

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

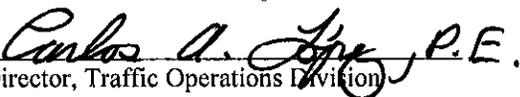
The Texas Transportation Commission (commission) finds it necessary to adopt the repeal of §§25.400 – 25.409 and simultaneously adopt new §§25.400 – 25.409, relating to the information logo sign and tourist-oriented directional sign program, and also adopt the repeal of §§25.700 – 25.708, relating to the major agricultural interest sign program, to be codified under Title 43, Texas Administrative Code, Part 1.

The preambles and the adopted repeals and new sections, attached to this minute order as Exhibits A - E, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the repeals of §§25.400 – 25.409 and §§25.700 – 25.708 and new §§25.400 – 25.409 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, Traffic Operations Division

Recommended by:

  
Executive Director

**110265 OCT 27 05**

Minute  
Number

Date  
Passed

1 Adoption Preamble

2 The Texas Department of Transportation (department) adopts the  
3 repeal of Subchapter G, §§25.400-25.409, and the simultaneous  
4 adoption of new Subchapter G, §§25.400-25.409 concerning the  
5 Information Logo Sign Program and Tourist-Oriented Directional  
6 (TOD) Sign Program. New §25.404 and §25.406 are adopted with  
7 changes to the proposed text as published in the September 9,  
8 2005 issue of the Texas Register (30 TexReg 5758). The  
9 remaining new §§25.400-25.403, §25.405, and §§25.407-25.409 and  
10 repeal of Subchapter G, §§25.400-25.409, are adopted without  
11 changes to the proposed text as published in the September 9,  
12 2005 issue of the Texas Register (30 TexReg 5758) and will not  
13 be republished.

14

15 EXPLANATION OF ADOPTED REPEALS AND NEW SECTIONS

16 Senate Bill 1137, 79<sup>th</sup> Legislature, Regular Session, 2005,  
17 requires the department to develop a TOD sign program for  
18 wineries or businesses related to agriculture or tourism. The  
19 legislation also directs the department to develop rules  
20 covering the operation and implementation of this program.

21

22 House Bill 2453, 79<sup>th</sup> Legislature, Regular Session, 2005, also  
23 requires the department to add a new service category to the  
24 Specific Information Logo Sign Program for pharmacies operating  
25 24-hours a day.

1 The adopted rules for new Subchapter G are designed to implement  
2 the provisions of Senate Bill 1137 and House Bill 2453 as well  
3 as make general changes and updates to the existing Information  
4 Logo Sign Program. Many of the provisions in the rules were  
5 developed when the program was originally implemented in 1992.  
6 The Information Logo Sign Program is now fully operational and  
7 many of the original program guidelines are no longer necessary.  
8 The new rules have been developed to improve readability,  
9 reflect the statutorily mandated "best value" approach in the  
10 program contract, reflect current program management practices  
11 and simplify the existing program rules. The subchapter title  
12 has also been changed to reflect current practices.

13  
14 Section 25.400. Purpose. Existing §25.400, Purpose, is repealed  
15 and replaced with new §25.400, Purpose, which is to establish  
16 the policies and procedures for the implementation of the Logo  
17 and TOD sign program. Changes to this section include the  
18 addition of the TOD sign program and deletion of the term "urban  
19 highways" to correspond to the new definition of eligible  
20 highways.

21  
22 Section 25.401. Definitions. Existing §25.401, Definitions, is  
23 repealed and replaced with new §25.401, Definitions. Section  
24 25.401 defines certain words and terms used in the subchapter.  
25 The majority of the terms remain unchanged in the new language.

1 Various terms have been added to this section as necessary under  
2 the new TOD sign program including "major portion," "TOD sign  
3 panel," "TOD sign program," "TOD sign assembly," and  
4 "trailblazer sign."

5  
6 Terms have also been added or amended to reflect the changes  
7 required in the Specific Information Logo Sign Program as  
8 required under House Bill 2453, including "pharmacy services,"  
9 "primary motorist service," and "specific information logo sign  
10 assembly."

11  
12 The terms "interstate highway" and "major shopping area" are no  
13 longer included. Location on an interstate highway is not  
14 required for participation in the Information Logo Sign Program  
15 and the definition of "retail shopping mall" has been modified  
16 and incorporated into new §25.406 regarding Major Shopping Area  
17 Guide Signs.

18  
19 Section 25.402. Information Logo and TOD Sign Program.  
20 Existing §25.402, Information Logo Sign Program, is repealed and  
21 replaced with new §25.402, Information Logo and TOD Sign  
22 Program. Section 25.402 addresses the issuance of a contract to  
23 develop, operate, and maintain both Logo and TOD signs.

24  
25 New §25.402 requires the selected contractor to market the

1 program statewide to have maximum impact. The vendor is  
2 required to contact all businesses participating in current sign  
3 programs to coordinate continued involvement. The contractor is  
4 required to obtain approval of the site plans prior to  
5 initiating the work. The contractor is required to provide  
6 annual reports and other reports as required by the department.  
7 The contractor is also required to supply monthly information  
8 regarding all participating entities and the location  
9 information for each sign.

10

11 New §25.402 prohibits the installation of signs by anyone other  
12 than the contractor, approved subcontractors, or the department.  
13 It also requires that the contractor maintain the signs.

14

15 New §25.402 provides the parameters for the fee the contractor  
16 can assess for installing and maintaining Logo and TOD signs. It  
17 also sets the requirements for payments to the contractor for  
18 the depreciated value of installed signs due to termination of  
19 the contract.

20

21 Specific requirements related to annual meetings, bonding,  
22 required permits/licenses and records required to be provided by  
23 the contractor are no longer included in the rule. These  
24 provisions will be included in the program contract as deemed  
25 necessary by the department.

1

2 The department is no longer required to inspect and monitor sign  
3 installation as part of this subchapter. The department  
4 considers this a routine and customary part of its duties and  
5 believes it is unnecessary to include as part of the program  
6 rules.

7

8 Section 25.403. Request for Proposals.

9 Existing §25.403 and §25.404 regarding notice, proposal  
10 submission and contract award procedures are repealed and  
11 replaced with §25.403, Request for Proposals. The repealed  
12 sections have provisions that utilize the standard low-bid  
13 highway construction contract. All future information logo and  
14 TOD sign program contracts will be awarded based on the best  
15 value provided to the state. New §25.403 details the issuance  
16 of the request for proposal (RFP), proposal evaluation and what  
17 constitutes an eligible proposal. The prior provisions  
18 regarding contract selection were based on highway maintenance  
19 contract procedures, which will no longer be utilized. With the  
20 adopted language, the program will be managed under a purchase  
21 of services contract which includes the best value  
22 determination. With the new RFP format, details such as maximum  
23 proposal length, response dates, and contract award provisions  
24 are not necessary and will be included in the RFP.

25

1 The department will select the contractor based on the listed  
2 evaluation criteria. The evaluation criteria were selected as a  
3 basis to determine the contractor's ability to fulfill the  
4 program obligations. The proposals must show a full  
5 understanding of the project and the capability to undertake and  
6 perform the program obligations. The proposal must also address  
7 the approach or course of action for meeting the goals of the  
8 program. The proposal must document sufficient financial  
9 resources to carry out all functions. In addition, the proposal  
10 will be evaluated on the proposed cost to the participating  
11 businesses. The department will evaluate the proposals based on  
12 the plan presented and the services offered against the fees  
13 charged to achieve the best value to the state.

14  
15 Due to the importance of reviewing complete proposals, a  
16 proposal that fails to comply with all requirements contained in  
17 the RFP will be ineligible for review and selection. This  
18 enables the department to conduct a fair and impartial  
19 selection. In addition, a proposal will be ineligible if it  
20 fails to guarantee the department recover the greater of the  
21 costs of implementing the program or at least 10% of the  
22 collected fees.

23  
24 Section 25.404. Specifications for Information Logo Signs.  
25 Existing §25.404, Evaluation, is repealed and replaced with new

1 \$25.404, Specifications for Information Logo Signs. Minor  
2 changes have been made to this section to incorporate the 24-  
3 hour pharmacies into the specific Information Logo Sign Program,  
4 as required by House Bill 2453, and to make other minor changes  
5 to reflect current program practices.

6  
7 "Pharmacy" sign priority for logo signs complies with the  
8 requirements of the United States Department of Transportation,  
9 Federal Highway Administration. In addition, the logo sign  
10 assembly is required to have the legend "24 HOUR Rx" displayed  
11 with pharmacy logos to ensure that the traveling public is aware  
12 that these businesses are open 24 hours a day.

13  
14 Section 25.404 allows the word "PROPANE" to be included as  
15 supplemental information on logos for gas stations. The  
16 department believes this will be beneficial to the traveling  
17 public by providing additional information for those motorists  
18 seeking propane.

19  
20 Section 25.404 also includes some changes to the major shopping  
21 area guide signs. Language is added to clarify that major  
22 shopping area guide signs are not installed as overhead signs.  
23 This reflects current practice within the program. It also  
24 changes the major shopping sign to a blue background to match  
25 other signs in the Information Logo and TOD sign programs. This

1 will allow department personnel to readily identify these as  
2 signs maintained by a contractor.

3  
4 With the full implementation of the program the department has  
5 found many of the existing rules unnecessary. The adopted rules  
6 no longer include the requirement that the department approve  
7 Specific Information Logo signs with more than two services  
8 prior to installation. The rule allows for no more than three  
9 types of services per sign assembly.

10  
11 Also deleted from existing §25.404 is the language regarding  
12 close proximity interchanges. The former language allowed a  
13 logo sign assembly to contain the logos for businesses that are  
14 located at more than one highway exit. This provision does not  
15 reflect current practice by the department and therefore is not  
16 included in the new language.

17  
18 Section 25.405. Commercial Establishment Eligibility. Existing  
19 §25.405, Specifications for Information Logo Signs, regarding  
20 general and specific information for commercial establishment  
21 eligibility, is repealed and replaced with §25.405, Commercial  
22 Establishment Eligibility. New or changed provisions include  
23 the following.

24  
25 Non-self service gas stations are no longer required to have

1 tire repair capabilities. The department believes that this  
2 requirement placed an unfair burden on non-self service  
3 stations.

4  
5 Food establishments are required to serve meals that are  
6 prepared on site. This is included to ensure that food  
7 establishments participating in the program operate as full-  
8 service restaurants rather than as convenience facilities  
9 offering pre-packaged foods.

10  
11 All camping facilities are no longer required to offer "modern  
12 sanitary facilities designed to service recreational vehicles.  
13 The department believes that not all camping sites should be  
14 required to have these types of facilities to participate in the  
15 program.

16  
17 The provisions related to the eligibility for a pharmacy to  
18 receive a specific information logo sign are added as per the  
19 requirements of House Bill 2453. These include requirements  
20 that the pharmacy be open for business 24 hours of each day and  
21 provide pharmacy services as defined in the subchapter. In  
22 addition pharmacies are excluded from the provisions that allow  
23 commercial establishments to be farther than three miles from  
24 the eligible highways as required under the federal Manual of  
25 Uniform Traffic Control Devices.

1  
2 The provisions related to variances are modified to note that no  
3 variances may be requested for the eligibility requirements for  
4 pharmacies. The statute specifically requires that only 24-hour  
5 pharmacies are allowed to participate in the program.

6  
7 References to the "director's designee" are deleted since the  
8 revised definition of executive director now specifically  
9 includes the director's designee. This is not a substantive  
10 change.

11  
12 Section 25.406. Major Shopping Area Eligibility. Existing  
13 §25.409, Major Shopping Area Eligibility, regarding the  
14 eligibility criteria for an entity to receive a major shopping  
15 area guide sign, is repealed and replaced with new §25.406,  
16 Major Shopping Area Eligibility. Section 25.406 establishes the  
17 criteria for a major shopping area to reflect recent trends in  
18 retail facilities. When the program was originally implemented,  
19 enclosed shopping malls were the typical applicants for this  
20 type of signing. Many shopping areas are now smaller in total  
21 size, not totally enclosed and consist of separate buildings of  
22 a unified theme.

23  
24 New §25.406 allows the department greater flexibility in the  
25 type of documentation an applicant must submit to the department

1 when requesting a variance from certain eligibility  
2 requirements. This change will allow the department to request  
3 less documentation if warranted.

4  
5 Section 25.407. Logo Sign Program Operation. Existing \$25.407,  
6 Program Operation, regarding the application and selection  
7 process for inclusion in the information logo sign program, is  
8 repealed and replaced with new \$25.407, Logo Sign Program  
9 Operation. The adopted language includes provisions for major  
10 shopping area guide signs.

