an
2 option for violations of false information, clearing vegetation,
3 erecting from the right of way, or repairing without proper
4 authority. Under those provisions the sign company should not
5 be allowed to correct their mistakes and enforcement actions
6 should proceed. The department also does not believe that the
7 word maintained needs to be defined.

8

9 COMMENT: Quorum commented on §21.176(a)(5) and §21.425 and
10 requested 20 feet instead of 10 feet be used to determine if the
11 sign is placed in the correct location and that the sign owner
12 have 20 days instead of 45 to request an appeal.

13

14 RESPONSE: The department agrees with these comments and has
15 made the corresponding changes to the rules. As with other
16 changes the department has agreed to extend the time period to
17 request an appeal to 45 days. Concerning location, if the sign
18 is placed within 20 feet of the location submitted on the
19 application and still meets all other spacing requirements the
20 department will accept that the sign was placed in the correct
21 location. If the sign does not meet other spacing requirements
22 the permit will be subject to enforcement actions.

23

24 COMMENT: Rothfelder commented on §21.176(a)(10) stating that it
25 is unclear as to when one year timeframe begins in regard to
26 when the business activity closes.

1
2 RESPONSE: The department disagrees with the comment and believes
3 the rule provides a clear meaning. This provision is in affect
4 under the current rules and the department has had few if any
5 enforcement issues. The rule requires a two part test. First
6 the department must be able to show that the business activity
7 was created only to allow the location to qualify for a sign and
8 then that the activity has not been in operation for the past
9 year.

10
11 COMMENT: OAA commented on §21.176(a)(1) and §21.425(a)(1) and
12 requested a change from "governmental entity" to "condemning
13 authority" as governmental entity is too limiting.

14
15 RESPONSE: The department agrees with the comment and has made
16 this change to both sections. The department had the language
17 requested by OAA in another section and this change makes the
18 rules consistent.

19
20 COMMENT: SignAd, Metro, Outdoor, and Southwest all commented on
21 §21.178. SignAd requested that the department consider zoning
22 designation of the land on the date of application and allow
23 uses by a city to decide if the site is conforming. Metro,
24 Outdoor, and Southwest argue that references to "small" and
25 "narrow" in paragraph (4) are open to interpretation and should
26 be more clearly stated or deleted.

1

2 RESPONSE: The department disagrees with these comments. This
3 language is part of the federal regulations and the current
4 rules. The department has been implementing these provisions
5 since the beginning of the program and has not identified any
6 issue that required more specific wording.

7

8 COMMENT: Metro and Southwest would like to see changes to
9 §21.179(b) regarding the visibility of the building from the
10 right of way.

11

12 RESPONSE: The department agrees in part and has amended the rule
13 to state that a portion of the building must be visible from the
14 right of way. Since the purpose of an unzoned area is that it
15 be a commercial area the department believes that at least some
16 portion of the building must be visible from the road.

17

18 COMMENT: Lamar requests changes in §21.179(h) to include
19 subsections (d), (e), and (f) and §21.180 in the grandfather
20 clause.

21

22 RESPONSE: The department agrees in part and has added §21.180 to
23 subsection (h). All of the language in subsections (d), (e),
24 and (f) is not new. If the department added the subsections in
25 which the new language is the same as the current language the
26 department would be removing the requirement that the sign

1 comply with any provisions and that is not a viable option.

2

3 COMMENT: Travis County requested that the department add
4 language preventing billboards on property platted for
5 residential development and where deed restrictions prohibit
6 billboards.

7

8 RESPONSE: The department disagrees with these comments. An area
9 platted for residential development that does not prohibited the
10 placement of commercial businesses would make the land use
11 consistent with an area designated for commercial and industrial
12 business which complies with Transportation Code, §391.032. The
13 statute provides that in areas that are not zoned the department
14 should consider if activity is allowed that would normally occur
15 in a commercial or industrial zoned area. Under the rules the
16 department requires two business activities which indicate that
17 the area allows activities that normally occur in zoned
18 commercial and industrial areas.

19

20 As to the deed restriction the department is not a party to the
21 deed restriction and is not in a position to enforce the
22 restrictions. Deed restrictions can lapse if not enforced and
23 since the department is not a party to the deed it would not
24 have the information necessary to determine if the restriction
25 was enforceable. Another party that also holds a deed with the
26 same restriction is the proper party to enforce the deed

1 restrictions.

2

3 COMMENT: Quorum requested that §21.179(d)(1)(A) regarding the
4 square footage of the business be amended to allow for the
5 business to be 300 square feet in size instead of 400.

6

7 REPSONSE: The department disagrees with this comment. This
8 issue was discussed by the committee members and 400 square feet
9 was the compromise achieved between the two conflicting
10 viewpoints.

11

12 COMMENT: Rothfelder argues that §21.179(a)(2) and (f) are
13 unclear and complains that subsection (d)(1)(B), which requires
14 that the business be a business that is customarily allowed in
15 zoned commercial areas, would rule out almost all businesses.
16 Rothfelder also comments that subsection (d)(3) regarding
17 bathrooms is unclear.

18

19 RESPONSE: The department agrees in part to these comments and
20 has clarified that the two activities have access to a bathroom
21 during all hours that they are open. This change removes any
22 ambiguity in the determination of whether the two activities
23 share a hallway or bathroom facilities. The department
24 disagrees that requiring the business activities be something
25 that is customarily allowed in zoned commercial areas rules out
26 most business. This provision is in the current rules and there

1 are many billboards that have been located in unzoned areas
2 based on the existence of two business activities.

3

4 COMMENT: Outdoor and Southwest commented on §21.179(c) and would
5 like clarification that it must be a public road or street to be
6 considered in determining whether the two business activities
7 are adjacent.

8

9 RESPONSE: The department disagrees with these comments. Any
10 road or street that separates the two activities indicates that
11 they are not adjacent.

12

13 COMMENT: OAA requests language in §21.179(d)(2) to state that
14 there can be a door in the dividing floor to ceiling wall
15 between the two activities.

16

17 RESPONSE: The department disagrees that this request is
18 necessary. Stating that the wall must be from floor to ceiling
19 does not mean that there cannot be a door that connects the two
20 activities.

21

22 COMMENT: Quorum commented on §21.180(b)(4) and §21.416(b)(4) and
23 is requesting that the business only be required to be open four
24 days per week instead of five.

25

26 RESPONSE: The department disagrees with these comments. The

1 change to the number of days and hours that the business must be
2 opened was discussed and agreed to during the committee
3 meetings. The purpose of this rule is to indicate that the area
4 is a commercial or industrial area so requiring that the
5 business be open five days a week goes to the establishment of
6 the commercial nature of the area.

7

8 COMMENT: ACME commented on §21.181(c) and §21.427(c) requesting
9 that the language be deleted and believes if a license is paying
10 property taxes on a sign, the department should not cancel the
11 permit.

12

13 RESPONSE: The department disagrees with this comment.
14 Subsection (c) states that the payment of taxes does not
15 indicate that the sign has not been abandoned. The department
16 does not want to base the signs status on whether taxes have
17 been paid; rather the department believes the determination
18 should be based on whether the sign is being used for
19 advertisement.

20

21 COMMENT: Rothfelder stated that he does not understand what
22 needs repair means and who makes that determination under
23 §21.181(a)(2).

24

25 RESPONSE: The department does not agree that a change to the
26 language is necessary. This language is in the current rule and

1 the department has not identified any problems with the
2 enforcement of it. It is clear, as with all enforcement issues,
3 that the initial determination is the department's
4 responsibility. If the sign is abandoned because of its state
5 of disrepair then the department is responsible for initiating
6 the cancellation proceedings. If the sign owner challenges the
7 department's determination then the administrative judge will be
8 involved in the determination of the issue.

9

10 COMMENT: The Lottery Commission and OAA requested that the
11 protrusion size under §21.182 and §21.428 be increased. The
12 Lottery Commission currently advertises on 131 billboards and
13 uses a digital display box that will qualify as a protrusion
14 under the new rules. The boxes range in size but 97 of them are
15 35% or less than the size of the billboard and they have
16 requested a change in the size of the protrusion to accommodate
17 those signs. OAA requested that the protrusion size be
18 increased to 33%.

19

20 RESPONSE: The department agrees with these requests and has
21 amended the rule to allow the protrusions to be 35% of the size
22 of the sign.

23

24 COMMENT: Metro commented on §21.182(c)(3) and (e) and requested
25 the square footage of the sign size be 840 square feet.

26

1 RESPONSE: The department agrees with the request and
2 acknowledges that there was an error in the calculations for the
3 maximum area of the sign. The language has been changed but due
4 to a change in the size of the protrusion, the maximum area of
5 the sign has increased. The section has been changed to provide
6 the correct total of 907 square feet. For consistency, the
7 department has also amended the language in §21.428 to match
8 this change in §21.182 and address the issues of this comment
9 for rural road signs.

10

11 COMMENT: Odam commented on §21.182 and stated that the previous
12 language allowed for the sign to be built smaller than requested
13 on the application but could be increased as long as it was no
14 more than a ten percent increase and wants a statement in the
15 rule that continues to allow a sign to be built up to the
16 permitted size at any time.

17

18 RESPONSE: The department disagrees with this comment. The
19 department has discovered that it is difficult to track changes
20 in signs and feels that the sign should either be constructed as
21 requested in the permit or be held to the structure that was
22 constructed. The permit holder will need to go through the
23 amended permit process if they want to make any changes to the
24 size of the sign after it has been constructed.

25

26 COMMENT: Metro commented on §21.183 and requested that the

1 department provide an independent traffic safety engineer report
2 if the permit was denied or cancelled because it causes a driver
3 to be unduly distracted, obscures or interferes with a traffic
4 control device, or obscures or interferes with a drivers view of
5 the traffic per §21.183(1), (2), or (3).

6
7 RESPONSE: The department disagrees with this comment. The
8 department employs traffic engineers who through their
9 experience can make a decision on these issues without requiring
10 a costly traffic safety engineer report. The department is also
11 tasked with making permitting decisions and is not going to pass
12 this responsibility to a third party through an independent
13 report.

14
15 COMMENT: ACME requests that the department reduce the distance
16 that a sign must be from a park from 1,500 feet to 500 feet in
17 §21.184.

18
19 RESPONSE: The department disagrees with this request. The
20 current rules provide for the 1,500 feet distance from a park
21 and the department feels that this is the correct spacing
22 requirement at this time.

23
24 COMMENT: SignAd, ACME, Media Outdoor, and Impact all commented
25 on §21.185. Sign Ad and Media Outdoor requested that the
26 department return to the previous interpretation on the spacing

1 for intersections which would not include roads that do not
2 fully intersect each other. ACME and Impact requested the
3 spacing from intersections be changed to 500 feet instead of
4 1,000.

5
6 RESPONSE: The department agrees in part and has changed the
7 definition of intersection as discussed previously. The
8 department is not considering changes to the spacing distance at
9 this time.

10
11 COMMENT: Lamar, Odam, and OAA all commented on §21.189 and
12 §21.432 requesting the ability to exceed the height restrictions
13 for wind turbines and solar panels placed on the sign structure.

14
15 RESPONSE: The department agrees with these comments and has
16 changed the rules to allow solar panels and wind turbines to be
17 placed on the sign structure. The rule provides that these
18 items can be above the 42 and 1/2 foot height restriction. This
19 change does not allow any portion of the sign face or
20 advertisement area of the sign to exceed the 42 and 1/2 height
21 restriction.

22
23 COMMENT: Lamar requests allowances to upgrade to new energy
24 efficient technology with less light spillage for all signs
25 (§21.190(b)).

26

1 RESPONSE: The department agrees with this comment, however, the
2 rules already authorize an upgrade to energy efficient lights
3 for a nonconforming sign. This does not require a change to the
4 new proposed rules. The department did make it easier to update
5 lights by adding an energy efficient lighting system to routine
6 maintenance under §21.191 and §21.434 which can be performed on
7 any sign without the need of an amended permit. This change was
8 to make it as easy as possible for the sign owner to improve the
9 lighting situation. Making the upgrade a routine change does
10 not give a sign company the authority to add lights to a sign
11 that does not have lights nor does it give the authority to add
12 outdated lights to the sign. The routine maintenance is for
13 updated energy efficient lights only. This requirement is to
14 ensure that the changes do not create more light spillage
15 issues.

16
17 COMMENT: Scenic Texas, Smith, Oesper, SW TX Dark-Sky, Lottery
18 Commission, TX Dark-Sky, Scenic America, and Carey all commented
19 on §21.190 and §21.433 and requested additional lighting
20 restrictions. Scenic Texas wants to preserve the dark sky and
21 requests that the department only allow two downward facing
22 lights. Smith and Oesper also requested only two downward
23 facing lights. Oesper also requested no lighting with greater
24 than 30 footcandles, no illumination when a business is closed
25 and more stringent restrictions for rural areas. Oesper also
26 recommended that the department follow the recommendations of

1 Ian Lewin of Lighting Sciences, Inc., Scottsdale, Arizona.
2 Jones requested that the rules require downward directional
3 lighting and aim directly onto the billboard to minimize
4 spillover, arguing that bright, over lit billboards cause pupils
5 to dilate quickly, causing temporary blindness, and is
6 distracting to drivers. Oesper also requested the department
7 follow Arizona's lead for easier to read, cleaner billboards
8 using less light. Schaar recommended the lights be turned off
9 from midnight to 6 am. and wants the brightness measured in
10 footcandles - 20 to 50 is sufficient for any sign. Scenic
11 America supports use of technology that controls light spillage;
12 if technology is not used, billboard lights should be turned off
13 at dark or no later than 10 pm. outside incorporated cities.

14

15 RESPONSE: The department disagrees with making any additional
16 changes to the lighting requirements at this time. The rules as
17 submitted limit the number of lights to no more than four upward
18 facing lights or four downward facing lights per sign direction.
19 If there are two sign faces both facing the same direction there
20 would be two lights per sign. The current rules do not have any
21 lighting restrictions. The department conducted a survey of the
22 46 states that allow off-premise outdoor advertising (Alaska,
23 Hawaii, Vermont, and Maine do not allow off-premise outdoor
24 advertising). Responses to the survey, which was specifically
25 related to billboard lighting issues, came from 42 of the states
26 and only one state limited the number of lights to two lights

1 per sign. The department did not receive a response from any
2 state that limited the light to a specific maximum wattage per
3 lighting fixture and only two states specify a maximum number of
4 lumens (measurement of light) based on the square footage of the
5 sign face. The department does not have the technical
6 capabilities to measure lumens or foot candles at this time,
7 therefore, it is not making a lumens or foot candle requirement.
8 The department does not agree that it should limit the time that
9 the lights are in use. The department would be unable to
10 enforce lighting restrictions that limited the lights to when
11 the businesses are open or no later than 10:00 p.m. This would
12 require increased staff and shift employees to oversee
13 enforcement. The department will continue to monitor lighting
14 issues and technical advancements in this area. If the FHWA
15 completes their study on lighting issues and the study indicates
16 more restrictions are warranted the department will reconsider
17 additional restrictions. With the changes made by these rules
18 regarding the number of luminaries allowed per sign face, Texas
19 is more restrictive than 97 percent of the states that responded
20 to our inquiries.

