

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

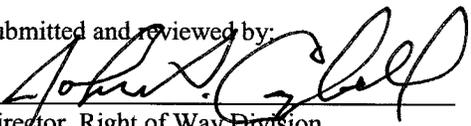
The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §21.144, §21.146, §21.149, §21.152, §21.155, §§21.158 - 21.160, §21.169, §§21.172 - 21.174, §21.179, §21.180, §21.183, §21.187, §21.193, §21.198, and new §21.204 relating to Regulation of Signs Along Interstate and Primary Highways; amendments to §21.405, §21.409, §21.411, §21.416; the repeal of §21.419 and new §21.419; amendments to §§21.420 - 21.423, §21.429, and new §§21.447 - 21.457 relating to Control of Signs Along Rural Roads to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted amendments, attached to this minute order as Exhibits A - C, 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*.

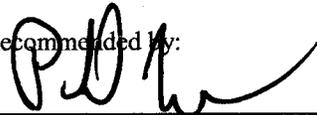
IT IS THEREFORE ORDERED by the commission that the amendments to §21.144, §21.146, §21.149, §21.152, §21.155, §§21.158 - 21.160, §21.169, §§21.172 - 21.174, §21.179, §21.180, §21.183, §21.187, §21.193, §21.198, §21.405, §21.409, §21.411, §21.416, §§21.420 - 21.423, §21.429, the repeal of §21.419, and new §21.204, §21.419, and §§21.447 - 21.457 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 Division

Recommended by:


Executive Director

113040 MAR 29 12

Minute Date
Number Passed

Adoption Preamble

1
2 The Texas Department of Transportation (department) proposes
3 amendments to 43 TAC Chapter 21, Subchapter I, Regulation of
4 Signs along Interstate and Primary Highways, §§21.144, 21.146
5 21.149, 21.152, 21.155, 21.158 - 21.160, 21.169, 21.172 -
6 21.174, 21.179, 21.180, 21.183, 21.187, 21.193, 21.198, and new
7 21.204 and amendments to Subchapter K, Control of Signs along
8 Rural Roads, 21.405, 21.409, 21.411, 21.416, the repeal of
9 21.419 and new 21.419, amendments to 21.420 - 21.423, 21.429,
10 and new 21.447-21.457, all concerning outdoor advertising. The
11 amendments to §§21.144, 21.149, 21.152, 21.155, 21.159, 21.160,
12 21.169, 21.172, 21.173, 21.179, 21.180, 21.183, 21.187, 21.193,
13 21.198, 21.405, 21.409, 21.411, 21.416, 21.421, 21.422, 21.429,
14 the repeal of 21.419 and new 21.419, and 21.447-21.457 are
15 adopted without changes to the proposed text as published in the
16 December 30, 2011 issue of the *Texas Register* (36 TexReg 9258)
17 and will not be republished. Sections 21.146, 21.158, 21.174,
18 21.204, 21.405, 21.420, and 21.423 are adopted with changes to
19 the proposed text as published in the December 30, 2011 issue of
20 the *Texas Register* (36 TexReg 9258).

21
22 EXPLANATION OF ADOPTED AMENDMENTS, REPEALS, AND NEW SECTIONS
23 The enactment of Senate Bill 1420 by the 82nd Legislature, 2011,
24 resulted in amendments to Transportation Code, Chapters 391 and
25 394 dealing with the Outdoor Advertising Regulatory Compliance

1 Program. The changes require the department to create a license
2 process for sign owners under the rural road program. The
3 changes also create administrative penalties for violations
4 under Transportation Code, Chapter 391, allowing the department
5 to develop a penalty matrix. In addition the department is
6 making changes to address issues that have developed after the
7 recent adoption of Subchapters I and K.

8

9 In this preamble, the abbreviation "OAS" is used for "outdoor
10 advertising signs" and "program" is used for "outdoor
11 advertising regulatory compliance program."

12

13 To address problems with receipt of applications and other
14 correspondence, the department has obtained a post office box
15 for the program. In §§21.152, 21.155, 21.159, 21.172 - 21.174,
16 21.409, 21.420 - 21.423, and 21.449 the department has included
17 the new post office box address and required all correspondence
18 be mailed to that address. Having all the correspondence sent
19 to one postal box will eliminate current issues regarding lost
20 correspondence due to the use of local and district office
21 contact information. The department believes this requirement
22 also will streamline the mail process and help address priority
23 issues.

24

25 Amendments to §21.144, License Required, are made to comply with

1 statutory changes related to the requirement of a license for an
2 OAS permit issued under Transportation Code, Chapter 394. This
3 change allows a person who holds a license issued under Chapter
4 21, Subchapter I to obtain a permit for a sign on a primary
5 road, which is governed by Subchapter I, or on a rural road,
6 which is governed by Chapter 21, Subchapter K. Similarly, a
7 license issued under new §21.450 of Subchapter K will allow the
8 licensee to obtain a permit under Subchapter I in addition a
9 permit under Subchapter K.

10

11 Amendments to §21.146, Exempt Signs, create an exempt status for
12 signs erected and maintained by public schools, colleges,
13 universities, and non-profit agricultural fairs and require that
14 the information presented on the sign is limited to information
15 about the meetings, services, events, or on-premise activities
16 of the entity and with a maximum sign face area of 200 square
17 feet.

18

19 Amendments to §21.149, Non-profit Sign Permit, clarify that a
20 sign in a political subdivision may qualify as a non-profit sign
21 if the sign is advertising or promoting that political
22 subdivision or an adjacent subdivision. This change
23 accommodates the current practice by the department to allow
24 counties to have non-profit signs. These amendments also allow
25 the sign owner to obtain a license under new §21.450 in order to

1 convert a non-profit sign to a general OAS. This change
2 accommodates the new license process under the rural road
3 program.

4
5 Amendments to §21.158, License Revocation, alert license holders
6 that the total number of enforcement proceedings that result in
7 a revocation of a license including all permits issued under
8 that license for signs under Transportation Code, Chapters 391
9 and 394. This change is needed to address the new license
10 requirement for rural road OAS. In response to a comment
11 §21.158 is also amended by adding a definition of final
12 enforcement action. The definition provides that a final
13 enforcement action is an action taken by the department that
14 leads to the revocation of the sign permit, the payment of an
15 administrative penalty, or the removal of a sign structure.
16 This definition follows the current department practice.

17
18 Amendments to §21.160, Applicant's Identification of Proposed
19 Site, streamline the site review process and prevent errors in
20 erecting the OAS structure. The identification requirement is
21 changed so that the applicant identifies the location of the
22 edge of the proposed sign structure by setting a stake or
23 marking the concrete at the edge of the sign structure closest
24 to the right of way line. This change assures that the sign
25 face does not encroach into state right of way and addresses

1 problems that may arise when the sign will not have a center
2 pole.

3
4 Amendments to §21.169, Notice of Sign Becoming Subject to
5 Regulation, allow a license issued under new §21.450 to be used
6 for signs that become subject to regulation because of changes
7 in circumstance. These amendments are necessary because of the
8 statutory change requiring a license under Transportation Code,
9 Chapter 394.

10
11 Amendments to §21.172, Permit Renewals, clarify the consequences
12 of the failure to erect a sign structure within one year of the
13 department's issuance of a permit with respect to the
14 structure's dimensions, lighting, and number of faces. Added
15 language allows the department to adjust the permit to reflect
16 the dimensions, lighting, and number of faces as they exist on
17 the date that is one year after the issuance of the permit.
18 This language addresses problems that have developed with signs
19 that are erected but not to the full extent of the permit. The
20 department needs to have records that reflect the actual
21 components of the sign structure for future enforcement and
22 renewal actions. This change reflects current department policy
23 on the treatment of new signs.

24
25 Amendments to §21.173, Transfer of Permit, recognize that

1 licenses may now be issued under new §21.450. This change
2 allows the transfer of a sign to a licensee under either
3 program.

4
5 Amendments to §21.174, Amended Permit, strengthen the overall
6 OAS permit process by requiring a permit holder to receive the
7 department's written approval for the amended permit before
8 proceeding with the change. This change is needed to address
9 the problem of a permit holder beginning to change a sign in a
10 manner that may not be approved. The change makes that
11 requirement clear and puts the sign owner on notice regarding
12 what is expected. Added language strengthens the permit process
13 by setting a one year time limit from the date of the
14 department's approval for the sign owner to complete the
15 maintenance or alterations to the sign, which parallels the one
16 year requirement currently in place for permit applications and
17 is consistent with the one-year completion provision relating to
18 the issued permits. In response to a comment §21.174 is amended
19 to provide for an opportunity for administrative review of a
20 denial of the amended permit application. In addition, a minor
21 cross reference is corrected in §21.174 (e).

22
23 Amendments to §21.179, Un-zoned Commercial or Industrial Area,
24 add language to expand the category of qualifying commercial or
25 industrial activities to include governmental activities. The

1 department has considered government activities as qualifying
2 activities. This change reflects departmental policy.

3
4 Amendments to §21.180, Commercial or Industrial Activity, remove
5 the requirement that a qualifying commercial or industrial
6 activity must post the hours during which the activity is
7 conducted. The department found the requirement did not address
8 the issue as intended. For example, the requirement excluded
9 businesses, such as hotels, that do not post hours. The
10 department concluded that the information can be gained in other
11 ways and the posting of hours should not be required.

12
13 Amendments to §21.183, Signs Prohibited at Certain Locations,
14 add language that alerts the reader that a sign may not be
15 erected or maintained in a manner that is inconsistent with
16 Health and Safety Code, Chapter 752 relating to the proximity of
17 overhead electrical or communication circuits, lines, or
18 conductors and their supporting structures and associated
19 equipment. This is an issue that has recently been brought to
20 the department's attention. It is not a new requirement on sign
21 owners. However, the department believes that by adding it to
22 the rules we will increase awareness of the existence of these
23 restrictions.