11  
12 New \$25.407 details the selection process for situations where  
13 there are more eligible business establishments than available  
14 sign spaces. New \$25.407 allows the contractor, upon approval  
15 by the department, to set an application deadline for spaces on  
16 new or existing logo sign assemblies. The date is no longer  
17 specifically stated. This will allow for greater flexibility in  
18 establishing deadlines for participating businesses and also  
19 allow these dates to be more closely tailored to the overall  
20 beginning and end of the contract between the program contractor  
21 and the department. The department will ensure that any dates  
22 proposed by the contractor will not cause any undue hardship on  
23 program participants.

24  
25 Section 25.407 includes information regarding the removal of

1 business logo and major shopping area signs. It establishes  
2 the process for removal if the business ceases to exist,  
3 relocates and is no longer eligible, does not meet the  
4 requirements, or does not provide the replacement logo panel as  
5 requested. It also provides that if a major shopping area guide  
6 sign or logo sign is removed permanently due to actions of the  
7 department, that the participation agreement between the major  
8 shopping area or business is cancelled and that any funds paid  
9 to the program contractor will be refunded on a prorated basis.

10

11 Section 25.408. TOD Sign Program Operation. New §25.408

12 provides guidelines and eligibility requirements for  
13 participation in the TOD sign program as required by Senate Bill  
14 1137.

15

16 New §25.408 specifies all general and specific requirements that  
17 an applicant must meet to obtain a TOD sign panel. As required  
18 by Senate Bill 1137, to be eligible for a TOD sign panel a  
19 facility must be a winery, farm, ranch, or other tourist-  
20 oriented destination.

21

22 Section 25.408 requires that to be eligible for a TOD sign  
23 panel, a major portion of a facility's visitors must have  
24 traveled more than 50 miles from the facility. Fifty miles was  
25 selected as the appropriate distance to determine tourist

1 visitors due to the unique geography of the state. Texas is a  
2 large state and it is not uncommon for motorists to travel up to  
3 50 miles on a single trip while simply conducting normal  
4 business or activities. The department believes this represents  
5 a reasonable distance to determine which visitors reside out of  
6 an eligible facility's general area.

7  
8 The facility must provide a tourist-oriented service or product  
9 of significant interest to the traveling public. The  
10 department's goal is to ensure that an entity receiving a TOD  
11 sign panel is an actual tourist destination.

12  
13 Additional general requirements are dictated by statute and are  
14 included in the rule for the reader's convenience. The facility  
15 is required by statute to comply with various state and federal  
16 laws regarding public accommodations. The facility must be  
17 located within 5 driving miles of an eligible highway as  
18 required by the state and federal Manual on Uniform Traffic  
19 Control Devices and be in compliance with the federal Highway  
20 Beautification Act of 1965.

21  
22 The facility must also provide modern restrooms, drinking water,  
23 and be clean and in good repair as required for information logo  
24 sign participants. The department feels that these requirements  
25 reflect the reasonable expectations of the motoring public.

1  
2 New §25.408 creates three categories of eligible facilities that  
3 may apply for a TOD sign panel: wineries, agritourism  
4 facilities and other commercial tourist-oriented facilities.  
5 This corresponds to language contained in Senate Bill 1137.

6  
7 Wineries are required to produce wine on their premises, to  
8 conduct regularly scheduled tours or provide tours as requested,  
9 to market their product on premise, to have a wine tasting area  
10 on premise and have a winery permit as issued by the state of  
11 Texas. These requirements are designed to ensure that wineries  
12 receiving a TOD sign panel will be of interest to tourists and  
13 provide the types of activities and products tourists typically  
14 associate with wineries.

15  
16 New §25.408 does not require standard hours of operation for a  
17 winery to receive a TOD sign panel. The department understands  
18 that many wineries operate on a limited schedule centered on  
19 weekends. The department believes that such a limitation could  
20 prevent a large number of wineries from participating in the  
21 program.

22  
23 New §25.408 also adds specific requirements for entities wishing  
24 to receive a TOD sign panel under the agritourism category. To  
25 be eligible to receive a sign, an agritourism facility must

1 produce an agricultural product, devote a minimum of five acres  
2 to the production of an agricultural product, conduct tours or  
3 provide them upon request, market the product on the premises  
4 and be open 12 months a year or during the normal seasonal  
5 business period. The list outlines in new §25.408(a)(2)(B)  
6 contains the requirements under the Major Agricultural Interest  
7 Sign Program that was repealed under Senate Bill 1137.

8  
9 These requirements ensure that facilities receiving a TOD sign  
10 panel under the agritourism category actually produce an  
11 agricultural product of significant interest to the public. The  
12 entity is required to stay open 12 months a year, or during the  
13 normal seasonal period for that type of business, to ensure that  
14 the public will be able to locate agritourist attractions.

15  
16 Various examples of eligible agritourism facilities are  
17 provided, although this list is not intended to reflect every  
18 eligible facility.

19  
20 New §25.408(a)(2)(C) adds specific requirements for the third  
21 category of an eligible facility, the tourist-oriented  
22 commercial businesses or entities. These types of facilities  
23 must produce a unique product or service of interest to  
24 tourists, be open for business at least five days a week  
25 including a Saturday or Sunday and be an independent enterprise

1 that is not part of a franchise or national chain.

2  
3 This category of facility is required to be open a minimum of  
4 five days a week because they serve tourist needs as well as  
5 serve as tourist attractions. The department believes that the  
6 public will have an expectation that these types of facilities,  
7 if included on the TOD sign panel, will be open for a  
8 significant portion of time.

9  
10 The department also adds the requirement that such a facility  
11 not be part of a franchise or national chain. The department  
12 believes that this will be consistent with the requirement that  
13 all eligible facilities provide a unique or unusual product or  
14 service of interest to tourists.

15  
16 Various examples of eligible commercial facilities are provided,  
17 although this list is not intended to reflect every eligible  
18 facility.

19  
20 New §25.408(a)(3) provides a list of ineligible facilities for  
21 TOD sign panels. The department believes that these facilities  
22 are not consistent with the goal of the project to provide  
23 information regarding tourist attractions to the public. This  
24 list does not include all ineligible facilities but provides a  
25 sample of the types of businesses or locations that will not

1 qualify.

2

3 Section 25.408 also provides that the department will make the  
4 final determination regarding an applicant's eligibility to  
5 participate in the TOD sign program.

6

7 Section 25.408 requires the facility to submit an application to  
8 the program contractor and for the contractor to verify all  
9 information as stated in the application. The section also  
10 requires the department to act to approve or disapprove an  
11 application within certain time limitations as required under  
12 Senate Bill 1137.

13

14 New language in §25.408 describes the specifications for TOD  
15 sign panels. Each TOD sign must meet all applicable provisions  
16 of the state and federal Manual on Uniform Traffic Control  
17 Devices and be fabricated and installed according to department  
18 requirements.

19

20 Section 25.408 sets out the general requirements for placement  
21 of TOD sign assemblies within state highway right-of-way. These  
22 provisions are included to ensure that TOD signs do not  
23 interfere with existing traffic control devices and are  
24 installed in a way that does not detract from motorist safety.

25

1 New §25.408 includes an order of priority for the assignment of  
2 TOD sign panels. The section allows for placement of no more  
3 than nine TOD sign panels per intersection approach. The  
4 department anticipates in some limited areas there might be more  
5 TOD sign applications than available panels. To address this  
6 type of situation the department is proposing a priority list  
7 derived from the language of Senate Bill 1137. The bill  
8 specifically lists wineries, and then generally states  
9 businesses related to agriculture or tourism including a farm,  
10 ranch, or other tourist activity. Since wineries are  
11 specifically listed, the department has listed them first on the  
12 priority list followed by agritourism and then other tourist-  
13 oriented businesses. The department believes this  
14 interpretation and priority listing is in accord with the  
15 statute and the intent of the legislation.

16  
17 New §25.408 requires each assembly have no more than three TOD  
18 sign panels. The department believes that this will allow  
19 reasonable accommodation of most facilities wishing to  
20 participate in the program while ensuring that intersection  
21 approaches are not unduly crowded by the signs. The sign  
22 composition will be dictated by the available space and will  
23 include information allowed under the federal Manual of Uniform  
24 Traffic Control Devices at the department's discretion.

25

1 New §25.408(d) requires that facilities that wish to participate  
2 in the program, but that are located more than one turn off the  
3 eligible state highway, must place additional trailblazer signs  
4 directing motorists to the facility before the TOD sign panel  
5 will be installed. The participating facility is responsible  
6 for all costs and issues associated with the installation and  
7 maintenance of these trailblazer signs. This provision is added  
8 to ensure that motorists will be able to find the eligible  
9 facility when it is not located directly on an eligible portion  
10 of the state highway system.

11  
12 Section 25.408 also provides for the conditions under which the  
13 department or program contractor may remove a TOD sign panel.  
14 This language is consistent with the provisions for specific  
15 logo and major shopping area signs.

16  
17 Section 25.409. Appeal. Existing §25.408, Appeal, regarding  
18 appeals by both the contractor and businesses, or tourist  
19 entities, is repealed and new §25.409, Appeal, is adopted. The  
20 new rule does not alter the appeal process for claims by the  
21 contractor. As required by Transportation Code, §201.112,  
22 appeals by the contractor fall under the contract claim  
23 provisions of §§1.21-1.26.

24  
25 The provisions regarding appeals by participating businesses and

1 entities have been changed to provide a more streamlined and  
2 efficient approach. The appeals will now be made directly to  
3 the Director of the Traffic Operations Division. Section 25.409  
4 states that the request must be in writing and received within  
5 30 days of the adverse decision. The language provides the  
6 information the petition must include to ensure that the  
7 director will have the information needed to make a timely and  
8 well informed decision. The department believes this new appeal  
9 process will allow participants a more flexible, streamlined  
10 approach to resolving any issues between themselves and the  
11 program contractor.

12

13 COMMENTS

14 Comments on the proposed new sections were received. In  
15 addition, department staff made minor grammatical changes to  
16 §25.404(e)(3)(A) and §25.406(a)(1)(D) to improve readability.

17

18 COMMENT:

19 The Railroad Commission of Texas requested that the rules be  
20 amended to allow propane retail outlets to participate in the  
21 Tourist-Oriented Directional Sign (TODS) program. The  
22 Commission noted in their request that tourists often use  
23 propane services, that these tourists often rely on signing to  
24 find these dealers and that propane dealers meet many of the  
25 requirements as stated in the rules to qualify for a TODS sign.

1

2 RESPONSE:

3 The department disagrees with this comment. While we appreciate  
4 the commission's concerns, the department does not believe that  
5 propane dealers represent a tourist attraction. There are many  
6 businesses that support tourist activities and accommodate  
7 tourist needs that will not qualify for TODS signing. We  
8 believe that the legislation as enacted makes TODS signing  
9 available to those businesses or non-profit entities that  
10 provide a unique or unusual service or product of significant  
11 interest to the tourist community. The department does not  
12 believe that retail propane dealers serve as a tourist  
13 attraction.

14

15 COMMENT:

16 The department also received a comment on the use of the RV  
17 Friendly symbol on specific information logo signs,  
18 §25.404(b)(2). The commenter offered the comment in his  
19 capacity as a private citizen. The commenter requests that the  
20 rules be amended to allow the use of these symbols for those  
21 businesses whose facilities are designed to accommodate the on-  
22 site parking or movement of recreational vehicles.

1 RESPONSE:

2 The Federal Highway Administration has issued interim approval  
3 to allow states to utilize the RV Friendly symbol if the states  
4 program meets minimum guidelines. The department agrees with  
5 the comment that these symbols should be allowed for those  
6 participating businesses meeting the criteria outlined by the  
7 Federal Highway Administration. Accordingly, the department has  
8 added new subpart (E) to §25.404(b)(2).

9

10 STATUTORY AUTHORITY

11 The repeals and new sections are adopted under Transportation  
12 Code, §201.101, which provides the commission with the authority  
13 to establish rules for the conduct of the work of the  
14 department, and more specifically Transportation Code, §391.091,  
15 which provides the commission with the authority to establish  
16 rules regarding the Information Logo Sign Program and  
17 Transportation Code, §391.099, which provides the commission  
18 with the authority to establish rules for the TOD Sign Program.

19

20 CROSS REFERENCE TO STATUTE

21 Transportation Code, §391.091 et seq.

1 SUBCHAPTER G. SPECIFIC INFORMATION LOGO SIGN PROGRAM

2 §25.400. Purpose. Transportation Code, §391.091, requires the  
3 commission to contract with a person, firm, group, or  
4 association in the State of Texas to erect and maintain  
5 information logo signs within eligible highways and urban  
6 highway rights of way. It further requires the commission to  
7 adopt rules necessary to administer and enforce this signing  
8 program, and to regulate the content, composition, placement,  
9 erection, and maintenance of information logo signs and supports  
10 within eligible highways and urban highway rights of way. The  
11 sections in this subchapter prescribe the policies and  
12 procedures for the implementation of an information logo sign  
13 program.