21
22 COMMENT: Lamar, Lottery Commission, and OAA all commented on
23 §21.190(g) and §21.433 regarding the number of changes the
24 digital display protrusion could be changed per day and the time
25 allotted for the change. Lamar and Lottery Commission requested
26 a change be allowed every six hours. OAA requested a change six

1 times per day. The Lottery Commission also requests that the
2 department allow the change to take place over two minutes
3 instead of one minute.

4

5 RESPONSE: The department agrees with these changes and has
6 amended the language to allow a change four times per 24 hours
7 and allow the change to occur over two minutes to accommodate
8 current technology.

9

10 COMMENT: SignAd and Lamar commented on §21.191 and §21.434.
11 SignAd disagrees with these changes since their signs are older
12 and on wood poles which cannot be upgraded to steel poles
13 because of city ordinance. These restrictions prevent them from
14 making signs safer with catwalks, etc. Lamar requests that the
15 department maintain the current rules until FHWA issues guidance
16 on customary maintenance.

17

18 RESPONSE: The department disagrees with these comments. The
19 department does not have the authority to force changes in city
20 ordinances and cannot require a certified city to allow changes
21 to the sign structure. The current rules and these new rules do
22 not allow the change from wood to steel poles on nonconforming
23 signs. However, the new rules will allow catwalks to be built
24 on existing signs structures regardless of whether the sign is
25 conforming. The department also disagrees with leaving the
26 requirement as stated in the current rules. The current rule is

1 confusing and the department has had difficulty enforcing the
2 rule. Sign companies have often disregarded the new permit
3 requirement which has left the department with signs and permits
4 that do not match. The department believes the new rules will
5 improve this process.

6
7 COMMENT: SignAd, Metro, ACME, Outdoor Signs, and Southwest all
8 commented on the relocation time period in §21.192 and §21.435.
9 They each stated that 18 months is not enough time to find a
10 relocation site and requested that the time period be changed
11 ranging from 36 months to ten years.

12
13 RESPONSE: The department agrees in part and has amended the rule
14 to provide 36 months to apply for the relocation permit. The
15 department does not agree that five or ten years is a reasonable
16 amount of time. To accommodate the extended relocation
17 provision the department added language requiring that the
18 permit must remain valid during the time between the sign's
19 removal and its erection at the new location. This requires
20 that the permit holder submit the annual renewal and renewal
21 fee. Failure to maintain an active permit will make the permit
22 ineligible for relocation.

23
24 COMMENT: SignAd and Lamar commented on the relocation
25 requirements of §21.193. They did not want to be limited by the
26 requirement that as a first and second priority the sign must be

1 located on the same property.

2

3 RESPONSE: The department agrees in part and has removed the
4 first priority that required the sign to be relocated straight
5 back from its current location. However, the department
6 maintained the language that the sign owner must first attempt
7 to relocate the sign on the same property before looking to
8 other locations. The department believes this change provides
9 the sign owner more flexibility but still maintains safeguards
10 for the current landowner. For consistency, the department has
11 also amended the language in §21.436 to match this change in
12 §21.193 and address the issues of this comment for rural road
13 signs.

14

15 COMMENT: Lamar and OAA both commented on §21.197 and §21.439 and
16 the problems that could happen in the event of a natural
17 disaster. They requested an expedited process for signs in an
18 area that is declared a natural disaster to ensure that they are
19 able to quickly address damage to their signs.

20

21 RESPONSE: The department agrees with these comments and has
22 provided for an expedited process. This process will allow the
23 sign owner the ability to repair the sign prior to approval by
24 the department if the sign is repaired within 180 days and the
25 sign owner sends all required documentation to the department
26 within 60 days of the repair. The department agrees that

1 limited resources would slow the repair process if the sign
2 company was required to get approval prior to the repairs.

3

4 COMMENT: Lamar also requested changes to §21.197(g) to include
5 the definition of destroyed sign per the FHWA memo of September
6 9, 2009 which stated "Destroyed means that 60% or more of the
7 upright supports of a sign structure are physically damaged such
8 that the normal repair practices would call for: in the case of
9 wooden sign structures, replacement of the broken supports or,
10 in the case of metal sign structures, the replacement of at
11 least 30% of the length above ground of each broken, bent, or
12 twisted support."

13

14 RESPONSE: The department disagrees with this request. The
15 definition of the damage for purposes of this subsection is
16 based on 60 percent of the costs. The department will continue
17 to monitor the federal definition and if adopted will consider
18 amending its rules.

19

20 COMMENT: Quorum commented on §21.198 and requested an exception
21 to the 30 day removal if the cancellation is under appeal.

22

23 RESPONSE: The department disagrees with the need to make changes
24 to the rule to address this issue. The rule gives the
25 department the authority to seek a removal of a sign if it is
26 cancelled. A permit is not cancelled until the completion of

1 the administrative process. If the permit holder requests an
2 appeal of the cancellation there is no cancellation until the
3 final determination is made. There is no need to add an
4 exception to the language.

5
6 COMMENT: Metro, Lamar, ACME, Rothfelder, and OAA all commented
7 on §21.199 and §21.441 regarding the destruction of vegetation.
8 Metro requested a selective cutting of vegetation program to
9 address obscured signs. OAA and Lamar want to be able to trim
10 vegetation from the private property side and want the word
11 "trim" removed. ACME requests reasonable removal of vegetation
12 blocking the visibility of a sign. Rothfelder believes that
13 §21.199(a)(1) needs to clarify that it does not apply where the
14 department has granted permission for removal of trees or where
15 a city requires the vegetation be cut or else it imposes a fine.

16
17 RESPONSE: The department agrees in part with the comments. The
18 department does not have the authority and never intended for
19 the rule to be read to limit a person's ability to manage their
20 own property; this would include the owner's ability to trim
21 vegetation that crosses the property line. The department has
22 added language to clarify that it is not a violation to trim
23 vegetation that encroaches onto private property as long as it
24 is done from the private property and does not damage the
25 vegetation in the right of way.

26

1 COMMENT: Travis County commented on §21.200 and requested that
2 the department expand the local control section to allow
3 counties who desire to assist the department to fulfill its
4 mission enter into interlocal agreements with the department to
5 perform some of the tasks required to effectively regulate
6 outdoor signs outside city jurisdictions.

7
8 RESPONSE: The department disagrees with this comment. State law
9 gives authority to regulate outdoor advertisement to the
10 department and cities. The statute does not provide this
11 authority to the counties; therefore, the department cannot pass
12 on its regulatory functions to the counties.

13
14 COMMENT: Rothfelder commented on §21.202 stating that the
15 language is a question of law and should not be addressed by
16 rule.

17
18 RESPONSE: The department disagrees with the comment. The rule
19 states that the issuance of a permit or license under this
20 chapter does not create a contract or property right. This rule
21 is within the department's rule making authority and provides
22 the department's interpretation of this issue.

23
24 COMMENT: ACME commented on §21.203 and requested that the
25 department fine a complainant for filing misleading or
26 inaccurate information in a compliant as the sign company may

1 incur costs dealing with the complaint.

2

3 RESPONSE: The department disagrees with the comment. The Sunset
4 Commission recommended that the department implement a complaint
5 process and that the process be included in the department's
6 rules. The complaints will be processed by the department and
7 although there will be some interaction with the sign company
8 the department does not believe it will rise to the level that
9 reimbursement is called for. In addition, the department does
10 not want to hinder actual complaints with the threat of monetary
11 reprisals.

12

13 COMMENT: OAA commented on §21.253(a)(1) and requests that the
14 department issue an electronic sign permit based on confirmation
15 that the sign complies with FHWA regulations, thereby allowing
16 for local control of signs.

17

18 RESPONSE: The department disagrees with this comment. The
19 electronic signs are governed by both the state and the city.
20 The department does not believe that relinquishing all control
21 of this issue to the city is in the best interest of the state
22 or the outdoor advertising program. Electronic billboards are a
23 relatively new issue in Texas and the department will continue
24 to be a part of the permitting process.

25

26 COMMENT: Scenic Texas and Scenic America commented on §21.255

1 regarding the number of electronic sign faces on one sign
2 structure. Both requested that only one electronic sign face
3 per sign be allowed as it is the department's current
4 interpretation.

5
6 RESPONSE: The department disagrees with this request. The
7 current language of the rule has been challenged as unclear.
8 The department's current interpretation of the rule allows two
9 signs to be within the restricted distance as long as the
10 electronic sign portion faces opposite directions of travel.
11 Under this interpretation a sign can have one electronic sign
12 face that is directed at the north-bound traffic and a sign
13 directly across the roadway can have an electronic sign face
14 directed at the south-bound traffic. The rule as written allows
15 both electronic sign faces to be on the same sign. The spacing
16 restriction still applies. So if one sign has two electronic
17 faces the next electronic sign has to be 1,500 feet away in both
18 directions.

19
20 COMMENT: Quorum Media commented on §21.255 regarding spacing of
21 electronic billboards stating that the rule should apply to
22 billboards on the same side of the highway only.

23
24 RESPONSE: The department disagrees with this comment. The
25 department believes that each electronic sign should be 1,500
26 feet from an electronic sign facing the same direction of

1 travel. The change to the rule allows a sign to have two
2 electronic sign faces, but to address the distance issue, the
3 department believes it is reasonable to include both sides of
4 the highway for spacing calculations. Under the rule, an
5 electronic sign facing northbound traffic must be 1,500 feet
6 from another electronic sign facing northbound traffic
7 regardless of which side of the highway the electronic sign is
8 on.

9
10 COMMENT: Travis County requests that the department close a
11 loophole that allows on-premise signs that harm safety,
12 aesthetics, and other public interests due to over lighting and
13 electronics. They also request that the department prohibit all
14 electronic signs in unincorporated areas, whether on-premise or
15 off-premise.

16
17 RESPONSE: The department disagrees with part of the comment as
18 the new rules do not authorize electronic off-premise signs in
19 unincorporated areas. As to on-premise signs the department
20 does not have the authority to restrict their choice of displays
21 regardless of whether it is within an incorporated area or not.

22
23 COMMENT: TSA commented on §21.401 stating that outdoor
24 advertising has different meanings and requests the term off-
25 premise advertising to replace outdoor advertising.

26

1 RESPONSE: The department disagrees with this comment. The term
2 outdoor advertisement has been used to reference off-premise
3 signs regulated by the Highway Beautification Act since its
4 inception. The department believes that changing the term at
5 this time would lead to greater confusion.

6
7 COMMENT: TSA, Budget Signs, and Daktronics commented on §21.402
8 and requested a definition for on-premise sign and changes to
9 the definitions of sign and sign face.

10
11 RESPONSE: The department disagrees with these requests. The
12 department does not believe a definition of on-premise sign
13 should be added to the definition section. What qualifies as an
14 on-premise sign is fully discussed in §21.442. Adding a shorter
15 definition will create confusion in determining if the sign
16 qualifies as an on-premise sign. The department also disagrees
17 that changes to the sign and sign face are necessary. The
18 recommended changes were primarily style issues and do not
19 request changes to the meaning of the terms.

20
21 COMMENT: TSA commented on §21.428 and request an increase in the
22 size of an on-premise sign for multi-tenant signs. John Lewis
23 also requested changes to the department regulations of on-
24 premise signs since on-premise signs are regulated by the Texas
25 Department of Licensing and Regulation.

26

1 RESPONSE: The department agrees with these comments. The main
2 function of these rules is to detail the permitting process and
3 outline what qualifies for a sign permit. The department does
4 not have statutory authority to issue or require a permit for an
5 on-premise sign. Since this section of the rule is discussing
6 size restrictions for the issuance of a permit the department
7 has removed the reference to on-premise signs. On-premise signs
8 are still governed by the statute but there is no reason to
9 simply restate the statute in department rules.

10

11 COMMENT: SignAd, Metro, Media, ACME, Outdoor Signs and OAA all
12 commented on §21.429 regarding spacing requirements for
13 intersections and interchanges. SignAd argued that the new
14 spacing requirements created difficulty because they must
15 consider city and county maintained roads and wants the rules to
16 only apply to roads on the interstate and freeways. Metro,
17 Outdoor Signs, and Media requested that interchange and
18 intersection be deleted so that it is the same as the current
19 rule. ACME and OAA want the spacing requirements to decrease.

20

21 RESPONSE: The department agrees with the comments and has
22 deleted the spacing requirements for intersections and
23 interchanges. The department agrees that the nature of roads
24 under the rural road program do not warrant the 1000 foot
25 spacing requirement. This change will maintain the current
26 procedures regarding spacing.

1

2 COMMENT: TSA, Lewis, and International Signs requested that
3 §21.430 regarding multi-faced signs apply to off-premise signs
4 only.

5

6 RESPONSE: The department agrees and has removed the reference to
7 on-premise signs. As discussed above the purpose of the rules
8 is to issue permits and the department does not have authority
9 to issue permits for on-premise signs.

10

11 COMMENT: TSA, Budget Signs, Daktronics, Federal Health, Comet,
12 International Sign, and Lewis all requested that §§21.433-21.441
13 not include on-premise signs.

14

15 RESPONSE: The department agrees and has removed all references
16 to on-premise signs in these sections for the reasons stated
17 above.

18

19 COMMENT: SignAd and Lamar commented on §21.436 and requested the
20 spacing restrictions for intersection and interchange be deleted
21 under the rural road program.

22

23 RESPONSE: The department agrees and has removed the references
24 to intersections and interchange from §21.146(g)(12). As
25 discussed above the department agrees that the intersections and
26 interchanges can be treated differently under the rural road

1 program based on the nature of the roads that are regulated
2 under the program.

3

4 COMMENT: TSA commented on §21.443 that it apply only to the
5 installation of electrical on-premise signs.

6

7 RESPONSE: The department agrees in part to this request and has
8 deleted this section. As stated, the purpose of the rules is to
9 address the permitting requirements. As this section does not
10 address permitting issues and is a basic restatement of the
11 statute it is unnecessary and has been deleted.

12

13 COMMENT: TSA commented on §21.941-21.947 regarding directional
14 signs and requested that on-premise signs be exempted from the
15 provisions.

16

17 RESPONSE: The department does not agree with this comment. The
18 department does not believe it is necessary to state that on-
19 premise signs are exempt from the directional sign program.

20

21 COMMENT: ACME requested that the department consider reasonable
22 and fair rules that help the outdoor industry, landowners,
23 advertisers, local and county governments, and small businesses
24 by adding off-premise signs to areas that are deficient of off-
25 premise signs. They also request that the department help the
26 outdoor industry maintain existing signs which keep a business

1 healthy.

2

3 RESPONSE: The department agrees in part with this comment. The
4 department is charged with regulating the outdoor advertising
5 industry. The department's goal is not to increase or limit the
6 number of billboards but rather to effectively and consistently
7 regulate the billboard program. The department believes that
8 these new rules will enable the department to carry out its
9 statutory responsibilities in a fair and equitable manner.

10

11 COMMENT: Property Rights Association commented and requested
12 that the department look at anything that removes the
13 opportunity to have a sign, makes it tougher for sign owners to
14 be in business, or removes a source of income for property
15 owners.