24
25 Amendments to §21.187, Spacing of Signs, clarify that the

1 spacing requirements apply to permitted signs only. The
2 department did not intend to limit spacing by the location of an
3 on-premise or exempt sign. This amendment clarifies the
4 department's current interpretation. The amendments also remove
5 language that limited the minimum 1,500 foot spacing
6 requirements to freeways that are located outside of
7 incorporated municipality boundaries. That limitation was
8 inadvertently added in the last rule revision. The department
9 did not intend to remove this spacing limitation for signs on
10 freeways that are inside city limits and is unable to justify
11 such a deletion. The Federal State Agreement requires the
12 department to have a minimum spacing requirement between
13 billboards. This amendment returns the spacing requirements to
14 the limits that have been in use since the start of the program.
15 Additionally, the amendments specify that no sign, other than an
16 exempt sign, may be erected within five feet of any highway
17 right of way line and that the distance is measured from the end
18 of the sign face nearest the right of way. The department has
19 always used the five foot buffer provision to ensure the signs
20 do not encroach into the right of way. This new language
21 formalizes that policy. Finally, the amendments clarify that in
22 determining whether an application for the relocation of a sign
23 because of a highway construction project conforms to spacing
24 requirements, the distance of the proposed site to a former site
25 will not be considered. The recently adopted relocation

1 provisions resulted in the consideration of permits for signs
2 that are no longer located at the permitted location when
3 determining the spacing requirements for permit applications.
4 The amendments allow the sign owners to use spacing from erected
5 signs rather than permitted signs that are in the process of
6 being relocated.

7
8 Amendments to §21.193, Location of Relocated Sign, add language
9 that alerts the reader that a relocated sign may not be erected
10 or maintained in a manner that is inconsistent with Health and
11 Safety Code, Chapter 752 relating to the proximity of overhead
12 electrical or communication circuits, lines, or conductors and
13 their supporting structures and associated equipment. This
14 change is consistent with the change to §21.183. The amendments
15 clarify that a governmental activity qualifies as a commercial
16 or industrial activity in the relocation of a sign displaced by
17 a highway construction project to provide consistency with other
18 sections in Subchapter I. The amendments also remove the
19 requirement that a relocated sign provide information about an
20 activity that the sign was relocated near. This requirement was
21 inadvertently added in the last rule revision and is not
22 consistent with department procedures.

23
24 Amendments to §21.198, Order of Removal, increase the number of
25 days for removal from 30 days to 45 days after the date that

1 notice is sent to be consistent with all other enforcement
2 action time lines. Having 45 days for all notices and
3 enforcement actions provides the department and sign owner one
4 consistent time frame.

5
6 New §21.204, Administrative Penalties, is added to comply with
7 statutory changes. The new rule provides the process for
8 imposing administrative penalties to correlate to administrative
9 penalties in §21.426. A permit plate violation is set at \$150
10 per violation. A registration or location violation is set at
11 \$250 per violation. The rule provides a \$500 penalty for
12 maintenance from the right of way or performing maintenance
13 without obtaining an amended permit and a \$1,000 penalty for
14 erecting the sign from the right of way. The Sunset Commission
15 review for the 2009 legislative session recommended that the
16 department develop a penalty matrix and the department believes
17 it will help eliminate some of the contested cases by offering a
18 set penalty for the violation. A minor reference to the
19 Transportation Code in §21.204(b) is corrected at adoption.

20
21 Amendments to §21.405, Exemptions, were made to increase the
22 consistency between the exempt sign rules for rural and primary
23 roads. The language is amended to add an exemption for
24 advertising on school bus benches to be consistent with §21.416.
25 In addition, the same language regarding the educational

1 institution exempt sign was added to allow the same exemption
2 for all school signs. The section is adopted with a minor
3 grammatical change by removing the word "and" at the end of
4 §21.405(a)(10).

5
6 Amendments to §21.409, Permit Application in addition to
7 specifying the official address to which all permit applications
8 and fees must be sent, amendments to this rule require original
9 signatures on the application document.

10
11 Amendments to §21.411, Applicant's Identification of Proposed
12 Site, streamline the site review process and prevent errors in
13 erecting the OAS structure in the same manner as changes to
14 §21.160.

15
16 Amendments to §21.416, Commercial or Industrial Activity,
17 provide consistency with §21.179 and §21.180. Language that
18 required a qualifying commercial or industrial activity to post
19 the hours during which the activity is conducted is removed. In
20 addition language is added to this section to require the
21 activity to be within 200 feet of the highway right of way line.
22 This language is consistent with the requirements under §21.179.

23
24 New §21.419, Request for a Variance, is added to comply with new
25 statutory requirements. This section replaces the current Board

1 of Variance process. Senate Bill 1420 eliminated the Board of
2 Variance. The new statute allows the executive director or the
3 executive director's designee the authority to grant a variance
4 to the requirements of Transportation Code, Chapter 394. The
5 new section provides that the executive director or the
6 executive director's designee at a level of senior management
7 may make the variance decision. The section also sets out the
8 process for requesting the review and how the decision will be
9 provided. This process is similar to other review processes to
10 maintain consistency throughout the program.

11
12 Amendments to §21.420, Permit Expiration, comply with the
13 statutory requirements of an OAS owner maintaining a license
14 under Transportation Code, Chapter 394. New language is added
15 to provide that a permit automatically expires on the date that
16 the license under which the permit was issued expires or is
17 revoked. This language is consistent with the language in
18 §21.176. In addition, the section is adopted with a correction
19 to the reference for §21.455.

20
21 Amendments to §21.421, Permit Renewals, add language that the
22 sign structure must be fully erected within one year of the
23 department's issuance of a permit with respect to dimensions,
24 lighting, and number of faces. Additional language allows the
25 department to adjust the permit to reflect the dimensions,

1 lighting, and number of faces as it exists on the date that is
2 one year after the issuance of the permit. The language is
3 added to be consistent with §21.172.

4

5 Amendments to §21.422, Transfer of Permit, address issues with
6 the new license requirements. Due to the addition of a license
7 requirement and the new non-profit sign language, the department
8 needs the ability to transfer sign permits to accommodate the
9 license requirement. The changes match the language in §21.173
10 regarding the transfer of permits under the primary program.

11

12 Amendments to §21.423, Amended Permit, strengthen the overall
13 OAS permit process by requiring a permit holder to receive the
14 department's written approval for the amended permit before
15 proceeding with the change. This change is needed to address
16 the problem of a permit holder beginning to change a sign in a
17 manner that may not be approved. The change makes that
18 requirement clear and puts the sign owner on notice regarding
19 what is expected. Added language strengthens the permit process
20 by setting a one year time limit from the date of the
21 department's approval for the sign owner to complete the
22 maintenance or alterations to the sign, which parallels the one
23 year requirement currently in place for permit applications and
24 is consistent with the one-year completion provision relating to
25 the issued permits. To be consistent with §21.174, language was

1 also added to provide an opportunity to appeal the denial of an
2 amended permit application.

3

4 Amendments to §21.429, Spacing of Signs, address the same issue
5 as discussed previously in §21.187, regarding the spacing of
6 signs. The same changes have been made to this section to
7 maintain consistency.

8

9 New §21.447, Complaint Procedures, is added to comply with new
10 statutory requirements. The section is the same as §21.203,
11 which outlines the current compliant process for all outdoor
12 advertising signs. The section states that the department will
13 accept and investigate all written complaints, will notify the
14 sign owner of the pending investigation, and will provide all
15 parties the results of the investigation. The section provides
16 timelines and the specific process.

17

18 New §21.448, License Required, is added to comply with statutory
19 changes requiring a license for the issuance of OAS permits
20 under the rural road program. To maintain consistency and allow
21 interchangeability of either license, the language of this new
22 section matches the license requirements of §21.144.

23

24 New §21.449, License Application, is added to comply with
25 statutory license requirements. To maintain consistency and

1 allow interchangeability of either license, the language of this
2 new section matches the license requirements of §21.152.

3

4 New §21.450, License Issuance, is added to comply with new
5 statutory license requirements. To maintain consistency and
6 allow interchangeability of either license, the language of this
7 new section matches the license requirements of §21.153.

8

9 New §21.451, License Not Transferrable, is added to comply with
10 new statutory license requirements and provide program
11 consistency. To maintain consistency and allow
12 interchangeability of either license, the language of this new
13 section matches the license requirements of §21.154.

14

15 New §21.452, License Renewals, is added to comply with new
16 statutory license requirements. To maintain consistency and
17 allow interchangeability of either license, the language of this
18 new section matches the license requirements of §21.155.

19

20 New §21.453, License Fees, is added to comply with new statutory
21 license requirements. To maintain consistency and allow
22 interchangeability of either license, the language of this new
23 section matches the license requirements of §21.156.

24

25 New §21.454, Temporary Suspension of License, is added to comply

1 with new statutory license requirements. To maintain
2 consistency and allow interchangeability of either license, the
3 language of this new section matches the license requirements of
4 §21.157.

5
6 New §21.455, License Revocation and Non-Renewal, is added to
7 comply with new statutory license requirements. To maintain
8 consistency and allow interchangeability of either license, the
9 language of this new section matches the license requirements of
10 §21.158, as amended.

11
12 New §21.456, Exception to License Requirement for Non-profit
13 Signs, is added to comply with new statutory license
14 requirements. To maintain consistency and allow
15 interchangeability of either license, the language of this new
16 section matches the license requirements of §21.148.

17
18 New §21.457, Non-profit Sign Permit, is added to comply with new
19 statutory requirements. To maintain consistency and allow
20 interchangeability of either license, the language of this new
21 section matches the license requirements of §21.149.