14  
15 §25.401. Definitions. The following words and terms, when used  
16 in the sections under this subchapter, shall have the following  
17 meanings, unless the context clearly indicates otherwise.

18 (1) Business logo--A separate sign panel of specified  
19 dimensions attached to a specific information logo sign and  
20 containing the commercial establishment name, symbol, brand,  
21 trademark, or combination.

22 (2) Close proximity interchanges--Sequential interchanges  
23 in a direction of travel where exit ramp spacing or existing

1 regulatory, guide, or warning signs preclude placement of a  
2 minimum of two specific information logo signs between exits.

3 (3) Commercial establishment--A privately owned business  
4 or corporation offering one or more of the primary motorist  
5 services.

6 (4) Commission--The Texas Transportation Commission.

7 (5) Contractor--A person, firm, group, or association in  
8 the State of Texas that acts as the authorized agent of the  
9 department in the operation of the specific information logo  
10 sign program.

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

12 (7) Driveway access--A vehicle entrance, built in  
13 compliance with state and local standards and regulations, for  
14 use by the public providing access from a public street or  
15 highway to a commercial establishment or major shopping area.

16 (8) Dual logo--A panel on a specific information logo  
17 sign containing the names of either:

18 (A) two food establishments in a shared space under  
19 common ownership; or

20 (B) a gas and food establishment in a shared space  
21 under common ownership.

22 (9) Eligible highway--A highway that:

23 (A) is located outside an urbanized area with a

1 population of 50,000 or more and qualifies for a maximum speed  
2 limit of 65 miles per hour under 23 U.S.C. §154, or if that law  
3 is repealed, qualified for a maximum speed limit of 65 miles per  
4 hour on the day before the effective date of the repeal; or

5 (B) is a controlled-access highway located inside an  
6 urbanized area with a population of 50,000 or more.

7 (10) Eligible urban highway--An interstate highway  
8 located inside an urbanized area with a population of 200,000 or  
9 more.

10 (11) Gross building area--Square footage of usable area  
11 within a building, or series of buildings under one roof, that  
12 is considered usable by the retail businesses and the public; if  
13 a building is multi-level, this includes the square footage  
14 available on each level.

15 (12) Information logo sign--A specific information logo  
16 sign or a major shopping area guide sign.

17 (13) Interchange--The intersection of the centerlines of  
18 an eligible highway or eligible urban highway and a crossroad.

19 (14) Interstate highway--Any highway which is part of the  
20 national system of interstate and defense highways designed to  
21 be a multi-lane and divided full control access roadway.

22 (15) Major shopping area--An enclosed retail shopping  
23 mall offering goods and services for sale to the public located

1 on a minimum 30 acres of land that contains 1 million square  
2 feet or more of gross building area.

3 (16) Major shopping area guide sign--A rectangular  
4 supplemental sign panel imprinted with the name of the retail  
5 shopping area as it is commonly known to the public and  
6 containing directional information.

7 (17) Major shopping area ramp sign--A supplemental sign  
8 with the common name of the retail shopping mall, directional  
9 arrows, and/or distances placed near an eligible urban highway  
10 exit ramp or access road.

11 (18) Multiple crossroad interchange--An interchange in  
12 which one exit in a direction of travel from an eligible highway  
13 provides the only point of access for two or more crossroads;  
14 the center of a multiple crossroad interchange is the mid-point  
15 of the intersection of the centerline of the eligible highway  
16 and centerlines of the affected crossroads.

17 (19) Primary motorist service--Gas, food, lodging, or  
18 camping available to the traveling public.

19 (20) Ramp business logo--A reduced size separate sign  
20 panel of specified dimensions attached to a ramp and containing  
21 the commercial establishment name, symbol, brand, trademark, or  
22 combination.

23 (21) Ramp sign--A supplemental sign with ramp business

1 logos or the name of the major shopping area, directional  
2 arrows, and distances placed near an eligible highway or  
3 eligible urban highway exit ramp.

4 (22) Retail shopping mall--Retail businesses located  
5 within a building, or a series of buildings, connected by a  
6 common continuous roof and walls, and enclosing and covering all  
7 inner pedestrian walkways and common areas.

8 (23) Specific information logo sign--A rectangular  
9 supplemental sign imprinted with the words "GAS," "FOOD,"  
10 "LODGING," or "CAMPING," or with a combination of those words,  
11 and the names (or business logos) of commercial establishments  
12 offering those services.

13 (24) State--The State of Texas.

14 (25) Texas MUTCD--Texas Manual on Uniform Traffic Control  
15 Devices for Streets and Highways, latest edition, issued by the  
16 Texas Department of Transportation.

17  
18 \$25.402. Information Logo Sign Program.

19 (a) Program. The department may award a contract or  
20 contracts to a person, firm, group, or association in the State  
21 of Texas, for an initial period not to exceed five years, to  
22 develop, operate, and maintain information logo signs at  
23 appropriate locations along eligible highways and eligible urban

1 highways, subject to the following terms and conditions.

2 (b) Marketing.

3 (1) In marketing the specific information logo sign  
4 program, the contractor shall develop an inventory of potential  
5 eligible commercial establishments:

6 (A) within a one-mile radius of the interchange if the  
7 total number of eligible commercial establishments willing to  
8 participate is equal to or greater than the number of available  
9 spaces and the available alternate positions for a motorist  
10 service;

11 (B) within a two-mile radius of the interchange if the  
12 total number of eligible commercial establishments willing to  
13 participate is equal to or greater than the number of available  
14 spaces and the available alternate positions for a motorist  
15 service; or (C) within a three-mile radius of the  
16 interchange.

17 (2) In marketing the major shopping area sign program,  
18 the contractor shall:

19 (A) develop an inventory of potential eligible retail  
20 shopping malls;

21 (B) submit this inventory to the department and, with  
22 department concurrence, determine which of the potential  
23 eligible retail shopping malls will require overhead or ground

1 mounted signing (retail shopping malls that require overhead  
2 signing shall become the responsibility of the department, and  
3 the retail shopping mall shall reimburse the department for all  
4 costs for site plans, engineering, fabrication, erection,  
5 inspection, and maintenance of overhead signs and supports);

6 (C) send letters explaining the program to potential  
7 eligible commercial establishments and retail shopping malls;  
8 and

9 (D) advertise the specific information logo sign  
10 program in local papers and post notices at appropriate  
11 locations at the county seats.

12 (c) Market study and site plans. Prior to construction of  
13 an information logo sign at an approved location, the contractor  
14 must submit to the department a market study and site plan. For  
15 close proximity interchanges and multiple crossroad  
16 interchanges, the contractor shall submit a market study to the  
17 department for approval before development of the site plan.  
18 Upon approval of the site plan, the contractor may begin work at  
19 the location described.

20 (d) As-built plans. The contractor shall submit as-built  
21 plans to the department within 45 calendar days upon completion  
22 of the installation of information logo signs.

23 (e) Contacting participating businesses. In the first

1 three months of a contract between the department and the  
2 contractor, the contractor shall contact all participating  
3 businesses with logo panels to:

4 (1) notify the businesses of the new contract between the  
5 department and the contractor; and

6 (2) coordinate whether the participating businesses will  
7 renew if space is available.

8 (f) Cooperation with other contractors. The contractor is  
9 required to cooperate with any contractor working on the state  
10 highway system as well as any other contractors operating  
11 information logo sign programs within the State. Upon request  
12 by a potential lessee, the department, or a member of the  
13 public, the contractor will furnish the name, address, and  
14 telephone number of other information logo sign contractors.

15 (g) Annual report. The contractor shall furnish an annual  
16 report to the department. The annual report will include the  
17 contractor's financial statement as provided in §25.403 of this  
18 title (relating to Prequalification), summary of eligible  
19 interchanges, business logos erected, major shopping area guide  
20 signs erected, and number of participation agreements completed.  
21 Other reports may also be required throughout the year as  
22 determined by the department.

23 (h) Program information.

1 (1) The contractor shall furnish an electronic inventory  
2 to the department in a format of the department's choice. This  
3 inventory shall include, but not be limited to:

4 (A) a list of all businesses participating in the  
5 program;

6 (B) information on all participating businesses  
7 including addresses, key contacts, and phone numbers;

8 (C) location information for each specific information  
9 logo sign including:

- 10 (i) roadway;  
11 (ii) exit number;  
12 (iii) direction; and

13 (D) date of expiration of the contract between each  
14 participating business and the program contractor.

15 (2) The inventory shall be updated and provided to the  
16 department on a monthly basis.

17 (i) Meetings. The contractor is required to attend  
18 meetings with the department or department representatives at  
19 least once per calendar year at a date and location determined  
20 by the department to discuss program operation. The department  
21 may also require other meetings.

22 (j) Installation by contractor. Installation of  
23 information logo signs may only be performed by the contractor,

1 a subcontractor approved by the department, or, in emergency  
2 situations, by the department. In the event that the department  
3 undertakes installation or other duties of the contractor, the  
4 contractor shall immediately remit to the department the  
5 specified fee or cost of such work.

6 (k) Department review. Prior to installation, the design  
7 and location of information logo signs must be submitted to the  
8 department for review. The department shall inspect  
9 installation and monitor maintenance.

10 (l) Sign relocation or removal. If the department  
11 determines that additional regulatory, warning, or guide signing  
12 is needed at an interchange, existing or planned information  
13 logo signs shall be removed or relocated by the contractor as  
14 directed by the department and at the sole expense of the  
15 contractor. If the department determines that construction or  
16 maintenance activities within the eligible highway or eligible  
17 urban highway rights of way will create conditions where  
18 existing information logo signs will not be in compliance with  
19 Transportation Code, Chapter 391, or provisions of this title,  
20 the contractor shall:

21 (1) remove the business logos and ramp business logos of  
22 the affected commercial establishments;

23 (2) remove the information logo signs and ramp signs; and

NOTE: Repealed Sections

Exhibit B

OGC: 08/16/05 4:00 PM

1 (3) reimburse advance rental fees paid by commercial  
2 establishments or retail shopping malls prorated as per the date  
3 of removal of the business logos or major shopping area guide  
4 signs.

5 (m) Sign maintenance. The information logo signs shall be  
6 maintained by the contractor in a manner and condition that is a  
7 distinct benefit to the safety of the public, benefit to the  
8 commercial establishments or retail shopping malls, and to the  
9 satisfaction of the department.

10 (n) Fees. The contractor shall assess a fee covering the  
11 installation, annual rental, covering, maintenance, and  
12 replacement costs for the signs and shall remit to the  
13 department the amount specified in the contract no later than  
14 the seventh business day following the last day of the month  
15 such fees are received by the contractor.

16 (1) Reduced fees. The contractor shall reduce the annual  
17 rental fee a prorated amount for each calendar day when:

18 (A) the business or ramp business logo(s), or the major  
19 shopping area guide sign has not been erected; or

20 (B) a previously erected business, ramp business logo,  
21 or major shopping area guide sign is obscured from view of the  
22 motorists for a period of time exceeding 10 consecutive calendar  
23 days.

NOTE: Repealed Sections

Exhibit B

OGC: 08/16/05 4:00 PM

1 (2) Non-reducible fee. A contractor may not reduce the  
2 annual fee for the period a business logo, ramp business logo,  
3 or major shopping area guide sign is covered at the request of  
4 the commercial establishment or retail shopping mall.

5 (o) Bonding. The contractor shall satisfy all requirements  
6 of Government Code, Chapter 2253, relating to bonds.

7 (p) Permits, licenses, and taxes. The contractor shall:

8 (1) procure all permits and licenses;

9 (2) pay all charges, fees, and taxes;

10 (3) give all notices necessary and incidental to the due  
11 and lawful prosecution of the work; and

12 (4) furnish the department with evidence of compliance  
13 with the permit, license, and tax requirements upon request.

14 (q) Records. The contractor shall:

15 (1) consistent with generally accepted accounting  
16 principles, maintain all books, documents, papers, advertising  
17 contracts, accounting records, and other evidence pertaining to  
18 the contract with the department; and

19 (2) furnish the department, its designee, or the state  
20 auditor such documents, records, and information for examination  
21 upon request.

22 (r) Termination.

23 (1) Contractor termination. If the contractor terminates

1 the contract or defaults prior to the conclusion date of any  
2 five-year term, ownership of the contract rights and any rights  
3 in the information logo signs constructed at the various  
4 interchanges and intersections shall immediately pass to and  
5 vest in the department on the effective date of termination, and  
6 the contractor shall not be entitled to any compensation.

7 (2) Department termination. If the department terminates  
8 the contract, before the contract's termination date, for  
9 reasons other than default of the contractor, the contractor  
10 will be paid for the depreciated value, as established by the  
11 department, for each of the information logo signs erected. The  
12 percentages are as follows (based on elapsed time since sign  
13 installation and the expiration year's statewide average square  
14 foot bid price for a large ground mounted sign):

15 (A) less than one year--90%;

16 (B) one year or more but less than two years--50%;

17 (C) two years or more but less than three years--25%;

18 or

19 (D) three years or more--0%.