16

17 RESPONSE: The department has considered these issues and
18 believes these rules balance the business opportunities for sign
19 companies and property owners against the department
20 responsibility to regulate outdoor advertising issues. The
21 rules do in some situations limit new billboard construction.
22 The department feels that the changes made in this area are
23 necessary to address enforcement and compliance issues. The
24 rules now require the business activity to be open for 180 days
25 prior to the permit application and that the business is open 25
26 hours per week. The department feels that these changes are

1 necessary to improve enforcement and to prohibit billboard
2 construction in areas that do not qualify under the statute.
3 Transportation Code, §391.031 allows billboards in locations
4 that, although not zoned commercial, the land use is consistent
5 with an area zoned for those purposes. By requiring the
6 business to be in operation 180 days and open 25 hours per week
7 the department is trying to ensure that billboards are only
8 placed in areas that comply with the statutory requirement. In
9 addition, the department has added several features that benefit
10 the property owner in these rules such as the land owner
11 notices.

12

13 STATUTORY AUTHORITY

14 The amendments are adopted under Transportation Code, §201.101,
15 which provides the commission with the authority to establish
16 rules for the conduct of the work of the department, and more
17 specifically, Transportation Code, §391.032, which provides
18 authority to establish rules to regulate the orderly and
19 effective display of outdoor advertising on primary roads;
20 Transportation Code, §391.063, which provides authority for the
21 commission to set fees for the issuance of an outdoor
22 advertising license; Transportation Code, §391.065, which
23 provides authority to establish rules to standardize forms and
24 regulate the issuance of outdoor advertising licenses;
25 Transportation Code, §394.004, which provides the commission
26 with the authority to establish rules to regulate the erection

1 and maintenance of signs on rural roads; and Transportation
2 Code, §394.025, which provides authority for the commission to
3 set fees for the issuance of an outdoor advertising license.

4

5 CROSS REFERENCE TO STATUTE

6 Transportation Code, Chapters 391 and 394.

1 SUBCHAPTER I. REGULATION OF SIGNS ALONG INTERSTATE
2 AND PRIMARY HIGHWAYS

3 Division 1. Signs

4 §21.141. Purpose. This division is established to regulate the
5 orderly and effective display of outdoor advertising along a
6 regulated highway within the State of Texas.

7
8 §21.142. Definitions. The following words and terms, when used
9 in this subchapter, shall have the following meanings, unless
10 the context clearly indicates otherwise.

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

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

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

16 (4) Freeway--A divided, controlled access highway for
17 through traffic. The term includes a toll road.

18 (5) Highway--The width between the boundary lines of a
19 publicly maintained way any part of which is open to the public
20 for vehicular travel.

21 (6) Interchange--A system of interconnecting roadways in
22 conjunction with one or more grade separations that provides for
23 the movement of traffic between two or more roadways or highways

1 on different levels.

2 (7) Intersection--The common area at the junction of two
3 highways that are on the primary system. The common area
4 includes the area within the lateral boundary lines of the
5 roadways. [~~The term as defined by Transportation Code,~~
6 ~~§541.303.~~]

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

11 (9) License--An outdoor advertising license issued by the
12 department.

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

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

22 (12) Nonconforming sign--A sign that was lawfully erected
23 but that no longer complies with a law or rule because of

1 changed conditions or because the law or rule was amended after
2 the sign was erected or that fails to comply with a law enacted
3 or rule adopted after the sign was erected.

4 (13) Nonprofit sign--A sign that is erected and
5 maintained by a nonprofit organization under a permit issued
6 under §21.149 of this division (relating to Nonprofit Sign
7 Permit).

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

10 (15) Primary system--Highways designated by the
11 commission as the federal-aid primary system and any highway on
12 the National Highway System. The term includes all roads
13 designated as part of the National Highway System as of 1991.

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

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

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

22 (19) Sign--An object that is designed, intended, or used
23 to advertise or inform, including a sign, display, light,

1 device, figure, painting, drawing, message, plaque, placard,
2 poster, billboard, logo, or symbol.

3 (20) Sign face--The part of the sign that contains
4 advertising or information and is distinguished from other parts
5 of the sign, including another sign face, by borders or
6 decorative trim. The term does not include a lighting fixture,
7 apron, or catwalk unless it displays a part of the advertising
8 or information contents of the sign.

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

13 (22) Visible--Capable of being read or identified by a
14 person with normal visual acuity.

15

16 §21.143. Permit Required. Except as provided by this chapter,
17 unless a person holds a permit issued under §21.164 of this
18 division (relating to Decision on Application) or §21.200 of
19 this division (relating to Local Control), the person may not
20 erect or maintain an outdoor sign that is:

21 (1) within 660 feet of the nearest edge of the right of
22 way of a regulated highway if any part of the sign's advertising
23 or information content is visible from any place on the main-

1 traveled way of the highway; or

2 (2) outside of the jurisdiction of an incorporated city
3 and more than 660 feet from the nearest edge of the right of way
4 of a regulated highway if any part of the sign's advertising or
5 information content is visible from the main-traveled way of the
6 highway and the sign was erected for the purpose of having its
7 advertising or information content seen from the main-traveled
8 way of the highway.

9

10 §21.144. License Required.

11 (a) Except as provided by this division, a person may not
12 obtain a permit for a sign under this division unless the person
13 holds a currently valid license issued under §21.153 of this
14 division (relating to License Issuance) applicable to the county
15 in which the sign is to be erected or maintained.

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

18

19 §21.145. Prohibited Signs.

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

22 (b) A sign may not be erected or maintained within the
23 right of way of a public roadway or an area that would be within

1 the right of way if the right of way boundary lines were
2 projected across an area of railroad right of way, utility right
3 of way, or road right of way that is not owned by the state or a
4 political subdivision.

5 (c) A sign may not be erected or maintained on a highway or
6 part of a highway designated under Transportation Code,
7 §391.252.

8
9 §21.146. Exempt Signs.

10 (a) The following signs are exempt from this division:

11 (1) an on-premise sign that meets the criteria provided
12 by §21.147 of this division (relating to On-premise Sign) except
13 as provided by subsection (c) of this section;

14 (2) a sign that has the purpose of protecting life or
15 property;

16 (3) a sign that provides information about underground
17 utility lines;

18 (4) an official sign that is erected by a public officer,
19 public agency, or political subdivision under the officer's,
20 agency's, or political subdivision's constitutional or statutory
21 authority;

22 (5) a sign required by the Railroad Commission of Texas
23 at the principal entrance to or on each oil or gas producing

1 property, well, tank, or measuring facility to identify or to
2 locate the property if the sign is no larger than necessary to
3 comply with the Railroad Commission's regulations;

4 (6) a sign of a nonprofit service club, charitable
5 association, religious organization, chamber of commerce,
6 nonprofit museum, or governmental entity that gives information
7 about the meetings, services, events, or locations of the entity
8 and that does not exceed an area of 32 [~~eight~~] square feet;

9 (7) a public service sign that:

10 (A) is located on a school bus stop seating bench or
11 shelter;

12 (B) identifies the donor, sponsor, or contributor of
13 the shelter;

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

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

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

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

23 (G) is not facing the same direction as any other sign

1 on that seating bench or shelter;

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

7 (9) a sign that:

8 (A) relates only to a public election;

9 (B) is located on private property;

10 (C) is erected after the 91st day before the date of
11 the election and is removed before the 11th day after the
12 election date;

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

15 (E) contains no commercial endorsement; and

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

20 (b) This division does not apply to a sign that was erected
21 before October 23, 1965 and that the commission, with the
22 approval of the Secretary of the United States Department of
23 Transportation, has determined to be a landmark sign of such

1 historic or artistic significance that preservation would be
2 consistent with the purposes of the Highway Beautification Act
3 of 1965, 23 United States Code §131.

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

7

8 §21.147. On-premise Sign.

9 (a) 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 or
15 [~~and~~] accessory products or services offered on the property;

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

19 (3) only advertises the lease, including a pre-lease, of
20 the real property on which the sign is located and is removed
21 within 90 days after the date of the closing of the lease
22 transaction.

23 (b) For the purposes of this section, a sign is located on

1 the real property of a business if:

2 (1) the real property on which the sign is located and
3 the real property on which the activity of the business is
4 conducted are one contiguous tract that is under common
5 ownership; or

6 (2) the sign is located on the real property of a
7 commercial development and the businesses of the development
8 share the sign structure of that sign.

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

12 (1) separated from the real property on which the
13 business activity is located by a road or highway or by another
14 business;

15 (2) devoted to a separate purpose unrelated to the
16 advertised business activity;

17 (3) held under an easement or other lesser property
18 interest than the property interest in the land on which the
19 business activity is located; or

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

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

1 (1) the sign consists principally of brand name or trade
2 name advertising and the product or service advertised is only
3 incidental to the principal activity [~~brand name or trade name~~
4 ~~advertising regarding a product or service that is only~~
5 ~~incidental to the business activity covers more than 50 percent~~
6 ~~of the area of a static sign face or for an electronic sign, as~~
7 ~~defined by §21.251 of this subchapter (relating to Definition),~~
8 ~~if brand name or trade name advertising is displayed 50 percent~~
9 ~~or more of the time during any five minute period];~~

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

12 (3) the sign provides rental income to the owner of the
13 real property on which it is located, unless the owner of the
14 real property receives the income from an on-premise business
15 for the use of the sign.

16 (e) For the purposes of this subsection:

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

20 (2) the date of the closing of a lease transaction is the
21 date that the landlord and tenant enter into a binding lease of
22 a property.

23

1 §21.148. Exception to License Requirement for Nonprofit Signs.

2 A nonprofit organization may erect or maintain a nonprofit sign
3 without obtaining an outdoor advertising license, but the
4 organization must obtain a permit under §21.149 of this division
5 (relating to Nonprofit Sign Permit) to erect or maintain such a
6 sign.

7

8 §21.149. Nonprofit Sign Permit.

9 (a) A nonprofit service club, charitable association,
10 religious organization, chamber of commerce, nonprofit museum,
11 or governmental entity may obtain a permit under this section to
12 erect or maintain a nonprofit sign.

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

14 (1) be in a municipality or the extraterritorial
15 jurisdiction of a municipality;

16 (2) advertise or promote only:

17 (A) the municipality;

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

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

23 (3) comply with each sign requirement under this division

1 from which it is not specifically exempted.

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

5 (d) After a permit is issued, the permit holder must obtain
6 approval from the department to change the message of the sign.
7 The department may issue an order of removal of the sign if the
8 permit holder fails to obtain that approval.

9 (e) If a sign ceases to qualify as a nonprofit sign, the
10 permit for the sign is subject to cancellation under §21.176 of
11 this division (relating to Cancellation of Permit).

12 (f) If the holder of a permit issued under this section
13 loses its nonprofit status or wishes to change the sign so that
14 it no longer qualifies as a nonprofit sign the permit holder
15 must:

16 (1) obtain a license under §21.153 of this division
17 (relating to License Issuance); and

18 (2) convert the sign permit to a permit for a sign other
19 than a nonprofit sign and pay the original permit and renewal
20 fees provided by §21.175 of this division (relating to Permit
21 Fees).

22

23 §21.150. Continuance of Nonconforming Signs.

1 (a) Notwithstanding other provisions of this division, the
2 department will renew a permit for a nonconforming sign only if
3 the sign structure:

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

6 (2) remains substantially the same as it was on the later
7 of the date it was erected, [~~or~~] became subject to the
8 department's control, or became a nonconforming sign.

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

14 (c) A nonconforming sign may not be:

15 (1) removed and re-erected for any reason, other than a
16 request by a condemning authority; or

17 (2) substantially changed, as described by §21.191 of
18 this division (relating to Repair and Maintenance).

19 (d) A nonprofit organization that holds a permit for a
20 nonconforming sign that otherwise qualifies for a permit under
21 §21.149 of this division (relating to Nonprofit Sign Permit) may
22 convert the permit to one issued under that section.

23

1 §21.151. Time Proposed Roadway Becomes Subject to Division.

2 For the purposes of this division, a proposed roadway becomes a
3 roadway or a proposed interchange becomes an interchange:

4 (1) when environmental clearance and the approved

5 alignment have been obtained from the Federal Highway

6 Administration; or

7 (2) if environmental clearance and approved alignment

8 from the Federal Highway Administration are not required for a

9 proposed roadway, when the alignment is approved by the

10 department or other political subdivision responsible for

11 constructing the roadway.

12

13 §21.152. License Application.

14 (a) To apply for a license under this division, a person

15 must file an application in a form prescribed by the department.

16 The application must include at a minimum:

17 (1) the complete legal name, mailing address, and

18 telephone number of the applicant; and

19 (2) designation of each county in which the applicant's

20 signs are to be erected or maintained.

21 (b) The application must be signed, notarized, and filed

22 with the department and be accompanied by:

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

1 (A) in the amount of \$2,500 for each county designated
2 under subsection (a)(2) of this section up to a maximum of
3 \$10,000;

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

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

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

12 (3) the license fee prescribed by §21.156 of this
13 division (relating to License Fees).

14

15 §21.153. License Issuance.

16 (a) The department will issue a license if the requirements
17 of §21.152 of this division (relating to License Application)
18 are satisfied.

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

21

22 §21.154. License Not Transferable. A license issued under this
23 division is not transferable.

1

2 §21.155. License Renewals.

3 (a) To continue a license in effect, the license must be
4 renewed.

5 (b) To renew a license, the license holder must file a
6 written application in a form prescribed by the department
7 accompanied by each applicable license fee prescribed by §21.156
8 of this division (relating to License Fees). The application
9 must be received by the department before the 46th [~~31st~~] day
10 after the date of the license's expiration and must include at a
11 minimum:

12 (1) the complete legal name, mailing address, and
13 telephone number of the license holder;

14 (2) number of the license being renewed;

15 (3) proof of current surety bond coverage; and

16 (4) the signature of the license holder or person signing
17 on behalf of the business entity.

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

20

21 §21.156. License Fees.

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

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

2 (c) In addition to the \$75 annual renewal fee, an
3 additional late fee of \$100 is required for a renewal license
4 application that is received before the 45th [~~31st~~] day after
5 the expiration date of the license.

6 (d) A license fee is payable by check, cashier's check, or
7 money order made payable to the Texas Highway Beautification
8 Fund, and must be submitted with the application. If the check
9 or money order is dishonored upon presentment, the license is
10 voidable.

11 (e) The department will provide a renewal notification to
12 the license holder at least 45 [~~30~~] days before the date of the
13 license expiration and if the license is not renewed before it
14 expires, the department within 20 [~~10~~] days after the date of
15 expiration will provide notification to the license holder of
16 the opportunity to file a late renewal application.

17

18 §21.157. Temporary Suspension of License.

19 [~~(a)~~] If the department is notified by a surety company
20 that a bond is being canceled, the department will notify the
21 license holder by certified mail that a new bond must be
22 obtained and filed with the department before the bond
23 cancellation date or the 30th day after the day of the receipt

1 of the notice, whichever is later.

2 [~~(b) Notice under this section is presumed to be received~~
3 ~~on the fifth day after the date of mailing.~~]

4

5 §21.158. License Revocation.