22
23 COMMENTS
24 Comments were received from Tim Anderson representing Clear
25 Channel Outdoor, Inc. (Clear Channel); Jody Richardson of Allen

1 Boone Humphries Robinson LLP representing CBS Outdoor, Inc.
2 (CBS); Daniel J. Creel representing SignAd Outdoor, Ltd.
3 (SignAd); and Ned Meister representing the Texas Farm Bureau.
4 Mr. Meister sent a letter stating he had reviewed the proposed
5 changes and offered no suggestions as to what the department
6 staff is proposing.

7
8 Comment: Clear Channel, SignAd, and CBS commented on §21.146,
9 Exempt Signs. Both Clear Channel and SignAd are of the opinion
10 that the number of exempt signs relating to the same activity,
11 attraction, site, business, or other entity (unless the sign
12 relates to a public election) should be limited. SignAd
13 suggested a maximum number of 3 signs with no number specified
14 from Clear Channel. SignAd suggested limiting the maximum
15 distance to each other for two exempt signs facing the same
16 direction of travel to one mile. SignAd suggests that an exempt
17 sign that gives information about the meetings, services,
18 events, or locations of the entity should not include an
19 educational institution. Clear Channel suggests that allowing
20 schools, universities, and agricultural fairs to display a
21 business logo so long as it does not exceed 25 percent of the
22 sign face appears to be a violation of the Federal Highway
23 Beautification Act as the business logos would be considered
24 outdoor advertising.

25

1 Response: After further consultation with the FHWA, the
2 department has changed the language in §21.146 to delete the
3 authority for the new school, university, and agriculture fair
4 exempt sign to include sponsor information and also has deleted
5 the exempt sign size increase from 32 to 50 square feet for
6 various other signs in §21.146. The language now limits the
7 information that can be on the school, university, or nonprofit
8 agriculture fair sign to that which is currently allowed for
9 other nonprofit entities. For consistency, the department has
10 also made these changes in §21.405. The department will
11 continue to work with the FHWA to address issues relating to
12 signs erected and maintained by a public school, college, or
13 university, or a non-profit agricultural fair and anticipates
14 future revisions to §21.405.

15
16 The department does not agree with the comments that request
17 limiting the number of exempt signs an entity can erect. The
18 department did not raise this issue in the rule proposal and
19 does not believe that it is appropriate to make this type of
20 change without providing all parties an opportunity to comment
21 and raise concerns.

22
23 Comment: Clear Channel and SignAd commented that §21.158 should
24 define final enforcement actions and that a time frame from the
25 aggregation of violations should be stated. SignAd is of the

1 opinion that final enforcement actions should be limited to the
2 previous twelve months before the renewal period of a license
3 holder.

4

5 Response: The department agrees in part to this comment and has
6 added language defining final enforcement action. The term is
7 defined to be an action that results in the revocation of the
8 sign permit, payment of an administrative penalty, or the
9 removal of the sign. The department disagrees that for a
10 license to be revoked, all of the enforcement proceedings
11 against a licensee must occur within a given 12 month period.
12 The department is concerned with the practices of a license
13 holder throughout the entire course of its operations as a
14 licensee, rather than during a defined period of time.

15

16 Comment: Clear Channel comments that §21.160 is vague and does
17 not explicitly instruct the applicant as to how many locations
18 must be marked in order to comply with the requirement that the
19 site must be identified with a stake. Clear Channel argues that
20 the vagueness renders the tolerances for marking the site under
21 §21.176(a)(5) moot and that secondary markings to show
22 structural distance from the right of way are irrelevant unless
23 language is included to prohibit the pole (once it is marked)
24 from being placed closer to the right of way.

25

1 Response: The department disagrees with the comment and believes
2 that it is clear by the language that one location must be
3 staked or marked at the edge of the sign face closest to the
4 right of way line. In addition, the proposed changes to §21.160
5 do not conflict with §21.176(a)(5). Section 21.176(a)(5) refers
6 to the owner's description of the proposed sign site in the
7 application, whereas §21.160 concerns the owner's marking of the
8 sign location for the purposes of the field inspection.

9

10 Comment: Clear Channel and SignAd commented on §21.163. Clear
11 Channel comments that the department should exercise discretion
12 regarding applications found incomplete or incorrect as not all
13 errors rise to the level of permit denial and suggests that only
14 fatal flaws that affect the site's candidacy should result in
15 denials and that those should be enumerated. SignAd comments
16 that §21.163 needs to be more specific in terms of the process
17 of priority ranking for two permit applications that are in
18 conflict due to proximity of the sign locations.

19

20 Response: Section 21.163 is not included in the rules that are
21 affected by the proposed rule changes. It is therefore
22 inappropriate to adopt any rule changes for §21.163 at this
23 time.

24

25 Comment: CBS comments that §21.172 implies that a permit may not

1 be eligible for renewal if a sign becomes nonconforming.

2

3 Response: The department disagrees with the comment. The
4 language of the rules requires that the sign meet all applicable
5 requirements. A nonconforming sign that complies with all the
6 provisions relevant to a nonconforming sign is in compliance
7 with this rule language and is eligible for renewal. The
8 proposed changes do not render the rule ambiguous or otherwise
9 complicate enforcement.

10

11 Comment: Clear Channel and CBS commented on §21.174. Clear
12 Channel comments that the rule does not allow a decision on an
13 amended permit to be appealed to the executive director and
14 suggests an appeal process similar to that of a new sign permit
15 application. CBS comments that language needs to be added to
16 ensure that the erection of scaffolding to protect workers who
17 are performing maintenance should not be a substantial change
18 that would not be allowed for a nonconforming sign.

19

20 Response: The department agrees and added language that allows
21 an appeal of the denial of an amended permit application in
22 §21.174. The new language will provide the same process for the
23 denial of an amended permit that is currently provided for an
24 original application denial. To maintain consistency between
25 the primary and rural road program the same language has been

1 added to §21.423.

2

3 Comment: CBS and SignAd comment on §21.179. CBS suggests the
4 wording of §21.179 and §21.180 in the description of how an
5 "unzoned area" is defined is confusing and suggests adding
6 clarification that a sign may be placed anywhere inside of the
7 identified unzoned area. SignAd suggests changing the maximum
8 allowable width of an undeveloped area between commercial or
9 industrial activities from 50 to 100 feet and removing roads and
10 streets from the list that will disqualify adjacency of
11 commercial or industrial activities.

12

13 Response: The department disagrees with the comment on §21.179.
14 The current definition of "unzoned area" has not presented the
15 department with problems in enforcing §21.179 and does not need
16 to be clarified. The width of an undeveloped area between
17 commercial or industrial activities and the removal of roads and
18 streets from the list of criteria affecting the establishment of
19 adjacency factors that define adjacency are beyond the scope of
20 the proposed rule changes. It is therefore inappropriate to
21 adopt any rule changes with respect to these factors at this
22 time.

23

24 Comment: SignAd comments on §21.180 that the rules requiring one
25 person to work at the activity site from 25 hours per week "on"

1 at least five days per week should be changed to 25 hours per
2 week "or" at least five days per week. In addition, SignAd
3 suggests deleting the requirement that the work hours be posted
4 at the activity site.

5
6 Response: The department agrees with the comment regarding the
7 posting of hours and that change was included in the previous
8 re-write of these rules. The department disagrees with the
9 comment that the requirements relating to hours worked should be
10 reduced to "at least five days per week." The current work hour
11 requirement is based on the conclusions of the Outdoor
12 Advertising Rules Advisory Committee and has been implemented
13 effectively.

14
15 Comment: SignAd comments that for §21.185 the definition of how
16 the distance from on and off ramps and rest areas are measured
17 should be changed. SignAd suggested the definition should be
18 from the nearest point of the beginning or ending of the
19 pavement widening at the exit from, or entrance to, the main-
20 traveled way or gore of the entrance or exit ramp.

21
22 Response: Section 21.185 is not included in the rules that are
23 affected by the proposed rule changes. It is therefore
24 inappropriate to adopt any rule changes for §21.185 at this
25 time.

1

2 Comment: SignAd comments that §21.187 regarding sign spacing
3 should be amended by deleting the reference to "incorporated"
4 with regard to municipal boundaries. They state that this would
5 allow more property owners additional sources of income.

6

7 Response: The department disagrees with the comment. The
8 proposed amendment strengthens the department's compliance with
9 the Federal Highway Beautification Act.

10

11 Comment: SignAd commented on §21.189 that the maximum overall
12 height of a permitted sign should be increased from 42 and 1/2
13 feet to 52 and 1/2 feet and that the language of how the maximum
14 sign height is determined should be changed to take the
15 measurement from the viewable grade level of the centerline of
16 the main-traveled way closet to the sign. Further, SignAd
17 comments that a point of measurement should be expanded from the
18 current requirement of being measured perpendicular to the sign
19 location to a point not to exceed 2,500 feet in either direction
20 perpendicular to the sign location.

21

22 Response: Section 21.189 is not included in the rules that are
23 affected by the proposed rule changes. It is therefore
24 inappropriate to adopt any rule changes for §21.189 at this
25 time.

1
2 Comment: CBS comments that language needs to be added to §21.191
3 that allows the erection of scaffolding (catwalks) to protect
4 workers who are performing maintenance on the signs.

5
6 Response: Section 21.191 is not included in the rules that are
7 affected by the proposed rule changes. It is therefore
8 inappropriate to adopt any rule changes for §21.191 at this
9 time.

10
11 Comment: SignAd suggests changing §21.193 to allow a displaced
12 (due to a road widening) permitted sign located along a highway
13 regulated by the Federal Highway Beautification Act to be
14 relocated (at reduced spacing restrictions) to a highway
15 regulated under the Rural Roads Act.