20 (3) Contract termination.

21 (A) If the contract terminates at its specified  
22 termination date, the existing contractor is not awarded the  
23 contract, and the existing contractor's contract contains

1 payment terms for economic value at the end of the specified  
2 termination date, then the subsequent contractor will pay the  
3 department the following economic value based on elapsed time  
4 since sign installation and the expiration year's statewide  
5 average square foot bid price for a large ground mounted sign:

6 (i) less than one year--90%;

7 (ii) one year or more but less than two years--50%;

8 (iii) two years or more but less than three years--  
9 25%; or

10 (iv) three years or more--0%.

11 (B) The department will pay the existing contractor the  
12 amount indicated in subparagraph (A) of this paragraph.

13 (C) Specific information logo ramp signs will not be  
14 eligible for consideration of compensation.

15 (D) An existing specific information logo sign  
16 contractor receiving a new contract will not be eligible for  
17 compensation upon expiration of the contract.

18 (E) The department will provide an estimate of the  
19 economic value of these signs in the department's request for  
20 offer.

21 (s) Sale, transfer, and assignment of contract. The  
22 contractor shall not sell, transfer, assign, or otherwise  
23 dispose of the contract or any portion thereof, or of its right,

1 title, or interest therein, without the prior written consent of  
2 the department.

3

4 \$25,403. Notice and Proposal Submission.

5 (a) Notice. The department will publish a notice of intent  
6 to award an information logo sign program contract in industry  
7 related publications and the Texas Register at least 45 calendar  
8 days prior to contractor selection. The notice shall include  
9 proposal requirements for potential contractors.

10 (b) Eligibility. A contractor must submit a sealed  
11 proposal to the director of the Traffic Operations Division, by  
12 mail or overnight delivery in compliance with the location,  
13 date, and time requirements of the notice.

14 (c) Contents. The proposal shall contain:

15 (1) the identity of key individuals, including  
16 subcontractors, who are proposed to be part of the contractor's  
17 project team together with their respective qualifications and  
18 experience on similar or related projects, the expected amount  
19 of involvement, and the time commitment for each individual and  
20 subcontractor;

21 (2) description of the contractor's:

22 (A) capability for undertaking and performing the work,  
23 including the types and locations of similar work performed in

1 the last three years that best characterize the quality and cost  
2 control of the contractor as well as the names, addresses, and  
3 phone numbers of knowledgeable individuals who can be contacted;  
4 and

5 (B) internal policies and procedures related to work  
6 quality, cost control, and resources, including management and  
7 organization capabilities currently available for performing the  
8 work;

9 (3) a demonstration of the contractor's understanding of  
10 the project, based on information available from the department,  
11 site visits by the contractor, and knowledge of applicable  
12 regulations or requirements;

13 (4) a realistic, clear, and concise approach or course of  
14 action to meet the goals and objectives of the project that  
15 identifies potential impacts, impediments, or conflicts;

16 (5) a description of internal methods for schedule  
17 control, including current references that confirm the  
18 contractor's ability for the timely completion of project work;

19 (6) the location or locations where the work will be  
20 accomplished by the contractor and any subcontractor, the  
21 identities of those who will be involved at each work location  
22 for the major work elements on the project, the location of the  
23 business offices, and the location where the signs will be

1 fabricated;

2 (7) an audited financial statement dated no later than  
3 the fiscal year immediately preceding the date of the proposal;

4 (8) supporting documentation such as graphs, charts,  
5 photos, resumes, and references; and

6 (9) the best value for the state which shall include:

7 (A) the proposed return to the department from fees  
8 collected from program participants for the business logo/major  
9 shopping area guide sign installation fee, annual rental fee,  
10 area guide sign covering fee, and area guide sign replacement  
11 fee (The minimum return that a contractor may propose for return  
12 to the department is 10%); and

13 (B) the proposed amount for the rental and installation  
14 fees that will be charged to a participant in the program.

15 (d) Page limits. The entire proposal should not exceed 25  
16 pages. A page is defined as an 8.5 by 11 inch or 11 by 17 inch  
17 sheet containing text, pictures, graphs, charts, plan sheets, or  
18 any other graphics. Not more than five 11 by 17 inch sheets may  
19 be used in conjunction with pictures, graphs, charts, plans, and  
20 other graphics. If 11 by 17 inch sheets contain text only, they  
21 will be counted as two pages.

22

23 \$25.404. Contract Award Procedures.

NOTE: Repealed Sections

Exhibit B

OGC: 08/16/05 4:00 PM

1 (a) Ineligible proposal. The department will not consider  
2 a proposal that:

3 (1) fails to comply with any requirement of the notice;

4 or

5 (2) fails to guarantee a fee to be paid to the department  
6 of at least 10% of the fees collected from program participants.

7 (b) Evaluation. The department will determine the best  
8 value to the state by evaluating the contractor's:

9 (1) proposed team and the time commitment for each team  
10 member;

11 (2) capability for undertaking and performing the work;

12 (3) understanding of the project;

13 (4) quality of services offered;

14 (5) financial resources and ability to perform the work;

15 (6) approach or course of action to meeting the goals and  
16 objectives;

17 (7) ability to meet the schedule;

18 (8) ability to fulfill any other criteria listed in the  
19 notice;

20 (9) proposed percentage to be paid to the department from  
21 fees collected from program participants; and

22 (10) proposed amount for the fees that will be charged to  
23 participants in the program.

1 (c) Award of contract.

2 (1) All proposals received by the director of traffic  
3 operations will be evaluated by a panel of department employees  
4 to determine which proposal will provide the best value to the  
5 state. A recommendation for award will be forwarded to the  
6 commission to accept or reject.

7 (2) The department will notify the contractor by  
8 certified mail of the award of a information logo sign program  
9 contract within 10 calendar days of the date of the award. To  
10 accept the award, the contractor must execute a contract with  
11 the department within 30 calendar days of the date of the award.

12 (3) The contract shall be in a form prescribed by the  
13 department and shall, at a minimum, include all terms and  
14 conditions prescribed under this subchapter and such other terms  
15 and conditions the department deems advantageous to the state.

16  
17 \$25.405. Specifications for information logo signs.

18 (a) Specific information logo signs.

19 (1) Design. A specific information logo sign shall:

20 (A) have a blue background with a white reflective  
21 border;

22 (B) contain a principal legend equal in height to the  
23 directional legend;

1 (C) meet the applicable provisions of the Texas MUTCD;

2 (D) have background material which conforms with  
3 department specifications for reflective sheeting;

4 (E) be fabricated, erected, and maintained in  
5 conformance with department specifications and fabrication  
6 details;

7 (F) provide vertical spacing and horizontal spacing for  
8 a balanced appearance of business logos.

9 (2) Content. A specific information logo sign shall  
10 contain:

11 (A) word legends for the following services: GAS, FOOD,  
12 LODGING, or CAMPING;

13 (B) the exit number or, if exit numbers are not  
14 applicable, other directional information;

15 (C) no more than six business logos on one sign panel;

16 (D) no more than three types of services on a sign  
17 panel (Signs with greater than two services shall be approved by  
18 the department prior to fabrication and installation); and

19 (E) no more than two dual logos.

20 (3) Placement. Subject to approval of the department, a  
21 specific information logo sign shall be installed or placed:

22 (A) to conform to the following order of placement  
23 along the direction of travel: CAMPING, LODGING, FOOD, GAS;

- 1 (B) according to the following priorities where  
2 available space is limited: GAS, FOOD, LODGING, and CAMPING;
- 3 (C) to take advantage of natural terrain;
- 4 (D) to have the least impact on the scenic environment;
- 5 (E) to avoid visual conflict with other signs within  
6 the highway right-of-way;
- 7 (F) with a lateral offset equal to or greater than  
8 existing guide signs;
- 9 (G) at least 800 feet from the previous interchange and  
10 at least 800 feet from the exit direction sign at the  
11 interchange from which the services are available;
- 12 (H) without blocking motorists' visibility of existing  
13 traffic control and guide signs;
- 14 (I) in locations that are not overhead;
- 15 (J) where a motorist, after following the sign(s), can  
16 conveniently re-enter the highway and continue in the original  
17 direction of travel;
- 18 (K) at least 800 feet between two large guide signs,  
19 but not excessively spaced; and
- 20 (L) at closely spaced interchanges when signs for each  
21 exit is not possible, the sign(s) may consist of two sections,  
22 one for each exit (the top section shall display the business  
23 logos for the first exit and the lower sections shall display

NOTE: Repealed Sections

Exhibit B

OGC: 08/16/05 4:00 PM

1 the business logos for the second exit).

2 (4) Existing signs. Existing regulatory, warning,  
3 destination, guide, recreation, and cultural interest signs will  
4 not be removed; provided, however, that subject to the written  
5 approval of the department, such existing signs may be relocated  
6 by special permission of the department at the sole expense and  
7 responsibility of the contractor and only to the extent  
8 necessary to accommodate logo signs.

9 (b) Business logos.

10 (1) Design. A business logo:

11 (A) may not exceed 48 inches in width or 36 inches in  
12 height;

13 (B) may be any color or combination of colors; and

14 (C) may only be fabricated, erected, and maintained in  
15 conformance with current department specifications for aluminum  
16 signs and reflective sheeting.

17 (2) Content. A business logo may:

18 (A) consist of a registered trademark or a legend  
19 message identifying the name or abbreviation of the commercial  
20 establishment;

21 (B) contain supplemental information, limited to the  
22 word "DIESEL" on a gas logo or "PROPANE" on a camping logo, or  
23 the words "24 HOURS" on a gas or a food logo, the words

1 "DIESEL", "PROPANE", and "24 HOURS" not to exceed six inches in  
2 height;

3 (C) contain a message, symbol, or trademark only if the  
4 message, symbol, or trademark does not resemble an official  
5 traffic control device; and

6 (D) contain text, symbols, or advertising only if the  
7 text, symbols, or advertising are related to the primary service  
8 of the specific information logo sign.

9 (c) Ramp signs.

10 (1) Design. A ramp sign shall:

11 (A) meet the applicable provisions of the Texas MUTCD;

12 (B) have a blue background with a white reflective  
13 border;

14 (C) conform with the latest department specifications  
15 for reflective sheeting for the background material of the sign;  
16 and

17 (D) be fabricated, erected, and maintained in  
18 conformance with the current department specifications for  
19 aluminum signs and roadside signs.

20 (2) Placement. Subject to approval of the department, a  
21 ramp sign may be placed along an exit ramp or access road, or at  
22 an intersection of an access road and crossroad when a  
23 commercial establishment's building or on-premise signing is not

1 visible from that exit ramp, access road, or intersection.

2 (3) Content. A ramp business logo shall:

3 (A) be no larger than 24 inches in width and 18 inches  
4 in height;

5 (B) contain directional arrows and distances; and

6 (C) be a duplicate of the business logo erected on a  
7 specific information logo sign.

8 (d) Dual logos.

9 (1) An establishment may have two names displayed on a  
10 single logo sign panel if the establishment consists of:

11 (A) two food outlets in a shared space under common  
12 ownership; or

13 (B) gas and food outlets in a shared space under common  
14 ownership.

15 (2) The fee to a participating business for a dual logo  
16 will be the same as to the charge for a standard logo.

17 (3) No more than two dual logos may be installed per logo  
18 sign.

19 (4) Dual logos may not be installed on a specific  
20 information logo sign unless all available spaces for the "FOOD"  
21 or "GAS" specific service categories are full.

22 (5) If demand for space on a logo sign exceeds the  
23 available number of spaces, businesses requesting a dual logo

NOTE: Repealed Sections

Exhibit B

OGC: 08/16/05 4:00 PM

1 must follow the same random drawing process as described in  
2 §25.407 of this subchapter.

3 (e) Major shopping area guide signs.

4 (1) Design. A major shopping area sign shall:

5 (A) have a green background with a white reflective  
6 legend and border;

7 (B) meet the applicable provisions of the Texas MUTCD;

8 (C) have background, legend, and border material which  
9 conforms with department specifications for reflective sheeting;

10 (D) not be illuminated externally or internally; and

11 (E) be fabricated, erected, and maintained in

12 conformance with department specifications and fabrication  
13 details.

14 (2) Content. A major shopping area guide sign shall:

15 (A) contain the name of the major shopping area as it  
16 is commonly known to the public; and

17 (B) contain the exit number or, if exit numbers are not  
18 applicable, other directional information.