6 (a) The department will revoke a license and will not issue
7 or renew permits or transfer existing permits under the license
8 if:

9 (1) the surety bond is not provided within the time
10 specified by the department under §21.152 of this division
11 (relating to License Application) or §21.155 of this division
12 (relating to License Renewals);

13 (2) surety bond coverage is terminated under §21.157 of
14 this division (relating to Temporary Suspension of License);

15 (3) the number of final enforcement actions [~~violations~~]
16 of this subchapter, or Transportation Code, Chapter 391,
17 committed by the license holder in the aggregate equal or
18 exceed:

19 (A) 10 percent of the number of valid permits held by
20 the license holder if the license holder holds more than 1,000
21 sign permits;

22 (B) 20 percent of the number of valid permits held by
23 the license holder if the license holder holds at least 500 but

1 fewer than 1,000 sign permits;

2 (C) 25 percent of the number of valid permits held by
3 the license holder if the license holder holds at least 100 but
4 fewer than 500 sign permits; or

5 (D) 30 percent of the number of valid permits held by
6 the license holder if the license holder holds fewer than 100
7 sign permits [~~10 percent of the number of valid permits held by~~
8 ~~the license holder]; or~~

9 (4) the license holder has not [~~responded to or~~] complied
10 with previous final administrative enforcement actions regarding
11 the license or any permit held under the license.

12 (b) The department will send notice by certified mail of an
13 action under this section to the address of record provided by
14 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 (d) [~~(e)~~] A request for an administrative hearing under
2 this section must be made in writing to the department within 45
3 ~~20~~ days after the date that the notice is mailed.

4 (e) [~~(f)~~] If timely requested, an administrative hearing
5 will be conducted in accordance with Chapter 1, Subchapter E of
6 this title (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 [~~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 division (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 division (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 settlement signed
20 by both parties or a court order settling the dispute is
21 delivered to the department.

22

23 §21.162. Permit Application for Certain Preexisting Signs. If

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

7

8 §21.163. Permit Application Review.

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

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

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

23 (1) the date of the final decision on an appeal under

1 §21.170 of this division (relating to Appeal Process for Permit
2 Denials); or

3 (2) if an appeal is not filed within the period provided
4 by §21.170 of this division, on the 46th [~~21st~~] day after the
5 date the denial notice was received under §21.164 of this
6 division (relating to Decision on Application).

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

12
13 §21.164. Decision on Application.

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

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

23 (c) If the permit application is not approved, the

1 department will send a copy of the denied application and a
2 notice that states the reason for the denial.

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

8

9 §21.165. Sign Permit Plate.

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

14 (1) the sign is erected; or

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

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

19 (c) The sign permit plate must remain visible from the
20 closest right of way at all times.

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

1 department accompanied by the replacement plate fee prescribed
2 by §21.175 of this division (relating to Permit Fees).

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

10

11 §21.166. Sign Location Requirements.

12 (a) The department will not issue a permit under this
13 division unless the sign for which application is made is
14 located along a roadway to which Transportation Code, Chapter
15 391, applies and is in:

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

17 (2) a zoned commercial or industrial area.

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

21

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

1 erected and maintained from private property.

2

3 §21.168. Conversion of Certain Authorization to Permit.

4 (a) The department will convert a registration issued under
5 §21.409 of this chapter (relating to Permit Applications) or a
6 permit issued under §21.407 of this chapter (relating to
7 Existing Off-Premise Signs) to a permit under this division if a
8 highway previously regulated under Transportation Code, Chapter
9 394 becomes subject to Transportation Code, Chapter 391.

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

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 45 [~~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 45-day [~~30-day~~] posting period under subsection
19 (a) of 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 45 [~~20~~] days after the date the
10 denial 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 60 [~~90~~] days after the date that the executive director receives
15 the request for appeal. If the final determination is that the
16 permit is denied, the executive director or the executive
17 director's designee will send the final determination to the
18 applicant stating the reason for denial. If the determination
19 is that the application be approved, the department will issue
20 the permit in accordance with §21.164 of this division (relating
21 to Decision on Application).

22 (d) If the executive director or designee is unable to make
23 a final determination on the appeal within the 60-day [~~90-day~~]

1 period under subsection (c) of this section, the department will
2 notify the applicant by mail of the delay and provide an
3 estimated time 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
9 expires or is revoked by the department under §21.158 of this
10 division (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 division 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 division (relating to Permit Fees). The
23 application must be received by the department before the 46th

1 [~~31st~~] 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 to the extent that it includes a sign
4 face before the first anniversary of the date that the permit
5 was issued.

6 (e) The department will provide a renewal notification to
7 the license holder at least 30 days before the date of the
8 permit expiration and if the permit is not renewed before it
9 expires the department within 20 days after the date of
10 expiration will provide notification to the license holder of
11 the opportunity to file a late renewal.

12

13 §21.173. Transfer of Permit.

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

16 (b) At the time of the transfer, both the transferor and
17 the transferee must hold a valid license issued under §21.153 of
18 this division (relating to License Issuance), except as provided
19 in subsections (e) - (g) of this section.

20 (c) To transfer one or more sign permits, the permit holder
21 must send to the department a written request in a form
22 prescribed by the department accompanied by the prescribed
23 transfer fee.

1 (d) If the request is approved, the department will send to
2 the transferor and to the transferee a copy of the approved
3 permit transfer form.

4 (e) A permit issued to a nonprofit organization under
5 §21.149 of this division (relating to Nonprofit Sign Permit) may
6 be transferred to another nonprofit organization that does not
7 hold a license issued under §21.153 of this division if the sign
8 will be maintained as a nonprofit sign.

9 (f) A permit issued to a nonprofit organization under
10 §21.149 of this division may be converted to a regular permit
11 and transferred to a person that is not a nonprofit organization
12 if the transferee holds a license for the county in which the
13 sign is located at the time of the transfer and the sign meets
14 all requirements of this division.

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

- 19 (1) legal documents showing the sign has been sold; and
20 (2) documents that indicate that the transferor is dead
21 or cannot be located.

22 (h) The department will not approve the transfer of a
23 permit if cancellation of the permit is pending or has been

1 abated awaiting the outcome of an administrative hearing.

2

3 §21.174. Amended Permit.

4 (a) To perform customary maintenance or to make substantial
5 changes to the sign or sign structure under §21.191 of this
6 division (relating to Repair and Maintenance) a permit holder
7 must submit an amended permit application. To change the sign
8 face of an existing permitted sign to an electronic sign under
9 Division 2 of this subchapter (relating to Electronic Signs) a
10 permit holder must submit an amended permit application.

11 (b) The amended permit application must be submitted on a
12 form prescribed by the department and must provide the
13 information required under §21.159 of this division (relating to
14 Permit Applications) applicable to an amended permit and
15 indicates the change from the information in the original
16 application for the sign permit. The amended application is not
17 required to contain the signatures of the land owner or city
18 representative.

19 (c) The new sign face size, configuration, or location must
20 meet all applicable requirements of this division and if the
21 amended permit is to erect an electronic sign, the requirements
22 of Division 2 of this subchapter.

23 (d) The holder of a permit for a nonconforming sign may

1 apply for an amended permit to perform eligible customary
2 maintenance under §21.191(b) of this division. An amended
3 permit will not be issued for a substantial change as described
4 by §21.191(c) of this division to a nonconforming sign.

5 (e) Making a change to a sign that requires an amended
6 permit without first obtaining an amended permit is a violation
7 of this division, except as provided by subsection (g) of this
8 section and will result in an administrative enforcement action.

9 (f) The department will make a decision on an amended
10 permit application within 45 days of the date of the receipt of
11 the amended permit application. If the decision cannot be made
12 within the 45 day period the department will notify the
13 applicant of the delay, provide the reason for the delay and
14 provide an estimate of when the decision will be made.

15 (g) If maintenance or changes authorized under this section
16 are being made on a conforming sign because of a natural
17 disaster, the department may waive the requirement that the
18 required amended permit be issued before the work begins. If
19 the department grants a waiver under this subsection, the permit
20 holder shall submit the amended permit application within 60
21 days after the date that the work is completed. If the
22 maintenance or changes violate this section or the permit holder
23 fails to submit the amended permit application as required by

1 this subsection, the sign is subject to enforcement and removal
2 actions.

3

4 §21.175. Permit Fees.

5 (a) The amounts of the fees related to permits under this
6 subchapter are:

7 (1) \$100 for an original or amended permit for a sign;

8 (2) \$100 for an original or amended permit issued under
9 Division 2 of this subchapter for an electronic sign;

10 (3) \$100 for an original permit for a sign that was
11 lawfully in existence when the sign became subject to
12 Transportation Code, Chapter 391;

13 (4) \$75 for the renewal of a permit;

14 (5) \$75 for the renewal of a permit issued under Division
15 2 of this subchapter for an electronic sign;

16 (6) \$25 for the transfer of a permit up to a maximum of
17 \$2,500 for a single transaction regardless of the location of
18 the sign; and

19 (7) \$25 for a replacement sign permit plate.

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

22 (c) In addition to the \$75 annual renewal fee, an
23 additional late fee of \$100 is required for a renewal of a

1 permit that is received before the 46th [~~31st~~] day after the
2 permit expiration date.

3 (d) No fee is charged for the transfer of a permit issued
4 to a nonprofit organization to another nonprofit under §21.173
5 of this division (relating to Transfer of Permit). The fee
6 provided under subsection (a)(6) of this section applies to the
7 conversion and transfer of a permit issued to a nonprofit
8 organization to a person other than a nonprofit organization
9 under §21.173 of this division.

10 (e) A fee prescribed by this section is payable by check,
11 cashier's check, or money order. If a check or money order is
12 dishonored upon presentment, the permit, renewal, or transfer is
13 void.

14
15 §21.176. Cancellation of Permit.

16 (a) The department will cancel a permit for a sign if the
17 sign:

18 (1) is removed, unless the sign is removed and re-erected
19 at the request of a condemning authority [~~political~~
20 ~~subdivision~~];

21 (2) is not maintained in accordance with this division or
22 Transportation Code, Chapter 391;

23 (3) is damaged beyond repair, as determined under §21.197

1 of this division (relating to Discontinuance of Sign Due to
2 Destruction);

3 (4) is abandoned, as determined under §21.181 of this
4 division (relating to Abandonment of Sign);

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

12 (6) is repaired or altered without obtaining a required
13 amended permit under §21.174 of this division (relating to
14 Amended Permit);

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

17 (8) is erected, repaired, or maintained in violation of
18 §21.199 of this division (relating to Destruction of Vegetation
19 and Access from Right of Way Prohibited);

20 (9) has been made more visible by the permit holder
21 clearing vegetation from the highway right of way in violation
22 of §21.199 of this division;

23 (10) is located in an unzoned commercial or industrial

1 area and the department has evidence that an activity supporting
2 the unzoned commercial or industrial area was created primarily
3 or exclusively to qualify the area as an unzoned commercial or
4 industrial area, and that no business has been conducted at the
5 activity site within one year; or

6 (11) does not have the permit plate properly attached
7 under §21.165 of this division (relating to Sign Permit Plate).

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

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

16 (1) the reason for the cancellation;

17 (2) the effective date of the cancellation;

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

20 (4) the procedure for requesting a hearing and the period
21 for filing the request.

22 (d) A request for an administrative hearing under this
23 section must be in writing and delivered to the department

1 within 45 [~~20~~] days after the date that the notice of
2 cancellation is received.

3 (e) If timely requested, an administrative hearing will be
4 conducted in accordance with Chapter 1, Subchapter E of this
5 title (relating to Procedures in Contested Case) and the
6 cancellation is abated until the cancellation is affirmed by
7 order of the commission.

8 (f) A permit holder may voluntarily cancel a permit by
9 submitting a request in writing after the sign has been removed.
10 Subsections (c) - (e) of this section do not apply to a permit
11 voluntarily canceled under this subsection.

12 (g) The department will notify the landowner identified on
13 the permit application of a cancellation enforcement action.
14 The notice is for informational purposes only, and does not
15 convey any rights to the landowner. The landowner may not
16 appeal the cancellation unless the landowner is also the holder
17 of the permit.

18
19 §21.177. Commercial or Industrial Area. For the purposes of
20 this division, a commercial or industrial area is:

21 (1) a zoned commercial or industrial area described by
22 §21.178 of this division (relating to Zoned Commercial or
23 Industrial Area); or

1 (2) an unzoned commercial or industrial area described by
2 §21.179 of this division (relating to Unzoned Commercial or
3 Industrial Area).

4
5 §21.178. Zoned Commercial or Industrial Area. A zoned
6 commercial or industrial area is an area that is designated,
7 through a comprehensive zoning action, for general commercial or
8 industrial use by a political subdivision with legal authority
9 to zone. An area is not a zoned commercial or industrial area
10 if it is:

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

13 (2) an area that is designated for and created primarily
14 to allow outdoor advertising structures along a regulated
15 highway;

16 (3) an unrestricted area; or

17 (4) a small parcel or narrow strip of land that cannot be
18 put to ordinary commercial or industrial use and that is
19 designated for a use classification that is different from and
20 less restrictive than its surrounding area.

21

22 §21.179. Unzoned Commercial or Industrial Area.

23 (a) An unzoned commercial or industrial area is an area

1 that:

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

8 (2) is not predominantly used for residential purposes;
9 and

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

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

17 (c) For commercial or industrial activities to be
18 considered adjacent for the purposes of subsection (a)(1) of
19 this section, the regularly used buildings, parking lots,
20 storage or processing areas of the activities may not be
21 separated by a vacant lot, an undeveloped area that is more than
22 50 feet wide, a road, or a street.

23 (d) Two activities that occupy the same building qualify as

1 adjacent activities for the purposes of subsection (a)(1) of
2 this section, if:

3 (1) each activity:

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

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

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

10 (3) the two activities have [~~separate and independent~~
11 ~~access and have separate and independent~~] access to the restroom
12 facilities during all hours the activity is staffed or opened;

13 and

14 (4) the two activities operate independently of one
15 another.

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

19 (f) To determine whether an area is not predominantly used
20 for residential purposes under subsection (a)(2) of this
21 section, not more than 50 percent of the area, considered as a
22 whole, may be used for residential purposes. A road or street
23 is considered to be used for residential purposes only if

1 residential property is located on both of its sides. The area
2 to be considered is the total of actual or projected frontage of
3 the commercial or industrial activities plus 800 feet on each
4 side of that frontage, measured along the highway right of way
5 to a depth of 660 feet. The depth of an unzoned commercial or
6 industrial area is measured from the nearest edge of the highway
7 right of way perpendicular to the centerline of the main-
8 traveled way of the highway.

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

18 (h) A sign is not required to meet the requirements of
19 subsection (d)(1)(A), (2), or (3) of this section or §21.180
20 (relating to Commercial or Industrial Activity) to maintain
21 conforming status if the permit for the sign was issued before
22 the effective date of this section.

23

1 §21.180. Commercial or Industrial Activity.

2 (a) For the purposes of this division, a commercial or
3 industrial activity is an activity that:

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

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

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

11 (B) is visible from the traffic lanes of the main-
12 traveled way;

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

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

16 (b) The following are not commercial or industrial
17 activities:

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

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

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

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

6 (5) the operation or maintenance of:

7 (A) an outdoor advertising structure;

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

13 (C) an apartment house or residential condominium;

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

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

21 (F) a cemetery; or

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

23 (6) an activity that is conducted on a railroad right of

1 way; and

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

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

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

13

14 §21.181. Abandonment of Sign.

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

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

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

21 (b) Small temporary signs, such as garage sale signs or
22 campaign signs, that are attached to the structure do not
23 constitute legible advertising or copy for the purpose of ending

1 the period under subsection (a)(1) of this section.