16
17 Response: Section 21.193 is not included in the rules that are
18 affected by the proposed rule changes. It is therefore
19 inappropriate to adopt any rule changes for §21.193 at this
20 time.

21
22 Comment: Clear Channel commented that the language in §21.204 is
23 unclear as to whether, upon correction, that the penalty must
24 still be paid to correct enumerated violations that are subject
25 to an administrative review.

1

2 Response: The department disagrees with the comment and does
3 not believe any change is necessary. This rule as proposed is
4 identical in all relevant aspects to §21.446, which the
5 department has enforced with few problems. The language in
6 subsection (d) states that before initiating an enforcement
7 action the department provides time to correct the issue. The
8 penalties of subsection (b) are enforcement actions therefore,
9 if the correction is made within the allotted 60 days there will
10 be no enforcement action and as a result no penalties.

11

12 Comment: Clear Channel comments on §21.251 that "electric signs"
13 and "tri-vision signs" are dissimilar except for the ability to
14 change messages and as the primary reason for digital spacing
15 requirements is the multiple message change and internal
16 illumination of digital, it is unnecessary to include "tri-
17 vision signs" in the same definition as "electric signs."

18

19 Response: Section 21.251 is not included in the rules that are
20 affected by the proposed rule changes. It is therefore
21 inappropriate to adopt any rule changes for §21.251 at this
22 time.

23

24 Comment: SignAd comments that the maximum square footage should
25 be changed from 32 square feet to 50 square feet for exempt

1 signs under §21.405 that show only the name of a ranch on which
2 livestock are raised or a farm on which crops are grown.

3

4 Response: The department disagrees with the comment. The
5 department is removing all sign face increases in §21.146 and
6 §21.405 at this time. The department will be working with FHWA
7 to address outstanding exempt sign issues.

8

9 Comment: SignAd suggests that replacement wording should be used
10 for portions of §21.412 as it pertains to the process of
11 priority ranking for two permit applications that are in
12 conflict due to proximity to one another.

13

14 Response: Section 21.412 is not included in the rules that are
15 affected by the proposed rule changes. It is therefore
16 inappropriate to adopt any rule changes for §21.412 at this
17 time.

18

19 Comment: Clear Channel comments on §21.413 that the department
20 should exercise discretion regarding applications found
21 incomplete or incorrect as not all errors rise to the level of
22 permit denial and suggests that only fatal flaws that affect the
23 site's candidacy should result in denials and that those should
24 be enumerated.

25

1 Response: Section 21.412 is not included in the rules that are
2 affected by the proposed rule changes. It is therefore
3 inappropriate to adopt any rule changes for §21.412 at this
4 time.

5
6 Comment: CBS and SignAd comment on §21.416. CBS suggests adding
7 language to §21.416 that would state that a governmental entity
8 and an independent school district would qualify as a commercial
9 or industrial activity. SignAd suggests that the rules
10 requiring one person to work at the activity site from 25 hours
11 per week "on" at least five days per week should be changed to
12 25 hours per week "or" at least five days per week. In
13 addition, SignAd suggests deleting the requirement that the work
14 hours be posted at the activity site.

15
16 Response: The department disagrees that the definition of
17 "commercial or industrial activity," should be amended to
18 specifically include the operations of governmental entities and
19 independent school districts. The specification of these
20 activities would not add clarity to the rule, which the
21 department has enforced with few problems. The department
22 agrees with the comment regarding the posting and that language
23 was removed in the proposed draft of these rules. The
24 department disagrees with the comment that the requirements
25 relating to hours worked should be reduced to "at least five

1 days per week." The current work hour requirement is based on
2 the conclusions of the Outdoor Advertising Rules Advisory
3 Committee and has been implemented effectively.

4

5 Comment: Clear Channel comments that §21.423 does not allow a
6 decision on an amended permit to be appealed to the executive
7 director and suggests an appeal process similar to that of a new
8 sign permit application.

9

10 Response: The department agrees and added language that allows
11 an appeal of the denial of an amended permit application in
12 §21.423. This change is consistent with the change made to
13 §21.174.

14

15 Comment: SignAd commented on §21.432 that the maximum overall
16 height of a permitted sign should be increased from 42 and 1/2
17 feet to 52 and 1/2 feet and that the language of how the maximum
18 sign height is determined should be changed to take the
19 measurement from the viewable grade level of the centerline of
20 the main-traveled way closet to the sign. Further, SignAd
21 comments that a point of measurement should be expanded from the
22 current requirement of being measured perpendicular to the sign
23 location to a point not to exceed 2,500 feet in either direction
24 perpendicular to the sign location.

25

1 Response: Section 21.432 is not included in the rules that are
2 affected by the proposed rule changes. It is therefore
3 inappropriate to adopt any rule changes for §21.432 at this
4 time.

5
6 Comment: SignAd suggest changing §21.436 to allow a sign on a
7 rural road displaced due to a road widening be relocated to a
8 highway regulated under the Federal Highway Beautification Act.

9
10 Response: Section 21.436 is not included in the rules that are
11 affected by the proposed rule changes. It is therefore
12 inappropriate to adopt any rule changes for §21.436 at this
13 time.

14
15 STATUTORY AUTHORITY

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

1 regulate the issuance of outdoor advertising licenses;
2 Transportation Code, §394.004, which provides the commission
3 with the authority to establish rules to regulate the erection
4 and maintenance of signs on rural roads; and Transportation
5 Code, §394.025, which provides authority for the commission to
6 set fees for the issuance of an outdoor advertising license.

7

8 CROSS REFERENCE TO STATUTE

9 Transportation Code, Chapters 391 and 394.

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

4 §21.144. License Required.

5 (a) Except as provided by this division, a person may not
6 obtain a permit for a sign under this division unless the person
7 holds a currently valid license issued under §21.153 of this
8 division (relating to License Issuance) or under §21.450 of this
9 chapter (relating to License Issuance) applicable to the county
10 in which the sign is to be erected or maintained.

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

13
14 §21.146. Exempt Signs.

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

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

19 (2) a sign that has the purpose of protecting life or
20 property;

21 (3) a sign that provides information about underground
22 utility lines;

23 (4) an official sign that is erected by a public officer,

1 public agency, or political subdivision under the officer's,
2 agency's, or political subdivision's constitutional or statutory
3 authority;

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

9 (6) a sign of a nonprofit service club, charitable
10 association, religious organization, chamber of commerce,
11 nonprofit museum, or governmental entity, other than an entity
12 to which paragraph (8) of this subsection applies, that gives
13 information about the meetings, services, events, or locations
14 of the entity and that does not exceed an area of 32 square
15 feet;

16 (7) a public service sign that:

17 (A) is located on a school bus stop seating bench or
18 shelter;

19 (B) identifies the donor, sponsor, or contributor of
20 the shelter;

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

23 (D) has no content other than that described by

1 subparagraphs (B) and (C) of this paragraph;

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

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

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

9 (8) a sign that is erected and maintained by a public
10 school, a college or university, or a non-profit agricultural
11 fair, but only if the information presented on the sign is
12 limited to information about the meetings, services, events, or
13 on premise activities of the entity, and the total area of the
14 sign's face facing a particular direction of travel does not
15 exceed 200 square feet.

16 (9) [~~+8~~] a sign that shows only the name of a ranch on
17 which livestock are raised or a farm on which crops are grown,
18 and the directions to, telephone number, or internet address of
19 the ranch or farm, and that has a sign face that does not exceed
20 an area of 32 square feet;

21 (10) [~~+9~~] a sign that:

22 (A) relates only to a public election;

23 (B) is located on private property;

1 (C) is erected after the 91st day before the date of
2 the election and is removed before the 11th day after the
3 election date;

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

6 (E) contains no commercial endorsement; and

7 (11) [~~10~~] a sign identifying the name of a recorded
8 subdivision located at an entrance to the subdivision or on
9 property owned by or assigned to the subdivision, home owners
10 association, or other entity associated with the subdivision.

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

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

21

22 §21.149. Nonprofit Sign Permit.

23 (a) A nonprofit service club, charitable association,

1 religious organization, chamber of commerce, nonprofit museum,
2 or governmental entity may obtain a permit under this section to
3 erect or maintain a nonprofit sign.

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

5 [~~(1) be in a municipality or the extraterritorial~~
6 ~~jurisdiction of a municipality;~~]

7 (1) [~~(2)~~] advertise or promote only:

8 [~~(A) the municipality;~~]

9 (A) [~~(B)~~] a political subdivision in whose jurisdiction
10 the sign is [~~wholly or partially~~] located or a political
11 subdivision that is adjacent to such a political subdivision [~~in~~
12 ~~the municipality~~]; or

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

16 (2) [~~(3)~~] comply with each sign requirement under this
17 division from which it is not specifically exempted.

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

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

1 permit holder fails to obtain that approval.

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

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

9 (1) obtain a license under §21.153 of this division
10 (relating to License Issuance) or §21.450 of this chapter
11 (relating to License Issuance); and

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

16
17 §21.152. License Application.

18 (a) To apply for a license under this division, a person
19 must file an application in a form prescribed by the department.
20 The application must include at a minimum:

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

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

1 signs are to be erected or maintained.

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

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

5 (A) in the amount of \$2,500 for each county designated
6 under subsection (a)(2) of this section up to a maximum of
7 \$10,000;

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

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

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

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

18 (c) The documentation and the fee required under this
19 section must be sent to: Texas Department of Transportation,
20 Outdoor Advertising, P.O. Box 13043, Austin, Texas 78711-3043.

21

22 §21.155. License Renewals.

23 (a) To continue a license in effect, the license must be

1 renewed.