19 (3) Placement. Subject to approval of the department, a  
20 major shopping area guide sign shall be installed or placed:

21 (A) independently mounted, or if approved by the  
22 department, attached to existing guide signs;

23 (B) to take advantage of natural terrain;

1 (C) to have the least impact on the scenic environment;

2 (D) to avoid visual conflict with other signs within  
3 the highway right-of-way;

4 (E) with a lateral offset equal to or greater than  
5 existing guide signs;

6 (F) for both directions of travel on the eligible urban  
7 highway;

8 (G) without blocking motorists' visibility of existing  
9 traffic control and guide signs; and

10 (H) in locations that are not overhead unless approved  
11 by the department.

12 (4) Existing signs. Existing regulatory, warning,  
13 destination, guide, recreation, and cultural interest signs will  
14 not be removed; provided, however, that subject to the written  
15 approval of the department, such existing signs may be relocated  
16 by special permission of the department at the sole expense and  
17 responsibility of the contractor and only to the extent  
18 necessary to accommodate major shopping area guide signs.

19 (f) Major shopping area ramp signs.

20 (1) Design. A major shopping area ramp sign shall:

21 (A) have a green background with a white reflective  
22 legend and border;

23 (B) meet the applicable provisions of the Texas MUTCD;

1 (C) have background, legend, and border material which  
2 conforms with department specifications for reflective sheeting;

3 (D) be fabricated, erected, and maintained in  
4 conformance with department specifications and fabrication  
5 details; and

6 (E) not be illuminated internally or externally.

7 (2) Content. A ramp sign shall contain:

8 (A) the name of the major shopping area as it is  
9 commonly known to the public; and

10 (B) directional arrows and distances.

11 (3) Placement. Subject to approval of the department,  
12 the major shopping area ramp sign(s) may be placed along an exit  
13 ramp or access road, or at an intersection of an access road and  
14 crossroad if the retail shopping mall driveway access,  
15 buildings, or parking areas are not visible from that exit ramp,  
16 access road, or intersection.

17

18 §25.406. Commercial Establishment Eligibility.

19 (a) General requirements for eligibility. To be eligible  
20 to have a business logo placed on a specific information logo  
21 sign, a commercial establishment must:

22 (1) offer at least one primary motorist service;

23 (2) be located with driveway access to the access road

1 (frontage road), ramp, or intersecting crossroad;

2 (3) be visible, or have on-premise signing visible, from  
3 the commercial establishment's driveway access or the exit ramp,  
4 access road, crossroad, or intersection (or for an establishment  
5 that provides lodging, be visible from an eligible highway or an  
6 interchange on an eligible highway and be located on a street  
7 that is not more than two turns off the access or frontage road  
8 to the eligible highway); and

9 (4) be located within the marketing inventory as stated  
10 in §25.402(b) of this title (relating to Information Logo Sign  
11 Program) but not farther than three miles from an interchange on  
12 an eligible highway, but if no service participating or willing  
13 to participate in the specific information logo sign program is  
14 located within three miles of an interchange, the department may  
15 approve commercial establishments of the same service:

16 (A) if located not farther than six miles from the  
17 interchange;

18 (B) nine miles from the interchange if no service  
19 participating or willing to participate is located six miles  
20 from the interchange;

21 (C) 12 miles from the interchange if no service  
22 participating or willing to participate is located nine miles  
23 from the interchange; or

NOTE: Repealed Sections

Exhibit B

OGC: 08/16/05 4:00 PM

1 (D) 15 miles from the interchange if no service  
2 participating or willing to participate is located 12 miles from  
3 the interchange;

4 (5) comply with all applicable laws concerning the  
5 provisions of public accommodations without regard to race,  
6 religion, color, sex, or national origin; and

7 (6) post its hours of operation on or near the main  
8 entrance so that they are visible to the public during open and  
9 closed hours.

10 (b) Specific services eligibility. In addition to the  
11 general requirements for eligibility to have a business logo  
12 placed on a specific information logo sign, a commercial  
13 establishment must meet the requirements for at least one of the  
14 following primary motorist services.

15 (1) Gas. To be eligible to have a business logo placed  
16 on a specific information logo sign carrying the legend "GAS," a  
17 commercial establishment must provide:

18 (A) vehicle services, including fuel, oil, and water;

19 (B) tire repair, if the establishment is not a self-  
20 service station;

21 (C) restroom facilities and drinking water;

22 (D) continuous operation for at least 12 hours per day,  
23 seven days a week; and

1 (E) a telephone accessible to the public.

2 (2) Food. To be eligible to have a business logo placed  
3 on a specific information logo sign carrying the legend "FOOD,"  
4 a commercial establishment must provide:

5 (A) a license or other evidence of compliance with  
6 public health or sanitation laws, if required by law;

7 (B) continuous operation at least 10 hours a day to  
8 serve two meals a day, six days a week;

9 (C) seating capacity for at least 16 people;

10 (D) public restrooms; and

11 (E) a telephone accessible to the public.

12 (3) Lodging. To be eligible to have a business logo  
13 placed on a specific information logo sign carrying the legend  
14 "LODGING," a commercial establishment must provide:

15 (A) a license or other evidence of compliance with laws  
16 regulating facilities providing lodging, if required by law;

17 (B) at least 10 rooms; and

18 (C) a telephone accessible to the public.

19 (4) Camping. To be eligible to have a business logo  
20 placed on a specific information logo sign carrying the legend  
21 "CAMPING," a commercial establishment must provide:

22 (A) a license or other evidence of compliance with laws  
23 regulating camping facilities, if required by law;

1 (B) adequate parking accommodations; and

2 (C) modern sanitary facilities and drinking water.

3 (c) Multiple services eligibility. If a commercial  
4 establishment offers more than one primary motorist service, it  
5 will be eligible to display a business logo for each of those  
6 services on the appropriate specific information logo sign,  
7 provided that:

8 (1) minimum criteria for the service as described in  
9 §25.405 of this title (relating to Specifications for  
10 Information Logo Signs) are met;

11 (2) the additional business logo(s) would not prevent  
12 participation by another eligible commercial establishment whose  
13 sole service would be displaced; and

14 (3) a business logo space is available.

15 (d) Variances.

16 (1) A person may request a variance from the information  
17 logo sign program. Requests for variances will only be  
18 considered if the existing requirements preclude participation  
19 in the program.

20 (2) A variance may be requested for a waiver of:

21 (A) an eligibility requirement except for the  
22 requirements listed in subsections (a)(1), (2) (except that an  
23 exception may be asked for an intersecting crossroad if the

1 roadway with driveway access Tees into the frontage road of the  
2 eligible highway and is easily accessible or visible from that  
3 intersection), (5), and (6), and (b) (1), (2) (A), (2) (C)-(E), and  
4 (3)-(4) of this section;

5 (B) location of the establishment;

6 (C) placement of the sign; or

7 (D) type of highway, except the highway must be on the  
8 state highway system and at or near a grade-separated  
9 intersection;

10 (3) Variances may not be requested for restrictions  
11 regarding dual logos.

12 (4) A person may submit a request for a variance to the  
13 department's local district engineer indicating:

14 (A) which requirement of the program it does not meet;

15 and

16 (B) the variance requested.

17 (5) The department may require additional documentation  
18 following generally accepted engineering standards, which shall  
19 include, but not be limited to:

20 (A) traffic studies;

21 (B) maps indicating ramps, major arterials, ingress and  
22 egress points, existing signs and distances;

23 (C) traffic flow analysis including traffic counts to

1 and from the commercial establishment or major shopping area;

2 (D) crash data and analysis; and

3 (E) detailed site plan of the commercial establishment  
4 or major shopping area, including but not limited to parking  
5 available, driveways, and location in reference to eligible  
6 highway or eligible urban highway.

7 (6) The executive director, or the director's designee,  
8 may grant a variance if he or she determines it is feasible to  
9 place the sign at the requested location and the sign meets the  
10 requirements of the Texas MUTCD; and

11 (A) the variance will substantially promote traffic  
12 safety;

13 (B) the variance will substantially improve traffic  
14 flow;

15 (C) an overpass, highway sign or other highway  
16 structure unduly obstructs the visibility of an existing  
17 commercial sign; or

18 (D) the variance is necessary to substantially improve  
19 the efficiency and effectiveness of communicating information  
20 needed by people to safely and efficiently use the  
21 transportation system.

22 (7) The executive director, or the director's designee,  
23 will indicate the reason for granting or denying a variance in

1 writing.

2

3 \$25.407. Program Operation.

4 (a) Commercial establishment and retail shopping mall  
5 application.

6 (1) Applications for commercial establishments or retail  
7 shopping malls desiring to participate in the information logo  
8 sign program are available upon request from the Texas  
9 Department of Transportation, Traffic Operations, 125 E. 11th  
10 Street, Austin, Texas 78701-2483.

11 (2) A commercial establishment or retail shopping malls  
12 desiring to participate in the information logo sign program  
13 must submit an application to the contractor and verify that all  
14 requirements are met. Applications must be submitted to the  
15 location as stated on the application form. The contractor will  
16 verify the eligibility of each applicant.

17 (3) For commercial establishments, a separate application  
18 is required for each primary motorist service per interchange  
19 per direction of travel. Only one application per commercial  
20 establishment per primary motorist service per direction of  
21 travel per interchange will be accepted.

22 (4) Applications will be reviewed by the contractor and  
23 applicants notified in writing of being qualified or rejected.

NOTE: Repealed Sections

Exhibit B

OGC: 08/16/05 4:00 PM

1 Rejected applications will be returned and deficiencies noted.

2 (5) Rejected applicants may resubmit their application  
3 when the noted deficiencies have been corrected.

4 (6) To be eligible for the selection process for the  
5 available business logo space(s), available first alternate  
6 position, or available second alternate position, a commercial  
7 establishment must have submitted a qualified application before  
8 the commercial establishment application deadline.

9 (7) The commercial establishment application deadline for  
10 the annual random drawing in the following calendar year is 5  
11 p.m. of the second Tuesday in August, received at the location  
12 as stated on the application. The commercial establishment  
13 application deadline for an emergency random drawing is 14  
14 calendar days after the business logo space(s), the first  
15 alternate position, or the second alternate position becomes  
16 available. If no qualified applications are on file or  
17 received, the contractor may postpone the commercial  
18 establishment application deadline until 14 calendar days after  
19 a qualified application is received.

20 (8) Qualified applications received after the commercial  
21 establishment application deadline will be placed on file and  
22 considered eligible for future annual and emergency random  
23 drawings.

NOTE: Repealed Sections

Exhibit B

OGC: 08/16/05 4:00 PM

1 (b) Commercial establishment selection.

2 (1) Available business logo space(s) and relative  
3 placement of business logos on the specific information logo  
4 sign, available first alternate position, and available second  
5 alternate position for each primary motorist service for each  
6 direction of travel at an interchange will be awarded by the  
7 annual or emergency random drawing of the qualified applications  
8 received before the commercial establishment application  
9 deadline. The relative placement of business logos in available  
10 space(s), in order of selection, is upper left, upper middle,  
11 upper right, lower left, lower middle, and lower right. For a  
12 specific information logo sign that includes more than one  
13 service, the relative placement of business logos in available  
14 space(s), in order of selection, is left to right and top to  
15 bottom for each portion of the sign designated for each service.

16 (2) The annual random drawing will be held publicly by  
17 the contractor on the second Tuesday of September in the  
18 presence of two or more department employees. Emergency random  
19 drawings will be held publicly as needed in the presence of two  
20 or more department employees. Emergency random drawings of  
21 qualified applicants will be held no earlier than 20 days nor  
22 later than 45 days after the commercial establishment  
23 application deadline. Emergency random drawings will not be

NOTE: Repealed Sections

Exhibit B

OGC: 08/16/05 4:00 PM

1 held within 45 days prior to the annual random drawings.

2 (3) When a business logo space(s) becomes available, the  
3 first and second alternates have first right of refusal,  
4 respectively, for the available business logo space. If the  
5 first alternate accepts an available business logo space, the  
6 second alternate then becomes the first alternate with first  
7 right of refusal for any existing or future available business  
8 logo space. Any remaining available business logo space(s),  
9 available first alternate position, or available second  
10 alternate position are awarded by the annual or emergency random  
11 drawings.

12 (4) If the number of qualified applicants is less than or  
13 equal to the number of available business logo space(s) at the  
14 time of the commercial application deadline, the available  
15 spaces will be awarded to the qualified applicants. The random  
16 drawing will determine only the relative placement of the  
17 business logo signs in the available space(s).

18 (5) The contractor shall notify the commercial  
19 establishment by certified mail of the award of specific  
20 information business logo sign space within 10 calendar days of  
21 the date of the award. To accept the award, the commercial  
22 establishment must execute a written participation agreement  
23 with the contractor within 30 calendar days of the date of the

NOTE: Repealed Sections

Exhibit B

OGC: 08/16/05 4:00 PM

1 award. The participation agreement shall be in a form as  
2 prescribed by the department and shall, at a minimum, contain  
3 all applicable provisions prescribed by this undesignated head.