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

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

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

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

21 (g) A multi-face sign is not abandoned unless all sign
22 faces may be considered abandoned under this section.

23 (h) Before initiating a cancellation process under this

1 section the department will provide notice to the sign owner and
2 land owner as identified on the permit application of the
3 abandonment determination and allow the sign owner 60 days to
4 correct the issue.

5

6 §21.182. Sign Face Size and Positioning.

7 (a) A sign face may not exceed:

8 (1) 672 square feet in area;

9 (2) 25 feet in height; and

10 (3) 60 feet in length.

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

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

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

18 (2) the area of the protrusion does not exceed 35 [~~25~~]
19 percent of the area indicated on the sign permit; and

20 (3) the sign face, including the area of the protrusions,
21 does not exceed 907 [~~807~~] square feet in area.

22 (d) The area is measured by the smallest square, rectangle,
23 triangle, circle, or combination that encompasses the entire

1 sign face.

2 (e) A sign may have two or more sign faces that are placed
3 back-to-back, side-by-side, stacked, or in "V" type construction
4 with not more than two faces presented in each direction. If
5 such an arrangement is used, the sign structure or structures
6 are considered to be one sign for all purposes. Two sign faces
7 which together exceed 907 [~~672~~] square feet in area, including
8 temporary protrusions, may not face in the same direction.

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

13

14 §21.183. Signs Prohibited at Certain Locations. A sign may not
15 be located in a place that creates a safety hazard, including a
16 location that:

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

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

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

22

23 §21.184. Location of Signs Near Parks.

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

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

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

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

14

15 §21.185. Location of Signs Near Certain Facilities.

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

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

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

22 (b) The distance from a ramp or acceleration or
23 deceleration lane is measured from the point of the pavement

1 widening at the beginning of the entrance or exit ramp and from
2 the point that the pavement widening ends at the conclusion of
3 the entrance or exit ramp.

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

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

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

14

15 §21.186. Location of Signs Near Right of Way. A sign may not
16 be erected so that the part of the sign face nearest a highway
17 is within five feet of the highway's right of way line.

18

19 §21.187. Spacing of Signs.

20 (a) Signs on the same side of a regulated freeway,
21 including freeway frontage roads, that are outside of
22 incorporated municipal boundaries may not be erected closer than
23 1,500 feet apart.

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

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

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

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

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

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

20

21 §21.188. Wind Load Pressure. An application for new sign permit
22 or a permit renewal must include a certification signed by the
23 applicant that the proposed or existing sign will withstand wind

1 load pressures in pounds per square foot as set out in the
2 following table.

3 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

4

5 §21.189. Sign Height Restrictions.

6 (a) Except as provided by subsection (f) of this section, a
7 sign may not be erected that exceeds an overall height of 42-1/2
8 feet.

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

11 (c) A roof sign that has an open sign face in which the
12 uniform open area between individual letter or shapes is not
13 less than 40 percent of the total gross area of the sign face
14 may not at any point exceed 40 feet above the roof level.

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

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

9 (f) The height measurement does not include any renewable
10 energy device such as solar panels or wind turbines that are
11 attached to the sign structure above the sign face to improve
12 the energy efficiency of the sign structure.

13

14 §21.190. Lighting of and Movement on Signs.

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

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

23 (1) upward lighting of no more than 4 luminaires per

1 direction of the sign face or faces of the structure; or

2 (2) downward lighting of no more than 4 luminaires per

3 direction of the sign face or faces of the structure.

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

5 (1) must be shielded, directed, and positioned to prevent

6 beams or rays of light from being directed at any portion of the

7 traveled ways of a regulated highway;

8 (2) may not be of such intensity or brilliance as to

9 cause vision impairment of a driver of any motor vehicle on a

10 regulated highway or otherwise interfere with the driver's

11 operation of a motor vehicle; and

12 (3) may not obscure or interfere with the effectiveness

13 of an official traffic sign, device, or signal.

14 (d) A temporary protrusion on a sign may be animated only

15 if it does not create a safety hazard to the traveling public. A

16 temporary protrusion may not be illuminated by flashing or

17 moving lights or enhanced by reflective material that creates

18 the illusion of flashing or moving lights.

19 (e) Reflective paint or reflective disks may be used on a

20 sign face only if the paint or disks do not:

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

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

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

1 (1) the light does not flash;

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

4 (3) the permit for the sign specifies that the sign is an
5 illuminated sign.

6 (g) This division does not prohibit a temporary protrusion
7 that displays only alphabetical or numerical characters and that
8 satisfies this subsection and the requirements of §21.182 of
9 this division (relating to Sign Face Size and Positioning),
10 relating to a temporary protrusion. The display on the
11 temporary protrusion may be a digital or other electronic
12 display, but if so:

13 (1) it must consist of a stationary image;

14 (2) it may not change more frequently than four times [~~twice~~] in any 24 hour period; and

15 (3) the process of any change of display must be completed within two [~~one~~] minute.

16

17 §21.191. Repair and Maintenance.

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

20 (1) the replacement of nuts and bolts;

21 (2) nailing, riveting, or welding;

22 (3) cleaning and painting;

23 (4) manipulation of the sign structure to level or plumb

1 it;

2 (5) changing of the advertising message; ~~and~~

3 (6) the replacement of minor parts if the materials of
4 the minor parts are the same type as those being replaced and
5 the basic design or structure of the sign is not altered~~[-]~~;

6 (7) 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; and

9 (8) upgrading existing lighting for an energy efficient
10 lighting system.

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

14 ~~[(1) changing all or part of the sign face structure but~~
15 ~~only if materials similar to those of the sign face being~~
16 ~~replaced are used;]~~

17 ~~[(2) upgrading existing lighting for an energy efficient~~
18 ~~lighting system;]~~

19 (1) [(3)] replacement of poles, but only if not more than
20 one-half of the total number of poles of the sign structure are
21 replaced in any 12 month period and the same material is used
22 for the replacement poles; and

23 (2) [(4)] adding a catwalk to the sign structure.

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

4 (1) adding lights to an unilluminated sign or adding more
5 intense lighting to an illuminated sign whether or not the
6 lights are attached to the sign structure;

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

8 (3) adding permanent bracing wires, guy wires, or other
9 reinforcing devices;

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

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

15 (6) increasing the height of the sign;

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

19 (8) moving the sign structure or sign face in any way
20 unless the movement is made in accordance with §21.192 of this
21 division (relating to Permit for Relocation of Sign).

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

1

2 §21.192. Permit for Relocation of Sign.

3 (a) A sign may be relocated in accordance with this
4 section, §21.193 of this division (relating to Location of
5 Relocated Sign), §21.194 of this division (relating to
6 Construction and Appearance of Relocated Sign), and §21.195 of
7 this division (relating to Relocation of Sign within
8 Municipality) if the sign is legally erected and maintained and
9 will be within the highway right of way as a result of a highway
10 construction project.

11 (b) To relocate a sign under this section, the permit
12 holder must obtain a new permit under §21.164 of this division
13 (relating to Decision on Application), but the permit fee is
14 waived.

15 (c) To receive a new permit to relocate a sign under this
16 section, the permit holder must submit a new permit application
17 that identifies that the application is for the relocation of an
18 existing sign due to a highway construction project. The new
19 location must meet all local codes, ordinances, and applicable
20 laws.

21 (d) Notwithstanding other provisions of this section, if
22 only a part of a sign will be located within the highway right
23 of way as a result of the construction project, the sign owner

1 may apply to amend the existing permit for the sign to
2 authorize:

3 (1) the adjustment of the sign face on a monopole sign
4 that would overhang the proposed right of way to the land on
5 which the sign's pole is located, including adding a second pole
6 if required to support the adjustment for a legal non-conforming
7 monopole sign;

8 (2) the relocation of the poles and sign face of a
9 multiple sign structure that are located in the proposed right
10 of way from the proposed right of way to the land on which the
11 other poles of the sign structure are located; or

12 (3) a reduction in the size of a sign structure that is
13 located partially in the proposed right of way so that the sign
14 structure and sign face are removed from the proposed right of
15 way.

16 (e) A permit application for the relocation of a sign must
17 be submitted within 36 [~~18~~] months after the earlier of the date
18 the original sign was removed or the date the original sign was
19 required to move. [~~Upon written request by the permit holder,~~
20 ~~the department shall grant an additional six months to submit an~~
21 ~~application.] The sign owner is required to continue to renew
22 the sign permit and pay the permit renewal fee for the sign to
23 remain eligible for relocation.~~

1

2 §21.193. Location of Relocated Sign.

3 (a) To receive a new permit for relocation, an existing
4 sign must be relocated [~~to one of the following locations, as~~
5 ~~listed in order of priority:~~]

6 [~~(1) on the same parcel of land on which the existing~~
7 ~~sign is located in a location that is allowed under this section~~
8 ~~and that is within 50 feet of a line drawn through the center~~
9 ~~point of the existing sign structure and perpendicular to the~~
10 ~~edge of the highway right of way nearest to the existing sign;~~
11 ~~or]~~

12 [~~(2)~~] on a part of the same parcel of land on which the
13 sign was situated before relocation in a location that is
14 allowed under this section.

15 (b) If the sign owner can demonstrate that [~~both of~~] the
16 location[s] under subsection (a) of this section is [~~are~~] not
17 physically or economically feasible for a sign structure, the
18 sign owner, on approval by the department, may relocate the sign
19 to any other location that is allowed under this subsection.
20 The owner is not entitled to additional relocation benefits
21 under §21.196 of this division (relating to Relocation Benefits)
22 if the sign structure is relocated further than 50 miles from
23 the location of the existing sign.

1 (c) The location of the relocated sign must be within a
2 zoned commercial or industrial area as described by §21.178 of
3 this division (relating to Zoned Commercial or Industrial Area)
4 or an unzoned commercial or industrial area, as described by
5 §21.179 of this division (relating to Unzoned Commercial or
6 Industrial Area) except that an unzoned commercial or industrial
7 area may include only one recognized commercial or industrial
8 activity.

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

10 (1) can cause a driver to be unduly distracted in any
11 way;

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

14 (3) will obstruct or interfere with the driver's view of
15 approaching, merging, or intersecting motor vehicle or rail
16 traffic.

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

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

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

23 (B) on the side of the highway adjacent to the public

1 park if the regulated highway is on an interstate or freeway
2 primary system;

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

5 (A) an interchange, intersection at grade, or rest
6 area; or

7 (B) a ramp or the ramp's acceleration or deceleration
8 lane;

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

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

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

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

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

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

5 (h) A sign may not be relocated from a road regulated under
6 this division to a rural road regulated by Subchapter K of this
7 chapter (relating to Control of Signs along Rural Roads).

8

9 §21.194. 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 §21.189 of this division (relating to Sign
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, if any, 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
19 smaller of the size of the existing sign face or an area of
20 1,200 square feet, a height of 25 feet, and a length of 60 feet.

21 (c) The sign faces of a relocated sign may be placed back-
22 to-back, side-by-side, stacked, or in "V" type construction with
23 not more than two displays facing any direction, except that if

1 the area of a sign face exceeds 350 square feet, sign faces may
2 not be stacked or placed side-by-side. The sign structure and
3 sign faces are considered one sign.

4

5 §21.195. Relocation of Sign within Municipality.

6 (a) If an existing sign is located within the incorporated
7 boundaries of a municipality that is approved by the department
8 to control outdoor advertising under §21.200 of this division
9 (relating to Local Control) and the sign will be relocated
10 within the incorporated boundaries of the same municipality,
11 permission to relocate the sign must be obtained only from the
12 municipality in accordance with the municipality's sign and
13 zoning ordinances.

14 (b) Permission from the municipality to relocate the sign
15 is required to receive relocation benefits from the department
16 under §21.196 of this division (relating to Relocation
17 Benefits).

18

19 §21.196. Relocation Benefits.

20 (a) Relocation benefits will be paid in accordance with
21 Subchapter G of this chapter (relating to Relocation Assistance
22 and Benefits) for the relocation of a sign under §21.192 of this
23 division (relating to Permit for Relocation of Sign) or §21.195

1 of this division (relating to Relocation of Sign within
2 Municipality).

3 (b) The owner of an existing sign that is being relocated
4 must enter into a written agreement with the governmental entity
5 that is acquiring the right-of-way in which the sign is located.
6 In the agreement the owner, in consideration of the payment by
7 the governmental entity of relocation benefits, waives and
8 releases any claim for damages against the governmental entity
9 and the state for any temporary or permanent taking of the sign.

10

11 §21.197. Discontinuance of Sign Due to Destruction.

12 (a) If a sign is partially destroyed by a natural force
13 outside the control of the permit holder, including wind,
14 tornado, lightning, flood, fire, or hurricane, the department
15 will determine whether the sign can be repaired without an
16 amended permit.

17 (b) The department may require the sign owner to submit an
18 estimate of the proposed work, including an itemized list of the
19 materials to be used and the manner in which the work will be
20 done. The department will allow the sign to be repaired without
21 an amended permit if the department determines that the damage
22 is not substantial. If the damage is determined to be
23 substantial the sign owner must obtain an amended permit under

1 §21.174 of this division (relating to Amended Permit).

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

7 (d) If a permit is canceled under this section or §21.176
8 of this division (relating to Cancellation of Permit) the
9 remaining sign structure must be dismantled and removed without
10 cost to the state.

11 (e) A sign that is totally or partially destroyed by
12 vandalism or a motor vehicle accident may be rebuilt as
13 described on the most recently approved permit application.

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

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

20 (h) If a sign is partially destroyed by a natural force
21 outside the control of the sign owner in an area that receives a
22 state or federal disaster declaration and the sign owner has
23 documentation to show that the sign damage is not considered

1 substantial the sign may be repaired without a prior
2 determination by the department under subsection (b) of this
3 section if the sign is repaired within 180 days after the date
4 of the event and if within 60 days after the date of completion
5 of the repairs, the owner submits to the department:

6 (1) photos of the partially destroyed sign and the
7 repaired sign; and

8 (2) a notarized affidavit executed by the sign owner
9 containing:

10 (A) the permit number of the sign;

11 (B) a statement that the sign was damaged by the
12 natural force;

13 (C) a statement that the cost to repair the sign was
14 less than 60 percent of the cost of a new sign with the same
15 basic construction; and

16 (D) a statement that the sign was repaired in the same
17 configuration and with like materials according to the most
18 recent approved permit.

19 (i) A sign repaired in violation of this subsection is
20 subject to enforcement and removal.

21

22 §21.198. Order of Removal.

23 (a) If a sign permit expires without renewal or is canceled

1 or if the sign is erected or maintained in violation of this
2 division, the owner of the sign, on a written demand by the
3 department, shall remove the sign at no cost to the state.

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

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

10

11 §21.199. Destruction of Vegetation and Access from Right of Way
12 Prohibited.

13 (a) A person may not:

14 (1) trim or destroy a tree or other vegetation on the
15 right of way for any purpose related to this division; or

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

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

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

22 (1) the state right of way is the only available access
23 for a sign on railroad right of way to which §21.150(b) of this

1 division (relating to Continuance of Nonconforming Signs)
2 applies; and

3 (2)the sign owner notifies the department and obtains
4 approval of the department before accessing the sign for
5 maintenance.