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

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

10 (2) number of the license being renewed;

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

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

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

16 (d) The documentation and the fee required under this
17 section must be sent to: Texas Department of Transportation,
18 Outdoor Advertising, P.O. Box 13043, Austin, Texas 78711-3043.

19

20 §21.158. License Revocation.

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

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

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

7 (3) the total number of final enforcement actions
8 initiated by the department against the license holder under
9 §21.176 of this subchapter (relating to Cancellation of Permit),
10 §21.198 of this subchapter (relating to Order of Removal);
11 §21.204 of this subchapter (relating to Administrative
12 Penalties), §21.425 of this chapter (relating to Cancellation of
13 Permit), §21.426 of this chapter (relating to Administrative
14 Penalties), or §21.440 of this chapter (relating to Order of
15 Removal); or Transportation Code, Chapters 391 or 394, that
16 result in the cancellation of the license holder's sign permit,
17 payment of an amended penalty by the license holder, or the
18 removal of the license holder's sign [~~the number of final~~
19 ~~enforcement actions of this subchapter, or Transportation Code,~~
20 ~~Chapter 391, committed by the license holder in the aggregate]~~
21 equal or exceed:

22 (A) 10 percent of the number of valid permits held by
23 the license holder if the license holder holds more than 1,000

1 sign permits;

2 (B) 20 percent of the number of valid permits held by
3 the license holder if the license holder holds at least 500 but
4 fewer than 1,000 sign permits;

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

8 (D) 30 percent of the number of valid permits held by
9 the license holder if the license holder holds fewer than 100
10 sign permits; or

11 (4) the license holder has not complied with previous
12 final administrative enforcement actions regarding the license
13 or any permit held under the license.

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

17 (c) The notice will clearly state:

18 (1) the reasons for the action;

19 (2) the effective date of the action;

20 (3) the right of the license holder to request an
21 administrative hearing; and

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

1 (d) A request for an administrative hearing under this
2 section must be made in writing to the department within 45 days
3 after the date that the notice is mailed.

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

7 (f) For the purposes of this section, an enforcement action
8 is final if the time for any further review of the action or
9 proceeding related to the action has expired.

10

11 §21.159. Permit Application.

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 must include, at a minimum:

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 within the city's
22 extraterritorial jurisdiction;

23 (6) the site owner's or the owner's authorized

1 representative's original signature on the application

2 demonstrating:

3 (A) consent to the erection and maintenance of the
4 sign; and

5 (B) right of entry onto the property of the sign
6 location by the department or its agents;

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

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

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

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

21 (1) the issuance of a department permit before the
22 municipality's; or

23 (2) the erection of the sign within a period of less than

1 twelve months after the date of the issuance of the municipal
2 permit.

3 (d) The application must be:

4 (1) notarized;

5 (2) sent to: Texas Department of Transportation, Outdoor
6 Advertising, P.O. Box 13043, Austin, Texas 78711-3043 [~~filed~~
7 ~~with the department's division responsible for the outdoor~~
8 ~~advertising program in Austin~~]; and

9 (3) accompanied by the fee prescribed by §21.175 of this
10 division (relating to Permit Fees).

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

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

13 (2) the exact location of the sign faces in relation to
14 the sign structure;

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

16 (4) the distance from the buildings, landmarks, right of
17 way line, other signs, and other distinguishable features of the
18 landscape.

19

20 §21.160. Applicant's Identification of Proposed Site.

21 (a) An applicant for a permit for a new sign must identify
22 the proposed site of the sign by setting a stake or marking the
23 concrete at the proposed location of the edge [~~center pole~~] of

1 the sign structure, including the sign face, that is nearest to
2 the right of way [~~or if there is no center pole, at each pole of~~
3 ~~the sign structure~~].

4 (b) At least two feet of the [a] stake must be visible
5 above the ground. The stake or the mark [~~and~~] must be
6 distinguished from any other stake or mark at the location.

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

10

11 §21.169. Notice of Sign Becoming Subject to Regulation.

12 (a) The department will send notice by certified mail to
13 the owner of a sign that becomes subject to Transportation Code,
14 Chapter 391 because of the construction of a new highway, the
15 change in designation of an existing highway, or decertification
16 of a certified city. If the owner of the sign cannot be
17 identified from the information on file with the department, the
18 department will give notice by prominently posting the notice on
19 the sign for a period of 45 consecutive days.

20 (b) If the owner of a sign described by subsection (a) of
21 this section does not hold a license issued under §21.153 of
22 this division (relating to License Issuance) or §21.450 of this
23 chapter (relating to License Issuance), the owner must obtain

1 the license within 60 days after the day that:

2 (1) the department sends notice under subsection (a) of
3 this section; or

4 (2) the 45-day posting period under subsection (a) of
5 this section ends.

6

7 §21.172. Permit Renewals.

8 (a) To be continued in effect, a sign permit must be
9 renewed.

10 (b) A permit is eligible for renewal if the sign for which
11 it was issued continues to meet all applicable requirements of
12 this division and Transportation Code, Chapter 391.

13 (c) To renew the permit, the permit holder must file with
14 the department a written application in a form prescribed by the
15 department accompanied by the applicable fees prescribed by
16 §21.175 of this division (relating to Permit Fees). The
17 application must be received by the department before the 46th
18 day after the date of the permit's expiration.

19 (d) A permit may not be renewed if the sign for which it
20 was issued is not erected to the extent that it includes a sign
21 face before the first anniversary of the date that the permit
22 was issued.

23 (e) The department will provide a renewal notification to

1 the license holder at least 30 days before the date of the
2 permit expiration and if the permit is not renewed before it
3 expires the department within 20 days after the date of
4 expiration will provide notification to the license holder of
5 the opportunity to file a late renewal.

6 (f) If one year after the date the department issues the
7 permit the sign structure is not built to the full extent
8 approved by the permit with respect to dimensions, lighting, or
9 number of faces, the department will adjust the permit to
10 reflect the dimensions, lighting, and number of faces of the
11 sign structure as they exist on that date. The permit will be
12 eligible for renewal only for the dimensions, lighting, and
13 number of faces as adjusted by the department.

14 (g) The documentation and fee required under this section
15 must be sent to: Texas Department of Transportation, Outdoor
16 Advertising, P.O. Box 13043, Austin, Texas 78711-3043.

17
18 §21.173. Transfer of Permit.

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

21 (b) At the time of the transfer, both the transferor and
22 the transferee must hold a valid license issued under §21.153 of
23 this division (relating to License Issuance) or §21.450 of this

1 chapter (relating to License Issuance), except as provided in
2 subsections (e) - (g) of this section.

3 (c) To transfer one or more sign permits, the permit holder
4 must send to the department a written request in a form
5 prescribed by the department accompanied by the prescribed
6 transfer fee.

7 (d) If the request is approved, the department will send to
8 the transferor and to the transferee a copy of the approved
9 permit transfer form.

10 (e) A permit issued to a nonprofit organization under
11 §21.149 of this division (relating to Nonprofit Sign Permit) may
12 be transferred to another nonprofit organization that does not
13 hold a license issued under §21.153 of this division or §21.450
14 of this chapter if the sign will be maintained as a nonprofit
15 sign.

16 (f) A permit issued to a nonprofit organization under
17 §21.149 of this division may be converted to a regular permit
18 and transferred to a person that is not a nonprofit organization
19 if the transferee holds a license for the county in which the
20 sign is located at the time of the transfer and the sign meets
21 all requirements of this division.

22 (g) The department may approve the transfer of one or more
23 sign permits from a transferor whose license has expired to a

1 person who holds a license, with or without the signature of the
2 transferor, if the person provides to the department:

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

4 (2) documents that indicate that the transferor is dead
5 or cannot be located.

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

9 (i) The documentation and fee required under this section
10 must be sent to: Texas Department of Transportation, Outdoor
11 Advertising, P.O. Box 13043, Austin, Texas 78711-3043.

12

13 §21.174. Amended Permit.

14 (a) To perform customary maintenance or to make substantial
15 changes to the sign or sign structure under §21.191 of this
16 division (relating to Repair and Maintenance) a permit holder
17 must obtain [~~submit~~] an amended permit [~~application~~]. To change
18 the sign face of an existing permitted sign to an electronic
19 sign under Division 2 of this subchapter (relating to Electronic
20 Signs) a permit holder must obtain [~~submit~~] an amended permit
21 [~~application~~].

22 (b) To obtain an amended permit, the permit holder must
23 submit an [~~The~~] amended permit application [~~must be submitted~~]

1 on a form prescribed by the department. The amended permit
2 application [~~and~~] must provide the information required under
3 §21.159 of this division (relating to Permit Application)
4 applicable to an amended permit and indicates the change from
5 the information in the original application for the sign permit.
6 The amended application is not required to contain the
7 signatures of the land owner or city representative.

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

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

17 (e) Making a change to a sign that requires an amended
18 permit without first obtaining an amended permit is a violation
19 of this division, except as provided by subsection (h) of this
20 section and will result in an administrative enforcement action.

21 (f) The department will make a decision on an amended
22 permit application within 45 days of the date of the receipt of
23 the amended permit application. If the decision cannot be made

1 within the 45 day period the department will notify the
2 applicant of the delay, provide the reason for the delay and
3 provide an estimate of when the decision will be made.

4 (g) If an amended permit application is denied, the
5 applicant may file a request with the executive director for an
6 appeal using the same procedures found in §21.170 of this
7 division (relating to Appeal Process for Permit Denials).

8 (h) If maintenance or changes authorized under this section
9 are being made on a conforming sign because of a natural
10 disaster, the department may waive the requirement that the
11 required amended permit be issued before the work begins. If
12 the department grants a waiver under this subsection, the permit
13 holder shall submit the amended permit application within 60
14 days after the date that the work is completed. If the
15 maintenance or changes violate this section or the permit holder
16 fails to submit the amended permit application as required by
17 this subsection, the sign is subject to enforcement and removal
18 actions.