4 (c) Responsibilities and rights of commercial  
5 establishment.

6 (1) The commercial establishment must provide a business  
7 logo and, if necessary, ramp business logo(s) within 60 days of  
8 notification by the contractor of the contractor's intent to  
9 erect the specific information logo signs or ramp signs.

10 (2) A commercial establishment may renew its  
11 participation agreement with the contractor on an annual or  
12 multi-year basis no later than July 31 of the last year of the  
13 contract. If the commercial establishment does not renew the  
14 agreement with the contractor, the contractor will remove the  
15 business logo at the end of the participation agreement, and  
16 will make the vacated space(s) available to other commercial  
17 establishments pursuant to subsection (b) of this section.

18 (d) Covering of business logo. A business logo and the  
19 ramp business logo(s) of a commercial establishment may be  
20 covered by the contractor if the commercial establishment is  
21 temporarily closed for a period not exceeding 30 calendar days.  
22 Unless removed pursuant to subsection (e) of this section, the  
23 business logo and ramp business logo(s) will remain covered

1 until the commercial establishment reopens.

2 (e) Removal of business logo.

3 (1) A business logo of a participating commercial  
4 establishment shall be removed by the contractor if the  
5 commercial establishment:

6 (A) ceases to exist;

7 (B) fails to pay the annual rental fee or other fees  
8 within 30 calendar days of the due date as specified on the  
9 agreement;

10 (C) is temporarily closed for more than 30 calendar  
11 days;

12 (D) does not meet the minimum requirements as stated  
13 herein, and all corrections are not made within 30 calendar days  
14 of written notification;

15 (E) is sold, and the new commercial establishment does  
16 not continue the original primary motorist service or does not  
17 meet the minimum requirements for the primary motorist service;

18 or

19 (F) has not provided a replacement business logo sign  
20 within 60 calendar days of written notification that the  
21 business logo is missing, damaged, broken, or faded.

22 (2) Removal of a business logo by the contractor will  
23 include the removal of the commercial establishment's ramp

NOTE: Repealed Sections

Exhibit B

OGC: 08/16/05 4:00 PM

1 business logo sign(s).

2 (3) If the business logo is removed due to the default of  
3 the commercial establishment to perform within the terms of the  
4 participation agreement and this undesignated head, the  
5 participation agreement is terminated between the commercial  
6 establishment and the contractor. All funds paid to the  
7 contractor by the commercial establishment are forfeited. Upon  
8 removal of a business logo, the vacated space becomes available  
9 pursuant to subsection (b) of this section. A replacement  
10 commercial business is selected, as stated in the commercial  
11 establishment selection process.

12 (4) If the business logo is removed permanently due to  
13 actions of the department, the participation agreement is  
14 terminated between the commercial establishment and the  
15 contractor. Advance funds paid to the contractor by the  
16 commercial establishment will be pro-rated as per the date of  
17 removal, and any remaining amounts refunded to the commercial  
18 establishment.

19 (f) Responsibilities and rights of the retail shopping  
20 mall.

21 (1) The retail shopping mall may renew its participation  
22 agreement with the contractor on an annual or multi-year basis  
23 no later than 60 days from the termination date of the contract.

NOTE: Repealed Sections

Exhibit B

OGC: 08/16/05 4:00 PM

1 If the retail shopping mall does not renew the agreement with  
2 the contractor, the contractor will remove the major shopping  
3 area guide signs and ramp signs at the end of the participation  
4 agreement.

5 (2) A major shopping area guide sign(s) of a retail  
6 shopping mall may be covered by the contractor if:

7 (A) the retail shopping mall is temporarily closed for  
8 a period not exceeding 30 calendar days; or

9 (B) the department finds the parking is so insufficient  
10 that it causes undue congestion of the state highway system  
11 system.

12 (3) A major shopping area guide sign of a retail  
13 shopping mall may be covered until:

14 (A) the mall reopens; or

15 (B) the department finds there is now sufficient  
16 parking.

17 (g) Removal of major shopping area guide sign.

18 (1) A major shopping area guide sign of a participating  
19 retail shopping mall shall be removed by the contractor if the  
20 retail shopping mall:

21 (A) ceases to exist;

22 (B) fails to pay the annual rental fee or other fees  
23 within 30 calendar days of the due date as specified on the

1 agreement;

2 (C) is temporarily closed for more than 30 calendar  
3 days;

4 (D) does not meet the minimum requirements as stated  
5 herein, and all corrections are not made within 30 calendar days  
6 of written notification;

7 (E) is sold, and the new retail shopping mall does not  
8 continue as a public retail business; or

9 (F) does not correct the parking insufficiency within  
10 90-days notice by the department.

11 (2) Removal of a major shopping area guide sign by the  
12 contractor will include the removal of the major shopping area's  
13 ramp sign(s).

14 (3) If the major shopping area guide sign is removed due  
15 to the default of the retail shopping mall to perform within the  
16 terms of the participation agreement and the requirements as  
17 stated herein, the participation agreement is terminated between  
18 the retail shopping mall and the contractor. All funds paid to  
19 the contractor by the retail shopping mall are forfeited.

20  
21 \$25.408. Appeal.

22 (a) Contractor. A contractor may appeal any adverse  
23 decision by the department under §25.403 of this title (relating

1 to Prequalification) by filing a petition for an administrative  
2 hearing pursuant to §§1.21-1.26 of this title (relating to  
3 Contested Case Procedure). Any dispute as to the terms of the  
4 contract will be governed by §1.68 of this title (relating to  
5 Contract Claim Procedure).

6 (b) Commercial establishment. A commercial establishment  
7 may appeal an adverse decision by the contractor by filing a  
8 petition for an administrative hearing pursuant to §§1.21-1.26  
9 of this title (relating to Contested Case Procedure).

10

11 §25.409. Major Shopping Area Eligibility.

12 (a) Eligibility criteria. To be eligible to have a major  
13 shopping area guide sign, the retail shopping mall must:

14 (1) be located not farther than three miles from an  
15 interchange with an eligible urban highway;

16 (2) consist of 30 acres or more of land;

17 (3) include an enclosed gross building area of 1,000,000  
18 square feet or more;

19 (4) be located with driveway access to the eligible urban  
20 highway access road (frontage road), ramp, intersecting  
21 crossroad or city street; and

22 (5) post its hours of operation on or near the main  
23 public entrance(s) so that they are visible to the public during

NOTE: Repealed Sections

Exhibit B

OGC: 08/16/05 4:00 PM

1 open and closed hours.

2 (b) Variances.

3 (1) A person may request a variance from the requirements  
4 of the major shopping area guide sign program. A request for a  
5 variance will only be considered if the existing requirements  
6 preclude participation in the program.

7 (2) A variance may be requested for wavier of the  
8 requirement of:

9 (A) eligibility except for the requirement of  
10 subsection (a) (5);

11 (B) location of the major shopping area;

12 (C) placement of the sign; or

13 (D) highway, except the highway must be on the state  
14 highway system.

15 (3) A person may submit a request for a variance to the  
16 department's local district engineer indicating:

17 (A) which requirement of the program it does not meet;

18 and

19 (B) the variance requested.

20 (4) The department may require additional documentation  
21 following generally accepted engineering standards, which shall  
22 include, but not be limited to:

23 (A) traffic studies;

1 (B) maps indicating ramps, major arterials, ingress and  
2 egress points, existing signs and distances;

3 (C) traffic flow analysis including traffic counts to  
4 and from the major shopping area;

5 (D) crash data and analysis;

6 (E) detailed site plan of the major shopping area,  
7 including but not limited to:

8 (i) parking available;

9 (ii) driveways; and

10 (iii) location in reference to eligible urban  
11 highways.

12 (5) The executive director, or the director's designee,  
13 may grant a variance if he or she determines it is feasible to  
14 place the sign at the location and the sign meets the  
15 requirements of the Texas MUTCD; and

16 (A) the variance will substantially promote traffic  
17 safety;

18 (B) the variance will substantially improve traffic  
19 flow;

20 (C) an overpass, highway sign, or other highway  
21 structure unduly obstructs the visibility of an existing  
22 commercial sign; or

23 (D) the variance is necessary to substantially improve

1 the efficiency and effectiveness of communicating the  
2 information needed by people to safely and efficiently use the  
3 transportation system.

4 (6) The executive director, or the director's designee,  
5 will indicate the reason for granting or denying a variance in  
6 writing.

7 (7) A variance will not be granted if the executive  
8 director, or the director's designee, finds that:

9 (A) a retail shopping mall is located on an  
10 intersecting crossroad or city street whose name can be easily  
11 identified with the retail shopping mall and has existing  
12 advance and exit guide signs; or

13 (B) the retail shopping mall's parking is so  
14 insufficient that it causes undue congestion of the roadway  
15 system.

1 SUBCHAPTER G. INFORMATION LOGO SIGN AND TOURIST-ORIENTED

2 DIRECTIONAL SIGN PROGRAM

3 §25.400. Purpose. Transportation Code, §391.091 and §391.099,  
4 requires the department to contract with a person, firm, group,  
5 or association in the State of Texas to erect and maintain  
6 information logo and tourist-oriented directional signs within  
7 eligible highway rights of way. It further requires the  
8 commission to adopt rules necessary to administer and enforce  
9 this signing program, and to regulate the content, composition,  
10 placement, erection, and maintenance of these signs within  
11 eligible highway rights of way. The sections in this subchapter  
12 prescribe the policies and procedures for the implementation of  
13 this program.

14  
15 §25.401. Definitions. The following words and terms, when used  
16 in this subchapter, shall have the following meanings, unless  
17 the context clearly indicates otherwise.

18 (1) Business logo--A separate sign panel of specified  
19 dimensions attached to a specific information logo sign assembly  
20 and containing the commercial establishment name, symbol, brand,  
21 trademark, or combination.

22 (2) Commercial establishment--A privately owned business  
23 or corporation offering one or more of the primary motorist

1 services.

2 (3) Commission--The Texas Transportation Commission.

3 (4) Contractor--A person, firm, group, or association in  
4 the State of Texas that acts as the authorized agent of the  
5 department in the operation of the specific information logo or  
6 the tourist-oriented directional (TOD) sign program.

7 (5) Department--The Texas Department of Transportation.

8 (6) Driveway access--A vehicle entrance, built in  
9 compliance with state and local standards and regulations, for  
10 use by the public providing access from a public street or  
11 highway to a commercial establishment or major shopping area.

12 (7) Dual logo--A panel on a specific information logo  
13 sign containing the names of either:

14 (A) two food establishments in a shared space under  
15 common ownership; or

16 (B) a gas and food establishment in a shared space  
17 under common ownership.

18 (8) Eligible highway--

19 (A) for information logo signs, a controlled access  
20 highway on the designated state highway system; or

21 (B) for TOD signs and participating facilities, a non-  
22 controlled access highway located on the designated state  
23 highway system outside the corporate limits of a municipality

1 with a population of 5,000 or more.

2 (9) Executive director--The executive director of the  
3 Texas Department of Transportation or his or her designee.

4 (10) Gross building area--Square footage of usable area  
5 within a building, or series of buildings, that is considered  
6 usable by the retail businesses and the public.

7 (11) Information logo sign--A specific information logo  
8 sign assembly or a major shopping area guide sign.

9 (12) Interchange--The intersection of the centerlines of  
10 an eligible highway and a crossroad.

11 (13) Major portion--Fifty-one percent or more.

12 (14) Major shopping area guide sign--A rectangular  
13 supplemental sign panel imprinted with the name of the retail  
14 shopping area as it is commonly known to the public and  
15 containing directional information.

16 (15) Major shopping area ramp sign--A supplemental sign  
17 with the common name of the major shopping area, directional  
18 arrows, and/or distances placed near an eligible highway exit  
19 ramp or access road.

20 (16) Multiple crossroad interchange--An interchange in  
21 which one exit in a direction of travel from an eligible highway  
22 provides the only point of access for two or more crossroads;  
23 the center of a multiple crossroad interchange is the mid-point

1 of the intersection of the centerline of the eligible highway  
2 and centerlines of the affected crossroads.

3 (17) Pharmacy services--The act of accepting and filling  
4 prescriptions by or under the supervision of a pharmacist  
5 licensed by the State of Texas.

6 (18) Primary motorist service--Gas, food, lodging,  
7 camping, or 24-hour pharmacy services available to the traveling  
8 public.

9 (19) Ramp business logo--A reduced size separate sign  
10 panel of specified dimensions attached to a ramp sign and  
11 containing the commercial establishment name, symbol, brand,  
12 trademark, or combination.

13 (20) Ramp sign--A supplemental sign with ramp business  
14 logos or the name of the major shopping area, directional  
15 arrows, and distances placed near an eligible highway or  
16 eligible highway exit ramp.