6 (d) It is not a violation to trim the portion of the tree
7 or vegetation that encroaches onto private property at the
8 private property line as long as the trimming occurs from the
9 private property.

10

11 §21.200. Local Control.

12 (a) The department may authorize a political subdivision to
13 exercise control over outdoor signs in its jurisdiction. If the
14 political subdivision receives approval under this section, it
15 will be listed as a certified city and a permit issued by that
16 political subdivision is acceptable instead of a permit issued
17 by the department within the approved area.

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

20 (1) a copy of its sign regulations;

21 (2) a copy of its zoning regulations;

22 (3) information about the number of personnel who will be
23 dedicated to the program and what type of records will be

1 maintained, including whether the political subdivision
2 maintains an inventory of signs that can be provided to the
3 department in an electronic format that is acceptable to the
4 department; and

5 (4) an enforcement plan that includes the removal of
6 illegal signs.

7 (c) The department, after consulting with the Federal
8 Highway Administration, shall determine whether a political
9 subdivision has established and will enforce within its
10 corporate limits standards and criteria for size, lighting, and
11 spacing of outdoor signs consistent with the purposes of the
12 Highway Beautification Act of 1965, 23 United States Code §131,
13 and with customary use. The size, lighting, and spacing
14 requirements of the political subdivision may be more or less
15 restrictive than the requirements of this division as long as
16 the requirements comply with the federal requirements, such as
17 the prohibition of signs over 1,200 square feet in size and
18 spacing of less than 500 feet. The authorization does not
19 include the area in a municipality's extraterritorial
20 jurisdiction.

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

1 (e) After approval under this section, the political
2 subdivision shall:

3 (1) provide to the department:

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

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

8 (2) annually provide to the department:

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

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

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

14 (f) The political subdivision may:

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

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

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

21 (h) The department may withdraw the approval of a political
22 subdivision given under this section if the department
23 determines that the political subdivision does not have an

1 effective sign control program. The department will consider
2 whether:

3 (1) the standards and criteria of political subdivision's
4 sign regulations continue to meet the requirements of subsection
5 (c) of this section;

6 (2) the political subdivision maintains an accurate sign
7 inventory and annually provides the inventory to the department
8 in an electronic format; and

9 (3) the political subdivision enforces the sign
10 regulations and annually reports enforcement actions as
11 required.

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

15

16 §21.201. Fees Nonrefundable. A fee paid to the department
17 under this division is nonrefundable.

18

19 §21.202. Property Right Not Created. Issuance of a permit or
20 license under this division does not create a contract or
21 property right in the permit or license holder.

22

23 §21.203. Complaint Procedures.

1 (a) The department will accept and investigate all written
2 complaints on a specific sign structure, sign company, or any
3 other issue under the jurisdiction of the outdoor advertising
4 program.

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

7 (c) If the complaint involves a sign structure or a sign
8 company the department will notify the owner of the sign
9 structure or sign company of the complaint and the pending
10 investigation within 15 days of receipt of the complaint. This
11 notification will include a copy of the complaint and complaint
12 investigation procedures.

13 (d) If the complaint included contact information, the
14 department will provide the complainant with a copy of the
15 complaint procedures within 15 days of the receipt of the
16 complaint.

17 (e) If the complaint involves fewer than 10 sign structures
18 the department will investigate the complaint and make a finding
19 within 30 days of the receipt of the complaint. If the
20 complaint involves 10 or more sign structures or is an
21 investigation of a sign company or other outdoor advertising
22 matter the department will make a finding within 90 days of the
23 receipt of the complaint.

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

5 (g) The department will provide the complainant, sign
6 owner, or sign company the findings of the investigation, which
7 will include whether administrative enforcement actions are
8 being initiated.

1 SUBCHAPTER I. REGULATION OF SIGNS ALONG INTERSTATE
2 AND PRIMARY HIGHWAYS

3 Division 2. Electronic Signs

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

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

15
16 §21.253. Issuance of Permit.

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

19 (1) satisfies the requirements of this division and any
20 applicable requirements of Division 1 of this subchapter
21 (relating to Signs); and

22 (2) has attached to it:

23 (A) a certified copy of the permit issued by the

1 municipality that gives permission for the electronic sign; or

2 (B) if the municipality does not issue permits, a
3 certified copy of written permission for the electronic sign
4 from the municipality.

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

9

10 §21.254. Prohibitions. An electronic sign may not:

11 (1) be illuminated by flashing, intermittent, or moving
12 lights;

13 (2) contain or display animated, moving video, or
14 scrolling advertising;

15 (3) consist of a static image projected on a stationary
16 object; or

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

18

19 §21.255. Location.

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

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

1 (2) within the extraterritorial jurisdiction of a
2 municipality described by paragraph (1) of this subsection that
3 under state law has extended its municipal regulation to include
4 that area.

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

10

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

17

18 §21.257. Requirements.

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

23 (b) An electronic sign must:

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

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

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

11

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

19

20 §21.259. Contact Information.

21 (a) The owner of an electronic sign shall provide to the
22 department contact information for a person who is available to
23 be contacted at any time and who is able to turn off the

1 electronic sign promptly if a malfunction occurs or is able to
2 accommodate an emergency notification request from a local
3 authority under §21.258 of this division (relating to Emergency
4 Information).

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

8

9 §21.260. Application of Other Rules. The requirements and
10 other provisions of Division 1 of this subchapter (relating to
11 Signs) apply to an electronic sign, except that if this division
12 conflicts with a provision of Division 1 of this subchapter,
13 this division 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 (5) Permit ~~[(6)]~~ Permit--The authorization granted for the
23 erection of a sign, subject to this subchapter and

1 Transportation Code, Chapter 394.

2 (6) [~~(7)~~] Person--An individual, association,
3 partnership, limited partnership, trust, corporation, or other
4 legal entity.

5 (7) [~~(8)~~] Portable sign--A sign designed to be mounted on
6 a trailer, bench, wheeled carrier, or other non-motorized mobile
7 structure or on skids or legs.

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

13 (9) [~~(10)~~] Sign--A thing that is designed, intended, or
14 used to advertise or inform, including a sign, display, light,
15 device, figure, painting, drawing, message, plaque, placard,
16 poster, billboard, logo, or symbol.

17 (10) [~~(11)~~] Sign face--The part of the sign that contains
18 the advertising or information contents and is distinguished
19 from other parts of the sign and another sign face by borders or
20 decorative trim. The term does not include a lighting fixture,
21 apron, or catwalk unless it displays a part of the advertising
22 or information contents of the sign.

23 (11) [~~(12)~~] Sign structure--All of the interrelated parts

1 and materials, such as beams, poles, braces, apron, catwalk, and
2 stringers, that are used, designed to be used, or intended to be
3 used to support or display a sign face.

4

5 §21.403. Prohibited Signs.

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

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

14 (c) A sign may not be erected or maintained on a highway or
15 part of a highway designated under Transportation Code,
16 §391.252.

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

20

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

1 first having obtained a permit under this subchapter.

2

3 §21.405. Exemptions. The following are exempt from the
4 requirements of this subchapter:

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

8 (2) a sign in existence before September 1, 1985, that
9 was properly registered and maintains a valid registration under
10 §21.407 of this subchapter (relating to Existing Off-Premise
11 Signs);

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

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

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

21 (6) a sign erected by a governmental entity;

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

1 (A) the sign is on private property;

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

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

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

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

9 (8) an off-premise directional sign for a small business,
10 as defined by Government Code, §2006.001, that is on private
11 property and is no larger than 50 square feet;

12 (9) a sign that is required by the Railroad Commission of
13 Texas at the principal entrance to or on each oil or gas
14 producing property, well, tank, or measuring facility to
15 identify or to locate the property, that is no larger in size
16 than is necessary to comply with the Railroad Commission's
17 regulations, and that has no advertising or information content
18 other than the name or logo of the company and the necessary
19 directions;

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

1 area of 32 square feet; and

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

6

7 §21.406. Exemptions for Certain Populous Counties.

8 (a) This subchapter does not apply to an off-premise
9 portable sign in an unincorporated area of a county with a
10 population of 2.4 million or more, according to the most recent
11 federal census, if the county either prohibits or regulates the
12 location, height, size, anchoring, or use of such a portable
13 sign.

14 (b) This subchapter does not apply to an on-premise sign in
15 an unincorporated area of a county with a population of 2.4
16 million or more or a county that borders such a county if:

17 (1) the county has adopted an ordinance to regulate on-
18 premise signs; or

19 (2) the commissioner's court of the county, by order, has
20 authorized the commission to regulate on-premise signs in the
21 unincorporated area of the county in accordance with a municipal
22 or county regulation.

23

1 §21.407. Existing Off-Premise Signs.

2 (a) A sign that existed before September 1, 1985 and that
3 was registered not later than December 30, 1985 does not require
4 a permit issued under this subchapter as long as the
5 registration remains valid.

6 (b) The sign registration is valid only for the location
7 indicated on the original registration application and only for
8 the sign described on that application.

9 (c) The sign registration must be renewed on or before
10 January 1 of the year of its expiration.

11 (d) The registration will automatically terminate if:

12 (1) the sign is removed for any reason other than to
13 change the advertising;

14 (2) the registration is not renewed; or

15 (3) the sign is replaced with another structure.

16 (e) To renew the registration, the holder must:

17 (1) file a written request, on the form prescribed by the
18 department;

19 (2) submit a renewal fee of \$10 per year for a period of
20 up to five years; and

21 (3) display the registration number on the sign structure
22 in numerals with a minimum height of two inches and a minimum
23 width of one inch.

1 (f) The registration allows for routine and customary
2 repairs and maintenance as provided under §21.434 of this
3 subchapter (relating to Repair and Maintenance), but substantial
4 changes are not authorized for existing signs. An amended
5 permit under §21.423 of this subchapter (relating to Amended
6 Permit) must be obtained prior to performing any customary
7 repairs or maintenance.

8 (g) The owner of an off-premise sign that was in existence
9 before September 1, 1985 and not duly registered or the
10 registration for which was timely renewed shall remove the sign
11 at the owner's expense upon written notification by the
12 department, unless it is an exempt sign.

13 (h) The registration of a sign may be transferred upon
14 filing with the department, on a form prescribed by the
15 department, a request for the transfer and payment of the
16 transfer fee.

17

18 §21.408. Continuance of Nonconforming Signs.

19 (a) Notwithstanding other provisions of this subchapter,
20 the department will renew a permit for a nonconforming sign only
21 if the sign structure:

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

1 (2) remains substantially the same as it was on the later
2 of the date it was erected, ~~[or]~~ became subject to the
3 department's control, or became a nonconforming sign due to
4 change in statute, rule, or condition.

5 (b) A nonconforming sign may not be:

6 (1) removed and re-erected for any reason, other than a
7 request by a governmental entity; or

8 (2) substantially changed, as described by §21.434 of
9 this subchapter (relating to Repair and Maintenance).

10

11 §21.409. Permit Applications.

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

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

16 (2) the original signature of the applicant;

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

18 (4) the complete legal name and address of the owner of
19 the designated site;

20 (5) a statement of whether the requested sign is located
21 within an incorporated city or a city's extraterritorial
22 jurisdiction;

23 (6) the site owner's or the owner's authorized

1 representative's signature on the application demonstrating
2 consent to the erection and maintenance of the sign and right of
3 entry onto the property of the sign location by the department
4 or its agents;

5 (7) information that details how and the location from
6 which the sign will be erected and maintained; and

7 (8) additional information the department considers
8 necessary to determine eligibility.

9 (b) The application must be:

10 (1) notarized;

11 (2) filed with the department's division responsible for
12 the Outdoor Advertising Program in Austin; and

13 (3) accompanied by the fee prescribed by §21.424 of this
14 subchapter (relating to Permit Fees).

15 (c) The application must include a sketch that shows:

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

17 (2) the exact location of the sign faces in relation to
18 the sign structure;

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

20 (4) the distance from the buildings, landmarks, right of
21 way line, other signs, and other distinguishable features of the
22 landscape.

23

1 §21.410. Site Owner's Consent; Withdrawal.

2 (a) A site owner's consent to the erection and maintenance
3 of the sign and access to the site by the department or its
4 agent is provided with a permit application under §21.409 of
5 this subchapter (relating to Permit Applications). The consent
6 operates for the life of the lease or until the owner delivers
7 to the department and the sign owner a written statement that
8 permission for the maintenance or inspection by the department
9 or its agents of the sign has been withdrawn and documentation
10 showing that the lease allowing the sign has been terminated in
11 accordance with the terms of the lease agreement or through a
12 court order.

13 (b) If the sign owner provides documentation that the sign
14 owner is disputing the lease termination [~~in court~~], the
15 department will not cancel the permit until a settlement signed
16 by both parties or a court order settling the dispute is
17 delivered to the department.

18

19 §21.411. Applicant's Identification of Proposed Site.

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

1 sign structure.

2 (b) At least two feet of a stake must be visible above the
3 ground.

4 (c) A stake or marking may not be moved or removed until
5 the application is denied or, if approved, until the sign has
6 been erected.

7

8 §21.412. Permit Application Review.

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

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

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

20 (1) the date of the final decision on an appeal under
21 §21.418 of this subchapter (relating to Appeal Process for
22 Permit Denials); or

23 (2) if an appeal is not filed within the period provided

1 by §21.418 of this subchapter, on the 46th [~~21st~~] day after the
2 date the denial notice was received under §21.413 of this
3 subchapter (relating to Decision on Application).

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

9
10 §21.413. Decision on Application.

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

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

20 (c) If the application is not approved, the department will
21 send a copy of the denied application and a notice that states
22 the reason for the denial.

23 (d) If an application is denied, the department will notify

1 the landowner identified on the permit application of the
2 denial. The notice is for informational purposes only, and does
3 not convey any rights to the landowner. The landowner may not
4 appeal the denial unless the landowner is also the applicant.

5

6 §21.414. Sign Permit Plate.

7 (a) The sign owner shall securely attach the sign permit
8 plate to the part of the sign structure that is nearest to the
9 rural road and visible from the closest right of way [~~main-~~
10 ~~traveled-way~~] not later than the 30th day after the date that
11 the sign is erected.

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

13 (c) The sign permit plate must remain visible from the
14 closest right of way [~~main-traveled-way~~] at all times.

15 (d) If a sign permit plate is lost or stolen or becomes
16 illegible, the sign owner must submit to the department a
17 request for a replacement plate in a form prescribed by the
18 department accompanied by the replacement plate fee prescribed
19 by §21.424 of this subchapter (relating to Permit Fees).

20 (e) Failure to apply for a replacement permit or attach the
21 plate to the sign structure as required in subsection (a) of
22 this section within 60 days of the date of written notification
23 from the department that the permit plate is not visible or

1 attached may result in an enforcement action under §21.425 or
2 §21.426 of this subchapter (relating to Cancellation of Permit
3 and Administrative Penalties, respectively).

4

5 §21.415. General Sign Location Requirements. The department
6 will not issue a permit under this subchapter unless the sign
7 for which application is made is located along a roadway to
8 which Transportation Code, Chapter 394 applies and is within 800
9 feet of a recognized commercial or industrial activity located
10 on the same side of the roadway.

11

12 §21.416. Commercial or Industrial Activity.