19 (i) An amended permit is valid for one year after the date
20 of the department's approval of the amended permit application.
21 The provisions of this subchapter relating to a permit,
22 including §21.172(f) of this division (relating to Permit
23 Renewals), apply to the amended permit. The date of the

1 department's approval of the amended permit application is
2 considered to be the amended permit's date of issuance.

3 (j) The documentation and fee required under this section
4 must be sent to: Texas Department of Transportation, Outdoor
5 Advertising, P.O. Box 13043, Austin, Texas 78711-3043.

6
7 §21.179. Unzoned Commercial or Industrial Area.

8 (a) An unzoned commercial or industrial area is an area
9 that:

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

16 (2) is not predominantly used for residential purposes;
17 and

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

19 (b) A part of the regularly used buildings, parking lots,
20 or storage or processing areas of each of the governmental,
21 commercial, or industrial activities must be within 200 feet of
22 the highway right of way and portion of the permanent building
23 in which the activity is conducted must be visible from the

1 main-traveled way.

2 (c) For governmental, commercial, or industrial activities
3 to be considered adjacent for the purposes of subsection (a)(1)
4 of this section, the regularly used buildings, parking lots,
5 storage or processing areas of the activities may not be
6 separated by a vacant lot, an undeveloped area that is more than
7 50 feet wide, a road, or a street.

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

11 (1) each activity:

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

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

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

18 (3) the two activities have access to the restroom
19 facilities during all hours the activity is staffed or opened;
20 and

21 (4) the two activities operate independently of one
22 another.

23 (e) For the purposes of subsection (d) of this section, two

1 separate product lines offered by one business are not
2 considered to be two activities.

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

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

1 the main-traveled way.

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

7

8 §21.180. Commercial or Industrial Activity.

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

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

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

15 (A) has an indoor restroom, running water, functioning
16 electrical connections, and permanent flooring, other than dirt,
17 gravel, or sand;

18 (B) is visible from the traffic lanes of the main-
19 traveled way;

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

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

23 (b) The following are not commercial or industrial

1 activities:

2 (1) agricultural, forestry, ranching, grazing, farming,
3 and related activities, including the operation of a temporary
4 wayside fresh produce stand;

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

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

8 (4) an activity that is not conducted by at least one
9 person who works for the business at the activity site for at
10 least 25 hours per week on at least five days per week [~~and for~~
11 ~~which the hours during which the activity is conducted are~~
12 ~~posted at the activity site~~];

13 (5) the operation or maintenance of:

14 (A) an outdoor advertising structure;

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

20 (C) an apartment house or residential condominium;

21 (D) a public or private preschool, secondary school,
22 college, or university, other than a trade school or corporate
23 training campus;

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

5 (F) a cemetery; or

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

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

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

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

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

20

21 §21.183. Signs Prohibited at Certain Locations.

22 (a) A sign may not be located in a place that creates a
23 safety hazard, including a location that:

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

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

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

6 (b) A sign may not be erected or maintained in a location
7 that violates Health and Safety Code, Chapter 752.

8

9 §21.187. Spacing of Signs.

10 (a) Permitted signs [~~Signs~~] on the same side of a regulated
11 freeway, including freeway frontage roads, [~~that are outside of~~
12 ~~incorporated municipal boundaries~~] may not be erected closer
13 than 1,500 feet apart.

14 (b) For a highway on a non-freeway primary system and
15 outside the incorporated boundaries of a municipality, permitted
16 signs on the same side of the highway may not be erected closer
17 than 750 feet apart.

18 (c) For a highway on a non-freeway primary system highway
19 and within the incorporated boundaries of a municipality,
20 permitted signs on the same side of the highway may not be
21 erected closer than 300 feet apart.

22 (d) For the purposes of this section, the space between
23 signs is measured between points along the right of way of the

1 highway perpendicular to the center of the signs.

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

5 (f) This section does not apply to directional signs, on-
6 premise signs, or official signs that are exempted from the
7 application of Transportation Code, §391.031.

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

12 (h) A permitted sign may not be erected within five feet of
13 the highway right of way line. The distance shall be measured
14 from the end of the sign face nearest the right of way line.

15 (i) A permitted sign that is being displaced by a highway
16 construction project will not be considered in determining the
17 spacing for a new sign application.

18

19 §21.193. Location of Relocated Sign.

20 (a) To receive a new permit for relocation, an existing
21 sign must be relocated on a part of the same parcel of land on
22 which the sign was situated before relocation in a location that
23 is allowed under this section.

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

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

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

19 (1) can cause a driver to be unduly distracted in any
20 way;

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

23 (3) will obstruct or interfere with the driver's view of

1 approaching, merging, or intersecting motor vehicle or rail
2 traffic.

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

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

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

9 (B) on the side of the highway adjacent to the public
10 park if the regulated highway is on an interstate or freeway
11 primary system;

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

14 (A) an interchange, intersection at grade, or rest
15 area; or

16 (B) a ramp or the ramp's acceleration or deceleration
17 lane;

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

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

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

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

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

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

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

18 (i) A relocated sign may not be erected or maintained in a
19 location that violates Health and Safety Code, Chapter 752.

20

21 §21.198. Order of Removal.

22 (a) If a sign permit expires without renewal or is canceled
23 or if the sign is erected or maintained in violation of this

1 division, the owner of the sign, on a written demand by the
2 department, shall remove the sign at no cost to the state.

3 (b) If the owner does not remove the sign within 45 [~~30~~]
4 days of the day that the demand is sent, the department will
5 remove the sign and will charge the sign owner for the cost of
6 removal, including the cost of any court proceedings.

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

9

10 §21.204. Administrative Penalties.

11 (a) The department may impose administrative penalties
12 against a person who intentionally violates Transportation Code,
13 Chapter 391 or this subchapter.

14 (b) The amount of the administrative penalty may not exceed
15 the maximum amount of a civil penalty that may be imposed under
16 Transportation Code, §391.035 and will based on the following:

17 (1) \$150 for a violation of a permit plate requirement
18 under §21.165 of this division (relating to Sign Permit Plate);

19 (2) \$250 for a violation of:

20 (A) a registration requirement of §21.162 of this
21 division (relating to Permit Application for Certain Preexisting
22 Signs); or

23 (B) erecting the sign at the location other than the

1 location specified on the application, except that if the actual
2 sign location does not conform to all other requirements the
3 department will seek cancellation of the permit;

4 (3) \$500 for:

5 (A) maintaining or repairing the sign from the state
6 right of way; or

7 (B) performing customary maintenance on any sign or
8 substantial maintenance on a conforming sign without first
9 obtaining an amended permit; or

10 (4) \$1,000 for erecting a sign from the right of way.

11 (c) In addition to the penalties assessed under subsection
12 (b) of this section, the department may seek to recover the cost
13 of repairing any damage to the right of way done by the sign
14 owner or on the sign owner's behalf.

15 (d) Before initiating an enforcement action under this
16 section, the department will notify the sign owner in writing of
17 a violation of subsection (b)(1) or (2)(B) of this section and
18 will give the sign owner 60 days to correct the violation and
19 provide proof of the correction to the department.

20 (e) Upon determination to seek administrative penalties the
21 department will mail a notice of the administrative penalties to
22 the last known address of the permit holder. The notice must
23 clearly state:

1 (1) the reasons for the administrative penalties;
2 (2) the amount of the administrative penalty; and
3 (3) the right of the holder of the permit to request an
4 administrative hearing.

5 (f) A request for an administrative hearing under this
6 section must be made in writing and delivered to the department
7 within 45 days after the date of the receipt of the notice.

8 (g) If timely requested, an administrative hearing shall be
9 conducted in accordance with Chapter 1, Subchapter E of this
10 title (relating to Procedures in Contested Case), and the
11 imposition of administrative penalties will be abated unless and
12 until that action is affirmed by order of the commission.

1 SUBCHAPTER K. CONTROL OF SIGNS ALONG RURAL ROADS

2 §21.405. Exemptions.

3 (a) The following are exempt from the requirements of this
4 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 (12) a sign of a nonprofit service club, charitable
7 association, religious organization, chamber of commerce, or
8 nonprofit museum that gives information about the meetings,
9 services, events, or locations of the entity and that does not
10 exceed an area of 32 square feet;

11 (13) a public service sign that:

12 (A) is located on a school bus stop seating bench or
13 shelter;

14 (B) identifies the donor, sponsor, or contributor of
15 the shelter;

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

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

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

23 (F) has a sign face that does not exceed an area of 32

1 square feet; and

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

3 on that seating bench or shelter; and

4 (14) a sign that is erected and maintained by a public
5 school, or a college or university, or a non-profit agricultural

6 fair, but only if the information presented on the sign is

7 limited to information about the meetings, services, events, or

8 on premise activities of the entity, and the total area of the

9 sign's face facing a particular direction of travel does not

10 exceed 200 square feet.

11 (b) An on-premise sign cannot be erected earlier than one

12 year before the date that the business for which the sign is

13 erected will open and conduct business.

14

15 §21.409. Permit Application.

16 (a) To obtain a permit for a sign, a person must file an

17 application in a form prescribed by the department. The

18 application at a minimum must include:

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

20 (2) the original signature of the applicant;

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

22 (4) the complete legal name and address of the owner of

23 the designated site;

1 (5) a statement of whether the requested sign is located
2 within an incorporated city or a city's extraterritorial
3 jurisdiction;

4 (6) the site owner's or the owner's authorized
5 representative's original signature on the application
6 demonstrating consent to the erection and maintenance of the
7 sign and right of entry onto the property of the sign location
8 by the department or its agents;

9 (7) information that details how and the location from
10 which the sign will be erected and maintained; and

11 (8) additional information the department considers
12 necessary to determine eligibility.