17 (21) Specific information logo sign assembly--A  
18 rectangular supplemental sign imprinted with the words "GAS,"  
19 "FOOD," "LODGING," "CAMPING," or "24 HOUR Rx" or with a  
20 combination of those words, and the names (or business logos) of  
21 commercial establishments offering those services.

22 (22) State--the State of Texas.

23 (23) Texas MUTCD--Texas Manual on Uniform Traffic Control

1 Devices for Streets and Highways, latest edition, issued by the  
2 Texas Department of Transportation.

3 (24) TOD sign assembly--An official sign structure  
4 erected under the TOD sign program containing one or more TOD  
5 panels and located on a TOD sign program eligible highway as  
6 defined in this subchapter.

7 (25) TOD sign panel--An individual sign panel of a  
8 business or entity participating in the TOD program contained on  
9 a TOD sign assembly.

10 (26) TOD sign program--Tourist-oriented directional sign  
11 program.

12 (27) Trailblazer sign--A sign used in conjunction with  
13 the TOD sign program off of the designated state highway system  
14 that indicates the direction to the participating business or  
15 entity.

16

17 §25.402. Information Logo Sign and TOD Sign Program.

18 (a) Program. The department may award a contract or  
19 contracts to a person, firm, group, or association in the State  
20 of Texas, for an initial period not to exceed five years, to  
21 develop, operate, and maintain information logo and TOD signs at  
22 appropriate locations along eligible highways subject to the  
23 terms and conditions of the subsection.

1 (b) Marketing. In marketing the information logo and TOD  
2 sign program, the contractor shall market the program to have  
3 maximum statewide implementation under the terms and conditions  
4 contained in the program contract.

5 (c) Site plans. Prior to construction of an information  
6 logo sign at an approved location, the contractor must submit a  
7 site plan to the department. Upon approval of the site plan,  
8 the contractor may begin work at the location described.

9 (d) Contacting participating businesses. In the first  
10 three months of a contract between the department and the  
11 contractor, the contractor shall contact all participating  
12 businesses with logo or TOD sign panels to:

13 (1) notify the businesses of the new contract between the  
14 department and the contractor; and

15 (2) coordinate whether the participating businesses will  
16 renew if space is available.

17 (e) Cooperation with other contractors. The contractor is  
18 required to cooperate with any contractor working on the state  
19 highway system as well as any other contractors operating other  
20 sign programs within the state. Upon request by a potential  
21 lessee, the department, or a member of the public, the  
22 contractor will furnish the name, address, and telephone number  
23 of other information logo sign or TOD sign contractors.

1 (f) Annual report. The contractor shall furnish an annual  
2 report to the department. The annual report will include the  
3 contractor's financial statement, number of logo sign assemblies  
4 erected, number of major shopping area guide signs erected,  
5 number of TOD sign assemblies and panels erected, and number of  
6 participation agreements completed. Other reports may also be  
7 required throughout the year as determined by the department.

8 (g) Program information.

9 (1) The contractor shall furnish an electronic inventory  
10 to the department in a format or formats of the department's  
11 choice. This inventory shall include, but not be limited to:

12 (A) a list of all businesses participating in the  
13 program;

14 (B) information on all participating businesses  
15 including addresses, key contacts, and phone numbers;

16 (C) location information for each information logo sign  
17 including:

18 (i) roadway;

19 (ii) exit number or crossroad; and

20 (iii) direction;

21 (D) information for each TOD sign including:

22 (i) roadway and crossroad;

23 (ii) number of TOD sign panels per TOD sign assembly;

1 (iii) direction; and

2 (iv) county; and

3 (E) date of expiration of the contract between each  
4 participating business and the program contractor.

5 (2) The inventory shall be updated and provided to the  
6 department on a monthly basis.

7 (h) Installation by contractor. Installation of  
8 information logo and TOD signs may only be performed by the  
9 contractor, a subcontractor approved by the department, or, in  
10 emergency situations, by the department. In the event that the  
11 department undertakes installation or other duties of the  
12 contractor, the contractor shall immediately remit to the  
13 department the specified fee or cost of such work.

14 (i) Department review. Prior to installation, the design  
15 and location of information logo and TOD signs must be submitted  
16 to the department for review.

17 (j) Sign relocation or removal. If the department  
18 determines that additional regulatory, warning, or guide signing  
19 is needed, existing or planned information logo or TOD signs  
20 shall be removed or relocated by the contractor as directed by  
21 the department and at the sole expense of the contractor. If  
22 the department determines that construction or maintenance  
23 activities within the eligible highway rights of way will create

1 conditions where existing information logo or TOD signs will not  
2 be in compliance with Transportation Code, Chapter 391, or  
3 provisions of this title, the contractor shall:

4 (1) remove the business logos and ramp business logos of  
5 the affected commercial establishments;

6 (2) remove the information logo signs and ramp signs;

7 (3) remove the TOD signs; and

8 (4) reimburse advance rental fees paid by participating  
9 businesses or entities prorated as per the date of removal of  
10 the business logos, major shopping area guide signs, or TOD  
11 signs.

12 (k) Sign maintenance. The information logo and TOD signs  
13 shall be maintained by the contractor in a manner and condition  
14 that is a distinct benefit to the safety of the public, benefit  
15 to the participating businesses or entities, and to the  
16 satisfaction of the department.

17 (l) Fees. The contractor shall assess a fee covering the  
18 installation, annual rental, covering, maintenance, and  
19 replacement costs for the signs and shall remit to the  
20 department the amount specified in the contract no later than  
21 the seventh business day following the last day of the month  
22 such fees are received by the contractor.

23 (1) Reduced fees. The contractor shall reduce the annual

1 rental fee by a prorated amount for each calendar day when:

2 (A) the business or ramp business logo(s), or the major  
3 shopping area guide sign has not been erected; or

4 (B) a previously erected business, ramp business logo,  
5 major shopping area guide sign, or TOD sign is obscured from  
6 view of the motorists for a period of time exceeding 10  
7 consecutive calendar days.

8 (2) Non-reducible fee. A contractor may not reduce the  
9 annual fee for the period a business logo, ramp business logo,  
10 or major shopping area guide sign, or TOD sign is covered at the  
11 request of the participating business or entity.

12 (m) Termination.

13 (1) Contractor termination. If the contractor terminates  
14 the contract or defaults prior to the conclusion date of any  
15 five-year term, ownership of the contract rights and any rights  
16 in the information logo or TOD signs constructed at the various  
17 interchanges and intersections shall immediately pass to and  
18 vest in the department on the effective date of termination, and  
19 the contractor shall not be entitled to any compensation.

20 (2) Department termination. If the department terminates  
21 the contract, before the contract's termination date, for  
22 reasons other than default by the contractor, the contractor  
23 will be paid for the depreciated value, as established by the

1 department, for each of the information logo or TOD signs  
2 erected. The percentages are as follows (based on elapsed time  
3 since sign installation and the expiration year's statewide  
4 average square foot bid price for a similar ground mounted  
5 sign):

6 (A) less than one year--90%;

7 (B) one year or more but less than two years--50%;

8 (C) two years or more but less than three years--25%;

9 or

10 (D) three years or more--0%.

11 (3) Contract termination.

12 (A) If the contract terminates at its specified  
13 termination date, the existing contractor is not awarded the  
14 contract, and the existing contractor's contract contains  
15 payment terms for economic value at the end of the specified  
16 termination date, then the subsequent contractor will pay the  
17 department the following economic value based on elapsed time  
18 since sign installation and the expiration year's statewide  
19 average square foot bid price for a similar ground mounted sign:

20 (i) less than one year--90%;

21 (ii) one year or more but less than two years--50%;

22 (iii) two years or more but less than three years--

23 25%; or

1 (iv) three years or more--0%.

2 (B) The department will pay the existing contractor the  
3 amount indicated in subparagraph (A) of this paragraph.

4 (C) Specific information logo ramp signs will not be  
5 eligible for consideration of compensation.

6 (D) An existing specific information logo sign  
7 contractor receiving a new contract will not be eligible for  
8 compensation upon expiration of the contract.

9 (E) The department will provide an estimate of the  
10 economic value of these signs in the department's request for  
11 offer.

12 (n) Sale, transfer, and assignment of contract. The  
13 contractor shall not sell, transfer, assign, or otherwise  
14 dispose of the contract or any portion thereof, or of its right,  
15 title, or interest therein, without the prior written consent of  
16 the department.

17  
18 \$25.403. Request for Proposals.

19 (a) Notice. The department will publish a request for  
20 proposals for the information logo and TOD sign program.

21 (b) Evaluation. The department will determine the best  
22 value to the state by evaluating the contractor's:

23 (1) proposed team and the time commitment for each team

1 member;

2 (2) capability for undertaking and performing the work;

3 (3) understanding of the project;

4 (4) quality of services offered;

5 (5) financial resources and ability to perform the work;

6 (6) approach or course of action to meeting the goals and  
7 objectives;

8 (7) ability to meet the schedule;

9 (8) proposed percentage to be paid to the department from  
10 fees collected from program participants;

11 (9) proposed amount for the fees that will be charged to  
12 participants in the program; and

13 (10) ability to fulfill any other criteria listed in the  
14 request for proposal.

15 (c) Ineligible proposal. The department will not consider  
16 a proposal that:

17 (1) fails to comply with any requirement contained in the  
18 request for proposals issued under this section; or

19 (2) fails to guarantee a fee to be paid to the department  
20 of at least 10% of the fees collected from program participants  
21 or a percentage as specified by the department in the request  
22 for proposals of the fees collected from program participants  
23 sufficient to cover the department's costs to administer the

1 program.

2

3 §25.404. Specifications for Information Logo Signs.

4 (a) Specific information logo signs.

5 (1) Design. A specific information logo sign assembly  
6 shall:

7 (A) have a blue background with a white reflective  
8 border;

9 (B) contain a principal legend equal in height to the  
10 directional legend;

11 (C) meet the applicable provisions of the Texas MUTCD;

12 (D) have background material that conforms with  
13 department specifications for reflective sheeting;

14 (E) be fabricated, erected, and maintained in  
15 conformance with department specifications and fabrication  
16 details;

17 (F) provide vertical spacing and horizontal spacing for  
18 a balanced appearance of business logos.

19 (2) Content. A specific information logo sign shall  
20 contain:

21 (A) word legends for the following services: GAS, FOOD,  
22 LODGING, CAMPING, or "24 HOUR Rx";

23 (B) the exit number or, if exit numbers are not

1 applicable, "NEXT EXIT";

2 (C) no more than six business logos on one logo sign  
3 assembly;

4 (D) no more than three types of services on a sign  
5 assembly; and

6 (E) no more than two dual logos.

7 (3) Placement. Subject to approval of the department, a  
8 specific information logo sign shall be installed or placed:

9 (A) to conform to the following order of placement  
10 along the direction of travel: PHARMACY, CAMPING, LODGING, FOOD,  
11 GAS;

12 (B) according to the following priorities where  
13 available space is limited: GAS, FOOD, LODGING, CAMPING, and  
14 PHARMACY;

15 (C) to take advantage of natural terrain;

16 (D) to have the least impact on the scenic environment;

17 (E) to avoid visual conflict with other signs within  
18 the highway right-of-way;

19 (F) with a lateral offset equal to or greater than  
20 existing guide signs;

21 (G) at least 800 feet from the previous interchange and  
22 at least 800 feet from the exit direction sign at the  
23 interchange from which the services are available;

1 (H) without blocking motorists' visibility of existing  
2 traffic control and guide signs;

3 (I) in locations that are not overhead;

4 (J) where a motorist, after following the sign(s), can  
5 conveniently re-enter the highway and continue in the original  
6 direction of travel; and

7 (K) at least 800 feet between two large guide signs,  
8 but not excessively spaced.

9 (4) Existing signs. Existing regulatory, warning,  
10 destination, guide, recreation, and cultural interest signs will  
11 not be removed; provided, however, that subject to the written  
12 approval of the department, such existing signs may be relocated  
13 by special permission of the department at the sole expense and  
14 responsibility of the contractor and only to the extent  
15 necessary to accommodate logo signs.

16 (b) Business logos.

17 (1) Design. A business logo:

18 (A) may not exceed 48 inches in width or 36 inches in  
19 height;

20 (B) may be any color or combination of colors; and

21 (C) may only be fabricated, erected, and maintained in  
22 conformance with current department specifications for aluminum  
23 signs and reflective sheeting.

1 (2) Content. A business logo may:

2 (A) consist of a registered trademark or a legend  
3 message identifying the name or abbreviation of the commercial  
4 establishment;

5 (B) contain supplemental information, limited to the  
6 word "DIESEL" or "PROPANE" on a gas logo, or "PROPANE" on a  
7 camping or gas logo, or the words "24 HOURS" on a gas or a food  
8 logo, the words "DIESEL", "PROPANE", and "24 HOURS" not to  
9 exceed six inches in height;

10 (C) contain a message, symbol, or trademark only if the  
11 message, symbol, or trademark does not resemble an official  
12 traffic control device; and

13 (D) contain text, symbols, or advertising only if the  
14 text, symbols, or advertising are related to the primary service  
15 of the specific information logo sign.