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

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

17 (2) is conducted in a permanent building or structure
18 affixed to the real property that:

19 (A) has an indoor restroom, running water, functioning
20 electrical connections, and permanent flooring, other than dirt,
21 gravel, or sand;

22 (B) is visible from the traffic lanes of the main-
23 traveled way;

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

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

4 (b) The following are not commercial or industrial
5 activities:

6 (1) agricultural, forestry, ranching, grazing, farming,
7 and related activities, including the operation of a temporary
8 wayside fresh produce stand;

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

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

12 (4) an activity that is not conducted by at least one
13 person who works for the business at the activity site for at
14 least 25 hours per week on at least five days per week and for
15 which the hours during which the activity is conducted are
16 posted at the activity site;

17 (5) the operation or maintenance of:

18 (A) an outdoor advertising structure;

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

1 (C) an apartment house or residential condominium;

2 (D) a public or private preschool, secondary school,
3 college, or university, other than a trade school or corporate
4 training campus;

5 (E) a quarry or borrow pit, other than the related
6 activities conducted in a building or structure that meets the
7 requirements of subsection (a)(2) of this section and the
8 parking facilities for that building or structure;

9 (F) a cemetery; or

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

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

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

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

19 (d) A sign is not required to meet the requirements of
20 subsections (a)(2)(C) (as clarified by subsection (c) of this
21 section), (a)(2)(D), (b)(3), or (b)(4) of this section to
22 maintain conforming status if the permit for the sign was issued
23 before the effective date of this section.

1

2 §21.417. Erection and Maintenance from Private Property. The
3 department will not issue a permit for a sign unless it can be
4 erected or maintained from private property.

5

6 §21.418. Appeal Process for Permit Denials.

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

9 (b) The request for appeal must:

10 (1) be in writing;

11 (2) contain:

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

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

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

17 (3) be received within 45 [~~20~~] days after the date the
18 denial notice was received.

19 (c) The executive director or the executive director's
20 designee, who may not be below the level of assistant executive
21 director, will make a final determination on the appeal within
22 60 days after the date that the executive director receives the
23 request for appeal. If the final determination is that the

1 permit is denied, the executive director or the executive
2 director's designee will send the final determination to the
3 applicant stating the reason for denial. If the final
4 determination is that the application be approved, the
5 department will issue the permit in accordance with §21.413 of
6 this subchapter (relating to Decision on Application).

7 (d) If the executive director or the designee is unable to
8 make a final determination on the appeal within the 60-day [~~90-~~
9 ~~day~~] period under subsection (c) of this section, the department
10 will notify the applicant by mail of the delay and provide an
11 estimated time in which a final determination will be made.

12

13 §21.419. Board of Variance.

14 (a) A board of variance is established. The executive
15 director shall appoint the members of the board. A majority of
16 the members constitutes a quorum.

17 (b) The board of variance may make minor exceptions to this
18 subchapter if the board determines that a substantial injustice
19 would result unless the minor exceptions were granted. The
20 board of variance may establish appropriate conditions and
21 safeguards for granting the variance.

22 (c) The board of variance will meet and consider variance
23 requests as needed.

1 (d) The board of variance will provide 10 days notice of
2 the meeting to all applicants requesting a variance.

3 (e) An applicant may request a variance from the board of
4 variance if the applicant believes that the applicant meets the
5 requirements of subsection (b) of this section.

6 (f) The board of variance will consider evidence from all
7 parties present at the meeting prior to making a determination
8 on the requested variance.

9

10 §21.420. Permit Expiration.

11 [~~(a)~~] A permit is valid for one year.

12 [~~(b) A permit automatically expires on the date that the
13 sign for which the permit was issued is acquired by the state.~~]

14

15 §21.421. Permit Renewals.

16 (a) To continue in effect, a permit must be renewed.

17 (b) A permit is eligible for renewal if the sign for which
18 it was issued continues to meet all applicable requirements of
19 this subchapter and Transportation Code, Chapter 394.

20 (c) To renew the permit, the permit holder must file with
21 the department a written application in a form prescribed by the
22 department accompanied by the applicable fees prescribed by
23 §21.424 of this subchapter (relating to Permit Fees). The

1 application must be received by the department before the 46th
2 [~~31st~~] day after the date of the permit expiration.

3 (d) A permit may not be renewed if the sign for which it
4 was issued is not erected to the extent that it includes a sign
5 face before the first anniversary of the date the permit was
6 issued.

7 (e) The department will provide a renewal notification to
8 the licensee at least 30 days before the date of the permit
9 expiration and if the permit is not renewed before it expires
10 the department within 20 days after the date of expiration will
11 provide notification to the licensee of the opportunity to file
12 a late renewal.

13

14 §21.422. Transfer of Permit.

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

17 (b) To transfer one or more sign permits, the permit holder
18 must send to the department a written request in a form
19 prescribed by the department accompanied by the prescribed
20 transfer fee prescribed by §21.424 of this subchapter (relating
21 to Permit Fees).

22 (c) If the request is approved, the department will send to
23 the transferor and to the transferee a copy of the approved

1 permit transfer form.

2 (d) The department will not approve the transfer of a
3 permit if cancellation of the permit is pending or has been
4 abated awaiting the outcome of an administrative hearing.

5

6 §21.423. Amended Permit.

7 (a) To perform customary maintenance or to make substantial
8 changes to the sign or sign structure under §21.434 of this
9 subchapter (relating to Repair and Maintenance), a permit holder
10 must submit an amended permit application.

11 (b) The amended permit application must be submitted on a
12 form prescribed by the department that provides the information
13 required under §21.409 of this subchapter (relating to Permit
14 Applications) that is applicable to an amended permit and
15 indicates the change from the information in the original
16 application for the sign permit. The amended permit will not
17 require the signature of the land owner or city representative.

18 (c) The new sign face size, configuration, or location must
19 meet all applicable requirements of this subchapter.

20 (d) The holder of a permit for a nonconforming sign may
21 apply for an amended permit to perform eligible customary
22 maintenance under §21.434 of this subchapter. An amended permit
23 will not be issued for a substantial change, as described by

1 §21.434(c) of this subchapter, to a nonconforming sign.

2 (e) Making a change to a sign that requires an amended
3 permit without first obtaining an amended permit is a violation
4 of this subchapter and will result in an administrative
5 enforcement action.

6 (f) The department will make a decision on an amended
7 permit application within 45 days of the date receipt of the
8 amended permit application. If the decision cannot be made
9 within the 45 day period the department will notify the
10 applicant of the delay, provide the reason for the delay, and
11 provide an estimate for when the decision will be made.

12 (g) In the event of a natural disaster the department may
13 waive the requirement that a required amended permit be issued
14 prior to the repair of a conforming sign. If the department
15 waives this requirement the amended permit must be submitted
16 within 60 days of the completion of the repairs. If the repairs
17 are in violation of these rules or the permit holder fails to
18 submit the amended permit application the sign is subject to
19 enforcement and removal actions.

20

21 §21.424. Permit Fees.

22 (a) The amounts of the fees related to permits under this
23 subchapter are:

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

2 (2) \$75 for the renewal of a permit;

3 (3) \$25 for the transfer of a permit up to a maximum of
4 \$2,500 for a single transaction regardless of the location of
5 the sign; and

6 (4) \$25 for a replacement sign permit plate.

7 (b) In addition to the \$75 annual renewal fee, an
8 additional late fee of \$100 is required for a renewal of a
9 permit that is received before the 46th [~~31st~~] day after the
10 permit expiration date.

11 (c) A fee prescribed by this section is payable by check,
12 cashier's check, or money order. If a check or money order is
13 dishonored upon presentment, the permit, renewal, or transfer is
14 void.

15

16 §21.425. Cancellation of Permit.

17 (a) The department will cancel a permit for a sign if the
18 sign:

19 (1) is removed, unless the sign is removed and re-erected
20 at the request of a condemning authority [~~political~~
21 ~~subdivision~~];

22 (2) is not maintained in accordance with this subchapter
23 or Transportation Code, Chapter 394;

1 (3) is damaged beyond repair, as determined under §21.439
2 of this subchapter (relating to Discontinuance of Sign Due to
3 Destruction);

4 (4) is abandoned, as determined under §21.427 of this
5 subchapter (relating to Abandonment of Sign);

6 (5) is erected after the effective date of this section
7 and is not built within 20 [~~10~~] feet of the location described
8 in the permit application or is built within 20 [~~ten~~] feet of
9 the location described in the permit application but at a
10 location that does not meet all spacing requirements of this
11 chapter or in accordance with the sketch or other assertions
12 contained in the permit application;

13 (6) is repaired or altered without obtaining a required
14 amended permit under §21.423 of this subchapter (relating to
15 Amended Permit);

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

18 (8) is erected, repaired, or maintained in violation of
19 §21.441 of this subchapter (relating to Destruction of
20 Vegetation and Access from Right of Way Prohibited);

21 (9) has been made more visible by the permit holder
22 clearing vegetation from the highway right of way in violation
23 of §21.441 of this subchapter;

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

7 (11) does not have the permit plate properly attached
8 under §21.414 of this subchapter (relating to Sign Permit
9 Plate).

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

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

18 (1) the reason for the cancellation;

19 (2) the effective date of the cancellation;

20 (3) the right of the permit holder to request an
21 administrative hearing on the cancellation; and

22 (4) the procedure for requesting a hearing and the period
23 for filing the request.

1 (d) A request for an administrative hearing under this
2 section must be in writing and delivered to the department
3 within 45 [~~20~~] days after the date that the notice of
4 cancellation is received.

5 (e) If timely requested, an administrative hearing will be
6 conducted in accordance with Chapter 1, Subchapter E of this
7 title (relating to Procedures in Contested Case) and the
8 cancellation will be abated until the cancellation is affirmed
9 by order of the commission.

10 (f) A permit holder may voluntarily cancel a permit by
11 submitting a request in writing after the sign for which the
12 permit was issued has been removed. Subsections (c) - (e) of
13 this section do not apply to a permit voluntarily canceled under
14 this subsection.

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

20

21 §21.426. Administrative Penalties.

22 (a) The department may impose administrative penalties
23 against a person who intentionally violates Transportation Code,

1 Chapter 394 or this subchapter.

2 (b) The amount of the administrative penalty may not exceed
3 the maximum amount of a civil penalty that may be imposed under
4 Transportation Code, §394.081 and will be based on the following:

5 (1) \$150 for a violation of a permit plate requirement
6 under §21.414 of this section (relating to Sign Permit Plate);

7 (2) \$250 for a violation of:

8 (A) a registration requirement of §21.407 of this
9 section (relating to Existing Off-Premise Signs); or

10 (B) erecting the sign at the location other than the
11 location specified on the application, except that if the actual
12 sign location does not conform to all other requirements the
13 department will seek cancellation of the permit;

14 (3) \$500 for:

15 (A) maintaining or repairing the sign from the state
16 right of way; or

17 (B) performing customary maintenance on any sign or
18 substantial maintenance on a conforming sign without first
19 obtaining an amended permit; or

20 (4) \$1000 for erecting a sign from the right of way.

21 (c) In addition to the penalties assessed under subsection
22 (b) of this section, the department may seek to recover the cost
23 of repairing any damage to the right of way done by the sign

1 owner or on the sign owner's behalf.

2 (d) Before initiating an enforcement action under this
3 section, the department will notify the sign owner in writing of
4 a violation of subsection (b)(1) or (2)(B) of this section and
5 will give the sign owner 60 days to correct the violation and
6 provide proof of the correction to the department.

7 (e) Upon determination to seek administrative penalties the
8 department will mail a notice of the administrative penalties to
9 the last known address of the permit holder. The notice must
10 clearly state:

11 (1) the reasons for the administrative penalties;

12 (2) the amount of the administrative penalty; and

13 (3) the right of the holder of the permit to request an
14 administrative hearing.

15 (f) A request for an administrative hearing under this
16 section must be made in writing and delivered to the department
17 within 45 [~~20~~] days after the date of the receipt of the notice.

18 (g) If timely requested, an administrative hearing shall be
19 conducted in accordance with Chapter 1, Subchapter E of this
20 title (relating to Procedures in Contested Case), and the
21 imposition of administrative penalties will be abated unless and
22 until that action is affirmed by order of the commission.

23

1 §21.427. Abandonment of Sign.

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

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

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

8 (b) Small temporary signs, such as garage sale signs or
9 campaign signs, that are attached to the structure do not
10 constitute legible advertising or copy for the purpose of ending
11 the period under subsection (a)(1) of this section.

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

16 (d) The department may initiate the cancellation process if
17 the department has evidence that supports the fact that the sign
18 face has been blank or has been without legible advertisement or
19 copy for 365 days, such as photographs showing that, on at least
20 four dates throughout the 365-day period, the sign was in the
21 same condition or was degrading. Evidence is not required for
22 each of the 365 days.

23 (e) If the location of the abandoned sign is allowed under

1 this subchapter, the department may issue a permit for the sign
2 site to anyone who submits an application that meets the
3 requirements of this subchapter. The department will not issue
4 a permit for an abandoned sign that is located in a place that
5 does not meet the requirements of this subchapter.

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

8 (g) A multi-face sign is not abandoned unless all sign
9 faces may be considered abandoned under this section.

10 (h) Before initiating the cancellation process under this
11 section, the department will provide notice to the sign owner
12 and land owner as identified on the permit application of the
13 abandonment determination and allow the sign owner 60 days to
14 correct the issue.

15

16 §21.428. Sign Face Size and Positioning.

17 [~~(a) An on-premise sign, other than an on-premise wall~~
18 ~~sign, may not be erected that has a face area exceeding 400~~
19 ~~square feet, including cutouts but excluding uprights, trim, and~~
20 ~~apron.]~~

21 (a) [~~(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 (b) For the purposes of subsection (b) of this section,
3 border and trim are included as part of the sign face.

4 (c) Notwithstanding the area limitation provided by
5 subsection (a)(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 35 [~~25~~]
10 percent of the area indicated on the sign permit; and

11 (3) the sign face, including the area of the protrusions,
12 does not exceed 907 [~~807~~] square feet in area.

13 (d) The area is measured by the smallest square, rectangle,
14 triangle, circle, or combination that encompasses the entire
15 sign face.

16 (e) 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 (f) 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 (g) A sign face that exceeds 454 [~~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 907 [672] square
3 feet in 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 1,500 feet of an off-
6 premise sign with a face area of at least 301 square feet that
7 is on the 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
Over 800	77

11

12 §21.432. Height Restrictions.

13 (a) Except as provided in subsection (f) of this section a
14 sign may not be erected that exceeds an overall height of 42-1/2

1 feet.

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

4 (c) A roof sign that has an open sign face in which the
5 uniform open area between individual letter or shapes is not
6 less than 40 percent of the total gross area of the sign face
7 may not at any point exceed 40 feet above the roof level.

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

10 (e) For the purposes of this section, height is measured
11 from the grade level of the centerline of the main-traveled way
12 closest to the sign, at a point perpendicular to the sign
13 location.

14 (f) The height measurement does not include any renewable
15 energy device such as solar panels or wind turbines that are
16 attached to the sign structure above the sign face to improve
17 the energy efficiency of the sign structure.

18

19 §21.433. Lighting.

20 (a) A sign may not contain or be illuminated by any
21 flashing, intermittent, or moving light except that this
22 subsection does not apply to a sign that only provides public
23 service information, such as time, date, temperature, or

1 weather.