13 (b) The application must be:

14 (1) notarized;

15 (2) sent to: Texas Department of Transportation, Outdoor
16 Advertising, P.O. Box 13043, Austin, Texas 78711-3043 [~~filed~~
17 ~~with the department's division responsible for the Outdoor~~
18 ~~Advertising Program in Austin~~]; and

19 (3) accompanied by the fee prescribed by §21.424 of this
20 subchapter (relating to Permit Fees).

21 (c) The application must include a sketch that shows:

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

23 (2) the exact location of the sign faces in relation to

1 the sign structure;

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

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

6

7 §21.411. Applicant's Identification of Proposed Site.

8 (a) An applicant for a permit for a new sign must identify
9 the proposed site of the sign by setting a stake or marking the
10 concrete at the proposed location of the edge of the sign
11 structure, including the sign face, that is nearest the right of
12 way [~~center pole of the sign structure or if there is no center~~
13 ~~pole, at each pole of the sign structure~~].

14 (b) At least two feet of the [a] stake must be visible
15 above the ground. The stake or the mark must be distinguished
16 from any other stake or mark at the location.

17 (c) A stake or marking may not be moved or removed until
18 the application is denied or, if approved, until the sign has
19 been erected.

20

21 §21.416. Commercial or Industrial Activity.

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

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

3 (2) is conducted in a permanent building or structure
4 affixed to the real property that:

5 (A) has an indoor restroom, running water, functioning
6 electrical connections, and permanent flooring, other than dirt,
7 gravel, or sand;

8 (B) is visible from the traffic lanes of the main-
9 traveled way;

10 (C) is not primarily used as a residence; [~~and~~]

11 (D) has at least 400 square feet of its interior floor
12 space devoted to the activity; and

13 (E) is within 200 feet of the highway right of way.

14 (b) The following are not commercial or industrial
15 activities:

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

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

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

22 (4) an activity that is not conducted by at least one
23 person who works for the business at the activity site for at

1 least 25 hours per week on at least five days per week [~~and for~~
2 ~~which the hours during which the activity is conducted are~~
3 ~~posted at the activity site~~];

4 (5) the operation or maintenance of:

5 (A) an outdoor advertising structure;

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

11 (C) an apartment house or residential condominium;

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

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

19 (F) a cemetery; or

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

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

23 (7) an activity that is created primarily or exclusively

1 to qualify an area as an unzoned commercial or industrial area.

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

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

11

12 §21.419. Request for a Variance [~~Board of Variance~~].

13 (a) An applicant may request that the executive director
14 approve a variance from the requirements of this subchapter if
15 the applicant believes that a minor exception to this subchapter
16 is required to prevent a substantial injustice. [~~A board of~~
17 ~~variance is established. The executive director shall appoint~~
18 ~~the members of the board. A majority of the members constitutes~~
19 ~~a quorum.~~]

20 (b) The executive director or the executive director's
21 designee, who must be a person who holds a senior leadership
22 position of the department and reports directly to the executive
23 director, will consider all relevant written evidence submitted

1 by the applicant and collected by the department relating to the
2 request. [~~The board of variance may make minor exceptions to~~
3 ~~this subchapter if the board determines that a substantial~~
4 ~~injustice would result unless the minor exceptions were granted.~~
5 ~~The board of variance may establish appropriate conditions and~~
6 ~~safeguards for granting the variance.~~]

7 (c) The executive director or the designee will make a
8 final determination on the request for a variance within 60 days
9 of the receipt of the request. [~~The board of variance will meet~~
10 ~~and consider variance requests as needed.~~]

11 (d) If the executive director or the designee is unable to
12 make a final determination on the request within the 60-day
13 period, the department will notify the applicant by mail of the
14 delay and provide an estimated time in which a final
15 determination will be made. [~~The board of variance will provide~~
16 ~~10 days notice of the meeting to all applicants requesting a~~
17 ~~variance.~~]

18 (e) If the variance is granted and the other applicable
19 requirements are satisfied, the department will issue the
20 permit. [~~An applicant may request a variance from the board of~~
21 ~~variance if the applicant believes that the applicant meets the~~
22 ~~requirements of subsection (b) of this section.~~]

23 (f) A denial of a variance is final and is not appealable.

1 ~~[The board of variance will consider evidence from all parties~~
2 ~~present at the meeting prior to making a determination on the~~
3 ~~requested variance.]~~

4
5 §21.420. Permit Expiration.

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

7 (b) A permit automatically expires on the date that the
8 license issued under which the permit was issued expires or is
9 revoked by the department under §21.158 of this chapter
10 (relating to License Revocation) or §21.455 of this subchapter
11 (relating to License Revocation and Non-Renewal).

12
13 §21.421. Permit Renewals.

14 (a) To continue in effect, a permit must be renewed.

15 (b) A permit is eligible for renewal if the sign for which
16 it was issued continues to meet all applicable requirements of
17 this subchapter and Transportation Code, Chapter 394.

18 (c) To renew the permit, the permit holder must file with
19 the department a written application in a form prescribed by the
20 department accompanied by the applicable fees prescribed by
21 §21.424 of this subchapter (relating to Permit Fees). The
22 application must be received by the department before the 46th
23 day after the date of the permit expiration.

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

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

11 (f) If one year after the date the department issues the
12 permit, the sign structure is not built to the full extent
13 approved by the permit with respect to dimensions, lighting, or
14 number of faces, the department will adjust the permit to
15 reflect the dimensions, lighting, and number of faces of the
16 sign structure as they exist on that date. The permit will be
17 eligible for renewal only for the dimensions, lighting, and
18 number of faces as adjusted by the department.

19 (g) The documentation and the fee required under this
20 section must be sent to: Texas Department of Transportation,
21 Outdoor Advertising, P.O. Box 13043, Austin, Texas 78711-3043.

22

23 §21.422. Transfer of Permit.

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

3 (b) To transfer one or more sign permits, the permit holder
4 must send to the department a written request in a form
5 prescribed by the department accompanied by the prescribed
6 transfer fee prescribed by §21.424 of this subchapter (relating
7 to Permit Fees).

8 (c) At the time of the transfer, both the transferor and
9 the transferee must hold a valid license issued under §21.153 of
10 this chapter (relating to License Issuance) or §21.450 of this
11 subchapter (relating to License Issuance), except as provided by
12 subsections (f) - (h) of this section.

13 (d) The documentation and fee required under this section
14 must be sent to: Texas Department of Transportation, Outdoor
15 Advertising, P.O. Box 13043, Austin, Texas 78711-3043.

16 (e) [~~e~~] If the request is approved, the department will
17 send to the transferor and to the transferee a copy of the
18 approved permit transfer form.

19 (f) A permit issued to a nonprofit organization under
20 §21.457 of this subchapter (relating to Nonprofit Sign Permit)
21 may be transferred to another nonprofit organization that does
22 not hold a license issued under §21.153 of this chapter or
23 §21.450 of this subchapter, if the sign will be maintained as a

1 nonprofit sign.

2 (g) A permit issued to a nonprofit organization under
3 §21.457 of this subchapter may be converted to a regular permit
4 and transferred to a person that is not a nonprofit organization
5 if the transferee holds a license for the county in which the
6 sign is located at the time of the transfer and the sign meets
7 all of the requirements of this subchapter.

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

12 (1) legal documents showing the sign has been sold; and
13 (2) documents that indicate that the transferor is dead
14 or cannot be located.

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

18

19 §21.423. Amended Permit.

20 (a) To perform customary maintenance or to make substantial
21 changes to the sign or sign structure under §21.434 of this
22 subchapter (relating to Repair and Maintenance), a permit holder
23 must obtain [~~submit~~] an amended permit [~~application~~].

1 (b) To obtain an amended permit the permit holder must
2 submit an [The] amended permit application [~~must be submitted~~]
3 on a form prescribed by the department that provides the
4 information required under §21.409 of this subchapter (relating
5 to Permit Application) that is applicable to an amended permit
6 and indicates the change from the information in the original
7 application for the sign permit. The amended permit will not
8 require the signature of the land owner or city representative.

9 (c) The new sign face size, configuration, or location must
10 meet all applicable requirements of this subchapter.

11 (d) The holder of a permit for a nonconforming sign may
12 apply for an amended permit to perform eligible customary
13 maintenance under §21.434 of this subchapter. An amended permit
14 will not be issued for a substantial change, as described by
15 §21.434(c) of this subchapter, to a nonconforming sign.

16 (e) Making a change to a sign that requires an amended
17 permit without first obtaining an amended permit is a violation
18 of this subchapter and will result in an administrative
19 enforcement action.

20 (f) The department will make a decision on an amended
21 permit application within 45 days of the date receipt of the
22 amended permit application. If the decision cannot be made
23 within the 45 day period the department will notify the

1 applicant of the delay, provide the reason for the delay, and
2 provide an estimate for when the decision will be made.

3 (g) If an amended permit application is denied, the applicant may file
4 a request with the executive director for an appeal using the same procedures
5 found in §21.170 of this chapter (relating to Appeal Process for Permit
6 Denials).

7 (h) In the event of a natural disaster the department may
8 waive the requirement that a required amended permit be issued
9 prior to the repair of a conforming sign. If the department
10 waives this requirement the amended permit must be submitted
11 within 60 days of the completion of the repairs. If the repairs
12 are in violation of these rules or the permit holder fails to
13 submit the amended permit application the sign is subject to
14 enforcement and removal actions.

15 (i) An amended permit is valid for one year after the date
16 of the department's approval of the amended permit application.
17 The provisions of this subchapter relating to a permit,
18 including §21.421(f) of this subchapter (relating to Permit
19 Renewals), apply to the amended permit. The date of the
20 department's approval of the amended permit application is
21 considered to be the amended permit's date of issuance.

22 (j) The documentation and fee required under this section
23 must be sent to: Texas Department of Transportation, Outdoor

1 Advertising, P.O. Box 13043, Austin, Texas 78711-3043.

2

3 §21.429. Spacing of Signs.

4 (a) A permitted [~~An~~] off-premise sign having a sign face
5 area of at least 301 square feet may not be located within 1,500
6 feet of another permitted off-premise sign on the same side of
7 the roadway.

8 (b) A permitted [~~An~~] off-premise sign having a sign face
9 area of at least 100 but less than 301 square feet may not be
10 located within 500 feet of another permitted off-premise sign
11 having a sign face within that range or within 1500 feet of a
12 permitted [~~an~~] off-premise sign that has a sign face of at least
13 301 square feet and is on the same side of the roadway.

14 (c) A permitted [~~An~~] off-premise sign having a face area of
15 less than 100 square feet may not be located within 150 feet of
16 another permitted off-premise sign having a sign face of less
17 than 100 square feet, within 500 feet of a permitted sign with a
18 face area of at least 100 but less than 301 square feet, or
19 within 1,500 feet of a permitted [~~an~~] off-premise sign with a
20 face area of at least 301 square feet that is on the same side
21 of the roadway.

22 (d) Two signs located at the same intersection do not
23 violate this section if they:

1 (1) are located so that their messages are not directed
2 toward traffic flowing in the same direction; and

3 (2) are not visible from the main-traveled way of an
4 interstate or federal-aid primary highway.

5 (e) For the purposes of this section, the space between
6 signs is measured between points along the right of way of the
7 roadway perpendicular to the center of the signs.

8 (f) The spacing requirements of this section do not apply
9 to signs separated by buildings, natural surroundings, or other
10 obstructions in a manner that causes only one of the signs to be
11 visible within the specified spacing area.

12 (g) An off-premise sign may not be erected within five feet
13 of a rural road right-of-way line. This distance will be
14 measured from the edge of the sign face nearest to the right of
15 way line.

16 (h) An off-premise sign must be erected within 800 feet of
17 at least one recognized commercial or industrial activity. The
18 commercial or industrial activity must be on the same side of
19 the rural road as the sign.

20 (i) Distance from the commercial or industrial activity is
21 measured from the outer edges of the regularly used buildings,
22 parking lots, storage facilities, or processing areas of the
23 commercial or industrial activity. Measurements are not made

1 from the property line unless the property lines coincide with
2 the regularly used portions of the activity.

3 (j) A sign may not be located in a place that creates a
4 safety hazard, including a location that:

5 (1) is likely to cause a driver to be unduly distracted;

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

8 (3) obstructs or interferes with the driver's view of
9 approaching, merging, or intersecting roadway or rail traffic.

10 (k) A sign may not be located in an area that is adjacent
11 to or within 1,000 feet of a rest area.

12 (l) The distance from a rest area is measured along the
13 right of way line from the outer edges of the rest area boundary
14 abutting the right of way.

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

17 (n) This subsection applies only if a public park boundary
18 abuts the right of way of a regulated highway. A sign may not
19 be located within 1,500 feet of the boundary of the public park,
20 as measured along the right of way line from the nearest common
21 point of the park's boundary and the right of way. This
22 limitation applies on both sides of the rural road.

23 (o) A permitted sign that is being displaced by a highway

1 construction project will not be considered in determining the
2 spacing for a new sign application.

3

4 §21.447. Complaint Procedures.

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

9 (b) The complaints can be filed via the department's
10 website, www.txdot.gov, or by mail to Texas Department of
11 Transportation, Outdoor Advertising, P.O. Box 13043, Austin,
12 Texas 78711-3043.

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

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

23 (e) If the complaint involves fewer than 10 sign structures

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

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

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

15

16 §21.448. License Required.

17 (a) Except as provided by this subchapter, a person may not
18 obtain a permit for a sign under this subchapter unless the
19 person holds a currently valid license issued under §21.153 of
20 this chapter (relating to License Issuance), or under §21.450 of
21 this subchapter (relating to License Issuance), applicable to
22 the county in which the sign is to be erected or maintained.

23 (b) A license is valid for one year after its date of

1 issuance or most recent renewal.

2

3 §21.449 License Application.

4 (a) To apply for a license under this subchapter, a person
5 must file an application in a form prescribed by the department.

6 The application must include at a minimum:

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

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

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

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

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

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

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

22 (2) a duly certified power of attorney from the surety
23 company authorizing the surety company's representative to

1 execute the bond on the effective date of the bond; and

2 (3) the license fee prescribed by §21.453 of this

3 subchapter (relating to License Fees).

4 (c) The documentation and fee required under this section

5 must be sent by certified or regular mail to: Texas Department

6 of Transportation, Outdoor Advertising, P.O. Box 13043, Austin,

7 Texas 78711-3043.

8

9 §21.450. License Issuance.

10 (a) The department will issue a license if the requirements

11 of §21.152 of this chapter (relating to License Application), or

12 if the requirements of §21.449 of this subchapter (relating to

13 License Application), are satisfied.

14 (b) The department will not issue a license to an entity

15 that is not authorized to conduct business in this state.

16

17 §21.451. License Not Transferable. A license issued under this

18 subchapter is not transferable.

19

20 §21.452. License Renewals.

21 (a) To continue a license in effect, the license must be

22 renewed.

23 (b) To renew a license, the license holder must file a

1 written application in a form prescribed by the department
2 accompanied by each applicable license fee prescribed by the
3 subchapter under which the license was issued. The application
4 must be received by the department before the 46th day after the
5 date of the license's expiration and must include at a minimum:

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

8 (2) the number of the license being renewed;

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

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

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

14 (d) A license is not eligible for renewal unless the
15 license holder has complied with the permit requirements of this
16 subchapter, Subchapter I of this chapter (relating to Regulation
17 of Signs Along Interstate and Primary Highways), or
18 Transportation Code, Chapters 391 and 394.

19
20 §21.453. License Fees.

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

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

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

5 (d) A license fee is payable by check, cashier's check, or
6 money order made payable to the state highway fund, and must be
7 submitted with the application. If the check or money order is
8 dishonored upon presentment, the license is voidable.

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

15
16 §21.454. Temporary Suspension of License. If the department is
17 notified by a surety company that a bond is being canceled, the
18 department will notify the license holder by certified mail that
19 a new bond must be obtained and filed with the department before
20 the bond cancellation date or the 30th day after the day of the
21 receipt of the notice, whichever is later.

22
23 §21.455. License Revocation and Non-Renewal.

1 (a) The department will initiate an enforcement proceeding,
2 as described in this section, to revoke a license holder's
3 license if:

4 (1) the license holder does not provide the department
5 with the required surety bond within the time specified in
6 §21.449 of this subchapter (relating to License Application) or
7 §21.452 of this subchapter (relating to License Renewals);

8 (2) the license holder's surety bond coverage is
9 terminated under §21.454 of this subchapter (relating to
10 Temporary Suspension of License);

11 (3) the number of final enforcement actions of this
12 subchapter, Subchapter I of this chapter (relating to Regulation
13 of Signs Along Interstate and Primary Highways), or
14 Transportation Code, Chapters 391 and 394, committed by the
15 license holder in the aggregate equal or exceed:

16 (A) 10 percent of the number of valid permits held by
17 the license holder, if the license holder holds more than 1,000
18 sign permits;

19 (B) 20 percent of the number of valid permits held by
20 the license holder, if the license holder holds at least 500 but
21 fewer than 1,000 sign permits;

22 (C) 25 percent of the number of valid permits held by
23 the license holder if the license holder holds at least 100 but

1 fewer than 500 sign permits; or

2 (D) 30 percent of the number of valid permits held by
3 the license holder if the license holder holds fewer than 100
4 sign permits; or

5 (4) the license holder has not complied with any
6 administrative orders or agreements arising out of and relating
7 to previous enforcement actions initiated against the license
8 holder under this section.

9 (b) The department will send notice by certified mail of an
10 action under this section to the address of record provided by
11 the license holder.

12 (c) The notice will clearly state:

13 (1) the reasons for the action;

14 (2) the effective date of the action;

15 (3) the right of the license holder to request an
16 administrative hearing; and

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

19 (d) A request for an administrative hearing under this
20 section must be made in writing to the department within 45 days
21 after the date that the notice is mailed.

22 (e) If timely requested, an administrative hearing will be
23 conducted in accordance with Chapter 1, Subchapter E of this

1 title (relating to Procedures in Contested Case).

2

3 §21.456. Exception to License Requirement for Nonprofit Signs.

4 A nonprofit organization may erect or maintain a nonprofit sign

5 without obtaining an outdoor advertising license, but the

6 organization must obtain a permit under either §21.457 of this

7 subchapter (relating to Nonprofit Sign Permit) before it may

8 erect or maintain such a sign.

9

10 §21.457. Nonprofit Sign Permit.

11 (a) A nonprofit service club, charitable association,

12 religious organization, chamber of commerce, nonprofit museum,

13 or governmental entity may obtain a permit under this section to

14 erect or maintain a nonprofit sign.

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

16 (1) advertise or promote:

17 (A) a political subdivision in whose jurisdiction the

18 sign is located or a political subdivision that is adjacent to

19 such a political subdivision; or

20 (B) 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 (2) comply with each sign requirement under this

1 subchapter from which it is not expressly 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 §21.425 of
11 this subchapter (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 chapter
17 (relating to License Issuance) or §21.450 of this subchapter
18 (relating to License Issuance); and

19 (2) convert the sign permit to a permit for a sign other
20 than a nonprofit sign and pay the original permit and renewal
21 fees provided by §21.424 of this subchapter (relating to Permit
22 Fees).