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

4 (1) upward lighting of no more than four luminaires per
5 direction of the sign face or faces of the structure; or

6 (2) downward lighting of no more than four luminaires per
7 direction of the sign face or faces of the structure.

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

9 (1) must be shielded, directed, and positioned to prevent
10 beams or rays of light from being directed at any portion of the
11 traveled ways of a regulated rural road;

12 (2) may not be of such intensity or brilliance as to
13 cause vision impairment of a driver of any motor vehicle on a
14 regulated rural road or otherwise interfere with the driver's
15 operation of a motor vehicle; and

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

18 (d) A temporary protrusion on a sign may be animated only
19 if it does not create a safety hazard to the traveling public.

20 A temporary protrusion may not be illuminated by flashing or
21 moving lights or enhanced by reflective material that creates
22 the illusion of flashing or moving lights.

23 (e) Reflective paint or reflective disks may be used on a

1 sign face only if the paint or disks do not:

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

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

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

5 (1) the light does not flash;

6 (2) the light does not cause an undue distraction to the

7 traveling public; and

8 (3) the permit for the sign specifies that the sign is an

9 illuminated sign.

10 (g) This subchapter does not prohibit a temporary

11 protrusion that displays only alphabetical or numerical

12 characters and that satisfies this subsection and the

13 requirements of §21.428 of this subchapter (relating to Sign

14 Face Size and Positioning) relating to a temporary protrusion.

15 The display on the temporary protrusion may be a digital or

16 other electronic display, but if so:

17 (1) it must consist of a stationary image;

18 (2) it may not change more frequently than four times [~~twice~~] in any 24 hour period; and

19 (3) the process of any change of display must be completed within two [~~one~~] minutes.

20

21 §21.434. Repair and Maintenance.

22 (a) The following are considered to be routine maintenance

23 activities that do not require an amended permit:

- 1 (1) the replacement of nuts and bolts;
- 2 (2) nailing, riveting, or welding;
- 3 (3) cleaning and painting;
- 4 (4) manipulation of the sign structure to level or plumb
- 5 it;
- 6 (5) changing of the advertising message; [~~and~~]
- 7 (6) the replacement of minor parts if the materials of
- 8 the minor parts are the same type as those being replaced and
- 9 the basic design or structure of the sign is not altered[~~-~~];
- 10 (7) changing all or part of the sign face structure but
- 11 only if materials similar to those of the sign face being
- 12 replaced are used; and
- 13 (8) upgrading existing lighting for an energy efficient
- 14 lighting system.

15 (b) The following are considered to be customary
16 maintenance activities that may be made but require an amended
17 permit prior to the initiation of such an activity:

18 [~~(1) changing all or part of the sign face structure but~~
19 ~~only if materials similar to those of the sign face being~~
20 ~~replaced are used;~~]

21 [~~(2) upgrading existing lighting for an energy efficient~~
22 ~~lighting system;~~]

23 (1) [~~(3)~~] replacement of poles, but only if not more than

1 one-half of the total number of poles of the sign structure are
2 replaced in any 12 month period and the same material is used
3 for the replacement poles; and

4 (2) [~~4~~]adding a catwalk to the sign structure.

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

8 (1) adding lights to an unilluminated sign or adding more
9 intense lighting to an illuminated sign whether or not the
10 lights are attached to the sign structure;

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

12 (3) adding permanent bracing wires, guy wires, or other
13 reinforcing devices;

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

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

19 (6) increasing the height of the sign;

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

23 (8) moving the sign structure or sign face in any way

1 unless the movement is made in accordance with §21.435 of this
2 subchapter (relating to Permit for Relocation of Sign).

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

5

6 §21.435. Permit for Relocation of Sign.

7 (a) A sign may be relocated in accordance with this
8 section, §21.436 of this subchapter (relating to Location of
9 Relocated Sign), and §21.437 of this subchapter (relating to
10 Construction and Appearance of Relocated Sign) if the sign is
11 legally erected and maintained and will be within the highway
12 right of way as a result of a construction project.

13 (b) To relocate a sign under this section, the permit
14 holder must obtain a new permit under §21.409 of this subchapter
15 (relating to Permit Applications), but the permit fee is waived.

16 (c) To receive a new permit to relocate a sign, the permit
17 holder must submit a new permit application that identifies that
18 the application is for the relocation of an existing sign due to
19 a highway project. The new location must meet all local codes,
20 ordinances, and applicable laws.

21 (d) Notwithstanding other provisions of this section, if
22 only a part of a sign will be located within the highway right
23 of way as a result of the construction project, the sign owner

1 may apply to amend an existing permit for the sign to authorize:

2 (1) the relocation of the sign face of a monopole sign
3 that would overhang the proposed right of way from that location
4 to the land on which the sign's pole is located;

5 (2) the relocation of the poles and sign face of a
6 multiple sign structure that are located in the proposed right
7 of way from the proposed right of way to the land on which the
8 other poles of the sign structure are located; or

9 (3) a reduction in the size of a sign structure that is
10 located partially in the proposed right of way, so that the sign
11 structure and sign face are removed from the proposed right of
12 way.

13 (e) A permit for the relocation of a sign must be submitted
14 within 36 [~~18~~] months from the earlier of the date the original
15 sign was removed or the date the original sign was required to
16 move. [~~Upon written request by the permit holder the department~~
17 ~~shall grant an additional six months to submit an application.]
18 The sign owner is required to continue to renew the sign permit
19 and pay the permit renewal fee for the sign to remain eligible
20 for relocation.~~

21

22 §21.436. Location of Relocated Sign.

23 (a) To receive a new permit for relocation, an existing

1 sign must be relocated [~~to one of the following locations, as~~
2 ~~listed in order of priority:~~]

3 [~~(1) on the same parcel of land on which the existing~~
4 ~~sign is located in a location that is allowed under this section~~
5 ~~and that is within 50 feet of a line drawn through the center~~
6 ~~point of the existing sign structure and perpendicular to the~~
7 ~~edge of the highway right of way nearest to the existing sign;~~
8 ~~or]~~

9 [(2)] on a part of the same parcel of land on which the
10 sign was situated before relocation in a location that is
11 allowed under this section.

12 (b) If the sign owner can demonstrate that [~~both of~~] the
13 location[~~s~~] under subsection (a) of this section is [~~are~~] not
14 physically or economically feasible for a sign structure, the
15 sign owner, on approval by the department, may relocate the sign
16 to any other location that is allowed under this section. The
17 owner is not entitled to additional relocation benefits under
18 §21.438 of this subchapter (relating to Relocation Benefits) if
19 the sign structure is relocated further than 50 miles from the
20 location of the existing sign.

21 (c) The location of the relocated sign must be within the
22 required distance of a commercial or industrial activity as
23 described by §21.416 of this subchapter (relating to Commercial

1 or Industrial Activity).

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

3 (1) is likely to cause a driver to be unduly distracted
4 in any way;

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

7 (3) will obstruct or interfere with the driver's view of
8 approaching, merging, or intersecting motor vehicle or rail
9 traffic.

10 (e) A sign may not be relocated from a rural road to a
11 highway that is subject to Subchapter I of this chapter
12 (relating to Regulation of Signs along Interstate and Primary
13 Highways).

14 (f) Spacing requirements of §21.429(a) - (c) of this
15 subchapter (relating to Spacing of Signs) apply to signs
16 relocated under this section.

17 (g) A sign may not be relocated to a place that is:

18 (1) within 500 feet of a public park that is adjacent to
19 a rural road on either side of the roadway; or

20 [~~2) within 500 feet of an interchange, intersection at
21 grade, or rest area; or~~]

22 (2) [~~3)~~] within five feet of any highway right of way
23 line.

1

2 §21.437. Construction and Appearance of Relocated Sign.

3 (a) A relocated sign must be constructed with the same
4 number of poles and of the same type of materials as the
5 existing sign. A relocated sign may not exceed the maximum
6 height provided by §21.432 of this subchapter (relating to
7 Height Restrictions). The number of sign faces and lighting, if
8 any, of the relocated sign may not exceed the number of faces or
9 lighting of the existing sign.

10 (b) The size of each of the sign faces of a relocated sign
11 that are visible to approaching traffic may not exceed the size
12 of the existing sign face.

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

19

20 §21.438. Relocation Benefits.

21 (a) Relocation benefits will be paid in accordance with
22 Subchapter G of this chapter (relating to Relocation Assistance
23 and Benefits) for the relocation of a sign under §21.435 of this

1 subchapter (relating to Permit for Relocation of Sign).

2 (b) The owner of an existing sign that is being relocated
3 must enter into a written agreement with the governmental entity
4 that is acquiring the right-of-way in which the sign is located.
5 In the agreement the owner, in consideration of the payment by
6 the governmental entity of relocation benefits, waives and
7 releases any claim for damages against the governmental entity
8 and the state for any temporary or permanent taking of the sign.

9

10 §21.439. Discontinuance of Sign Due to Destruction.

11 (a) If a sign is partially destroyed by a natural force
12 outside the control of the permit holder, including wind,
13 tornado, lightening, flood, fire, or hurricane, the department
14 will determine whether the sign can be repaired without an
15 amended permit.

16 (b) The department may require the permit holder to submit
17 an estimate of the proposed work, including an itemized list of
18 the materials to be used and the manner in which the work will
19 be done. The department will allow the sign to be repaired
20 without an amended permit if the department determines that the
21 damage is not substantial. If the damage is determined to be
22 substantial the sign owner must obtain an amended permit under
23 §21.423 of the subchapter (relating to Amended Permit).

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

6 (d) If a permit is canceled under this section or §21.425
7 of this subchapter (relating to Cancellation of Permit) the
8 remaining sign structure must be dismantled and removed without
9 cost to the state.

10 (e) A sign that is totally or partially destroyed by
11 vandalism or a motor vehicle accident may be rebuilt as
12 described on the most recently approved permit application.

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

15 (g) Damage is considered to be substantial if the cost to
16 repair the sign would exceed 50 percent of the cost to replace
17 it with a sign of the same basic construction using new
18 materials and at the same location.

19 (h) A sign that is partially destroyed by a natural force
20 outside the control of the permit holder in an area that
21 receives a state or federal disaster declaration and the sign
22 owner has documentation to show that the sign damage would not
23 be considered substantial the sign may be repaired without prior

1 determination by the department if, repaired within 180 days of
2 the event and if within 60 days of the completion of the
3 repairs, the owner submits the following:

4 (1) photos of the partially destroyed sign and the
5 repaired sign; and

6 (2) a notarized affidavit executed by the permit holder
7 containing:

8 (A) the permit number of the sign;

9 (B) a statement that the sign was damaged by the
10 natural force;

11 (C) a statement that the cost to repair the sign was
12 less than 60 percent of the cost of a new, sign with the same
13 basic construction; and

14 (D) a statement that the sign was repaired in the same
15 configuration and with like materials according to the most
16 recent approved permit.

17 (i) A sign repaired in violation of this subsection is
18 subject to enforcement and removal.

19

20 §21.440. Order of Removal.

21 (a) If a sign permit expires without renewal or is canceled
22 or if the sign is erected or maintained in violation of this
23 subchapter, the owner of the sign, on a written demand by the

1 department, shall remove the sign at no cost to the state.

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

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

8

9 §21.441. Destruction of Vegetation and Access from Right of Way
10 Prohibited.

11 (a) A person may not:

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

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

15 (b) The department will initiate an enforcement action if
16 the permit holder, or someone acting on behalf of the permit
17 holder, violates this section.

18 (c) It is not a violation to trim the portion of the tree
19 or vegetation that encroaches onto private property at the
20 private property line as long as the trimming occurs from the
21 private property.

22

23 §21.442. On-Premise Signs.

1 (a) A business may not maintain more than five on-premise
2 signs on a frontage of a single rural road at a single business
3 location.

4 (b) A permit under 21.404 of this subchapter (relating to
5 Permit Required) is not required to erect an on-premise sign.

6 (c) An on-premise sign is a sign that:

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

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

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

13 (2) only advertises the sale or lease of the real
14 property on which the sign is located and is removed within 90
15 days after the date of the closing of the real property
16 transaction.

17 (d) 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 (e) For the purpose of subsection (d)(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) is 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 (f) A sign is not an on-premise sign if:

18 (1) the sign consists principally of brand name or trade
19 name advertising and the product or service advertised is only
20 incidental to the principal activity [~~brand name or trade name~~
21 ~~advertising regarding a product or service that is only~~
22 ~~incidental to the business activity covers more than 50 percent~~
23 ~~of the area of a static sign face or for an electronic sign, as~~

1 ~~defined by §21.251 of this chapter (relating to Definition), if~~
2 ~~brand name or trade name advertising is displayed 50 percent or~~
3 ~~more of the time during any five minute period];~~

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

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

10 (g) For the purposes of this subsection:

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

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

17

18 [~~§21.443. On Premise Sign Erectors.~~]

19 [~~(a) Any person engaged primarily in the business of~~
20 ~~erecting signs that advertise companies located or products sold~~
21 ~~on the premises on which the signs are erected must file with~~
22 ~~the director of the right of way division on behalf of the~~
23 ~~commission a surety bond that is in the amount of at least~~

1 ~~\$100,000 and payable to the commission to reimburse the~~
2 ~~department for the cost of removing a sign unlawfully erected or~~
3 ~~maintained by the person. The bond must be in a form prescribed~~
4 ~~by the department and must remain in effect at all times that~~
5 ~~the person remains primarily engaged in the business of erecting~~
6 ~~such a sign.]~~

7 ~~[(b) If a person files with the department an affidavit~~
8 ~~that states that the person is not engaged primarily in the~~
9 ~~business of erecting on-premise signs, the statement in the~~
10 ~~affidavit will be accepted as factual unless probative evidence~~
11 ~~to the contrary is received by the department.]~~

12 ~~[(c) A person may not be exempted from the bond requirement~~
13 ~~of this section.]~~

14

15 §21.444. Fees Nonrefundable. A fee paid to the department
16 under this subchapter is nonrefundable.

17

18 §21.445. Property Right Not Created. Issuance of a permit
19 under this subchapter does not create a property right in the
20 permit holder.

21

22 §21.446. Time Proposed Roadway Becomes Subject to Subchapter.
23 For the purposes of this subchapter, a proposed roadway becomes

1 a roadway and a proposed interchange becomes an interchange:

2 (1) when environmental clearance and the approved

3 alignment have been obtained from the Federal Highway

4 Administration; or

5 (2) if environmental clearance and approved alignment

6 from the Federal Highway Administration are not required for a

7 proposed roadway, when the alignment is approved by the

8 department or other political subdivision responsible for

9 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.

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§21.943. Eligibility.

(a) To be eligible for a directional sign, a privately owned activity or attraction must be of national or regional interest to the traveling public and must be:

- (1) a natural phenomenon;
- (2) a scenic attraction;
- (3) an historic, educational, cultural, scientific, or religious site; or
- (4) an outdoor recreational area.

(b) The department may determine whether an attraction or activity satisfies the requirements of subsection (a) of this section. In making the determination the department may use among other resources the National Register of Historic Places and the "Texas State Travel Guide" published by the State of Texas.

§21.944. Size of Sign. A sign, including its border and trim but excluding its supports, may not exceed:

- (1) an area of 150 square feet;
- (2) a height of 20 feet; or
- (3) a length of 20 feet.

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.