16 (E) contain an "RV Friendly" symbol indicating the  
17 business has facilities that accommodate the on-site movement  
18 and parking of recreational vehicles. The facility must meet  
19 the following criteria to be considered eligible to receive the  
20 RV Friendly symbol:

21 (i) roadway access and egress must be hard surface,  
22 free of potholes and needs to be at least 12 feet wide with a  
23 minimum swing radius of 50 feet to enter and exit the facility;

1           (ii) roadway access, egress, and parking facilities  
2 must be free of any electrical wires, tree branches, or other  
3 obstructions up to 14 feet above the surface;

4           (iii) facilities requiring short-term parking, such  
5 as restaurants or tourist attractions, are required to have 2 or  
6 more spaces that are 12 feet wide and 65 feet long with a swing  
7 radius of 50 feet to enter and exit the spaces;

8           (iv) fueling facilities with canopies are required to  
9 have a 14-foot clearance, and those selling diesel fuel are  
10 required to have pumps with non-commercial nozzles;

11           (v) fueling facilities must allow for pull-through a  
12 with swing radius of 50 feet;

13           (vi) for campgrounds, 2 or more spaces that are 18  
14 feet wide and 45 feet long are required; and

15           (vii) businesses must also post directional signing  
16 on their sites, as needed, to those RV friendly parking spaces  
17 and other on-site RV friendly services, so that the motorist is  
18 given additional guidance upon leaving the public highway and  
19 entering the business establishment's property.

20           (c) Ramp signs.

21           (1) Design. A ramp sign shall:

22           (A) meet the applicable provisions of the Texas MUTCD;

23           (B) have a blue background with a white reflective

1 border;

2 (C) conform with the latest department specifications  
3 for reflective sheeting for the background material of the sign;  
4 and

5 (D) be fabricated, erected, and maintained in  
6 conformance with the current department specifications for  
7 aluminum signs and roadside signs.

8 (2) Placement. Subject to approval by the department, a  
9 ramp sign may be placed along an exit ramp or access road, or at  
10 an intersection of an access road and crossroad when a  
11 commercial establishment's building or on-premise signing is not  
12 visible from that exit ramp, access road, or intersection.

13 (3) Content. A ramp business logo shall:

14 (A) be no larger than 24 inches in width and 18 inches  
15 in height;

16 (B) contain directional arrows and distances; and

17 (C) be a duplicate of the business logo erected on a  
18 specific information logo sign.

19 (d) Dual logos.

20 (1) An establishment may have two names displayed on a  
21 single logo sign panel if the establishment consists of:

22 (A) two food outlets in a shared space under common  
23 ownership; or

1 (B) gas and food outlets in a shared space under common  
2 ownership.

3 (2) The fee to a participating business for a dual logo  
4 will be the same as to the charge for a standard logo.

5 (3) No more than two dual logos may be installed per logo  
6 sign.

7 (4) Dual logos may not be installed on a specific  
8 information logo sign unless all available spaces for the "FOOD"  
9 or "GAS" specific service categories are full.

10 (5) If demand for space on a logo sign exceeds the  
11 available number of spaces, businesses requesting a dual logo  
12 must follow the same drawing process as described in §25.407 of  
13 this subchapter.

14 (e) Major shopping area guide signs.

15 (1) Design. A major shopping area sign shall:

16 (A) have a blue background with a white reflective  
17 legend and border;

18 (B) meet the applicable provisions of the Texas MUTCD;

19 (C) have background, legend, and border material that  
20 conforms to department specifications for reflective sheeting;

21 (D) not be illuminated externally or internally; and

22 (E) be fabricated, erected, and maintained in

23 conformance with department specifications and fabrication

1 details.

2 (2) Content. A major shopping area guide sign shall:

3 (A) contain the name of the major shopping area as it  
4 is commonly known to the public; and

5 (B) contain the exit number or, if exit numbers are not  
6 applicable, other directional information.

7 (3) Placement. Subject to approval of the department, a  
8 major shopping area guide sign shall be installed or placed:

9 (A) so that it is independently mounted;

10 (B) to take advantage of natural terrain;

11 (C) to have the least impact on the scenic environment;

12 (D) to avoid visual conflict with other signs within  
13 the highway right-of-way;

14 (E) with a lateral offset equal to or greater than  
15 existing guide signs;

16 (F) for both directions of travel on the eligible urban  
17 highway;

18 (G) without blocking motorists' visibility of existing  
19 traffic control and guide signs; and

20 (H) in locations that do not include overhead  
21 installation.

22 (4) Existing signs. Existing regulatory, warning,  
23 destination, guide, recreation, and cultural interest signs will

1 not be removed; provided, however, that subject to the written  
2 approval of the department, such existing signs may be relocated  
3 by special permission of the department at the sole expense and  
4 responsibility of the contractor and only to the extent  
5 necessary to accommodate major shopping area guide signs.

6 (f) Major shopping area ramp signs.

7 (1) Design. A major shopping area ramp sign shall:

8 (A) have a blue background with a white reflective  
9 legend and border;

10 (B) meet the applicable provisions of the Texas MUTCD;

11 (C) have background, legend, and border material that  
12 conforms to department specifications for reflective sheeting;

13 (D) be fabricated, erected, and maintained in  
14 conformance with department specifications and fabrication

15 details; and

16 (E) not be illuminated internally or externally.

17 (2) Content. A ramp sign shall contain:

18 (A) the name of the major shopping area as it is  
19 commonly known to the public; and

20 (B) directional arrows and distances.

21 (3) Placement. Subject to approval of the department,  
22 the major shopping area ramp sign(s) may be placed along an exit  
23 ramp or access road, or at an intersection of an access road and

1 crossroad if the major shopping area driveway access, buildings,  
2 or parking areas are not visible from that exit ramp, access  
3 road, or intersection.

4

5 §25.405. Commercial Establishment Eligibility.

6 (a) General requirements for specific information logo sign  
7 eligibility. To be eligible to have a business logo placed on a  
8 specific information logo sign, a commercial establishment must:

9 (1) offer at least one primary motorist service;

10 (2) be located with driveway access to the access road  
11 (frontage road), ramp, or intersecting crossroad;

12 (3) be visible, or have on-premise signing visible, from  
13 the commercial establishment's driveway access or the exit ramp,  
14 access road, crossroad, or intersection (or for an establishment  
15 that provides lodging, be visible from an eligible highway or an  
16 interchange on an eligible highway and be located on a street  
17 that is not more than two turns off the access or frontage road  
18 to the eligible highway); and

19 (4) be located not farther than three miles from an  
20 interchange on an eligible highway, but if no gas, food,  
21 lodging, or camping service participating or willing to  
22 participate in the specific information logo sign program is  
23 located within three miles of an interchange, the department may

1 approve commercial establishments of the same service:

2 (A) if located not farther than six miles from the  
3 interchange;

4 (B) nine miles from the interchange if no service  
5 participating or willing to participate is located six miles  
6 from the interchange;

7 (C) 12 miles from the interchange if no service  
8 participating or willing to participate is located nine miles  
9 from the interchange; or

10 (D) 15 miles from the interchange if no service  
11 participating or willing to participate is located 12 miles from  
12 the interchange;

13 (5) comply with all applicable laws concerning the  
14 provisions of public accommodations without regard to race,  
15 religion, color, sex, or national origin; and

16 (6) post its hours of operation on or near the main  
17 entrance so that they are visible to the public during open and  
18 closed hours.

19 (b) Specific services eligibility. In addition to the  
20 general requirements for eligibility to have a business logo  
21 placed on a specific information logo sign, a commercial  
22 establishment must meet the requirements for at least one of the  
23 following primary motorist services.

1           (1) Gas. To be eligible to have a business logo placed  
2 on a specific information logo sign carrying the legend "GAS," a  
3 commercial establishment must provide:

4           (A) vehicle services, including fuel, oil, and water;

5           (B) restroom facilities and drinking water;

6           (C) continuous operation for at least 12 hours per day,  
7 seven days a week; and

8           (D) a telephone accessible to the public.

9           (2) Food. To be eligible to have a business logo placed  
10 on a specific information logo sign carrying the legend "FOOD,"  
11 a commercial establishment must provide:

12           (A) a license or other evidence of compliance with  
13 public health or sanitation laws, if required by law;

14           (B) continuous operation at least 10 hours a day to  
15 serve two meals a day prepared on site, six days a week;

16           (C) seating capacity for at least 16 people;

17           (D) public restrooms; and

18           (E) a telephone accessible to the public.

19           (3) Lodging. To be eligible to have a business logo  
20 placed on a specific information logo sign carrying the legend  
21 "LODGING," a commercial establishment must provide:

22           (A) a license or other evidence of compliance with laws  
23 regulating facilities providing lodging, if required by law;

1 (B) at least 10 rooms; and

2 (C) a telephone accessible to the public.

3 (4) Camping. To be eligible to have a business logo  
4 placed on a specific information logo sign carrying the legend  
5 "CAMPING," a commercial establishment must provide:

6 (A) a license or other evidence of compliance with laws  
7 regulating camping facilities, if required by law;

8 (B) adequate parking accommodations; and

9 (C) drinking water.

10 (5) Pharmacy. To be eligible to have a business logo  
11 placed on a specific information logo sign carrying the legend  
12 "24 HOUR Rx," a commercial establishment must:

13 (A) be open for business 24 hours of each day; and

14 (B) provide pharmacy services 24 hours of each day.

15 (c) Multiple services eligibility. If a commercial  
16 establishment offers more than one primary motorist service, it  
17 will be eligible to display a business logo for each of those  
18 services on the appropriate specific information logo sign,  
19 provided that:

20 (1) minimum criteria for the service as described in  
21 §25.404 of this subchapter (relating to Specifications for  
22 Information Logo Signs) are met;

23 (2) the additional business logo(s) would not prevent

1 participation by another eligible commercial establishment whose  
2 sole service would be displaced; and

3 (3) a business logo space is available.

4 (d) Variances.

5 (1) A person may request a variance from the information  
6 logo sign program. Requests for variances will only be  
7 considered if the existing requirements preclude participation  
8 in the program.

9 (2) A variance may be requested for a waiver of:

10 (A) an eligibility requirement except for the  
11 requirements listed in subsections (a)(1), (2) (except that an  
12 exception may be asked for an intersecting crossroad if the  
13 roadway with driveway access Tees into the frontage road of the  
14 eligible highway and is easily accessible or visible from that  
15 intersection), (5), and (6), and (b) of this section;

16 (B) location of the establishment;

17 (C) placement of the sign; or

18 (D) type of highway, except the highway must be on the  
19 state highway system and for logo signs at or near a grade-  
20 separated intersection.

21 (3) Variances may not be requested for restrictions  
22 regarding dual logos.

23 (4) A person may submit a request for a variance to the

1 department's local district engineer indicating:

2 (A) which requirement of the program it does not meet;

3 and

4 (B) the variance requested.

5 (5) The department may require additional documentation  
6 following generally accepted engineering standards, which may  
7 include, but not be limited to:

8 (A) traffic studies;

9 (B) maps indicating ramps, major arterials, ingress and  
10 egress points, existing signs and distances;

11 (C) traffic flow analysis including traffic counts to  
12 and from the commercial establishment or major shopping area;

13 (D) crash data and analysis; and

14 (E) detailed site plan of the commercial establishment  
15 or major shopping area, including but not limited to available  
16 parking, driveways, and location in reference to eligible  
17 highways.

18 (6) The executive director may grant a variance if he or  
19 she determines it is feasible to place the sign at the requested  
20 location and the sign meets the requirements of the Texas MUTCD;  
21 and

22 (A) the variance will substantially promote traffic  
23 safety;

1 (B) the variance will substantially improve traffic  
2 flow;

3 (C) an overpass, highway sign or other highway  
4 structure unduly obstructs the visibility of an existing  
5 commercial sign; or

6 (D) the variance is necessary to substantially improve  
7 the efficiency and effectiveness of communicating information  
8 needed by people to safely and efficiently use the  
9 transportation system.

10 (7) The executive director will indicate the reason for  
11 granting or denying a variance in writing.

12

13 \$25.406. Major Shopping Area Eligibility.

14 (a) Eligibility criteria. To be eligible to have a major  
15 shopping area guide sign, the major shopping area must:

16 (1) consist of a group of 10 or more retail and other  
17 commercial establishments that:

18 (A) have a gross building area of not less than 650,000  
19 square feet;

20 (B) is located within close proximity to one another;

21 (C) employs a unifying theme carried out by individual  
22 shops in their architectural design;

23 (D) have a minimum of two anchor businesses, with a

1 combined gross building area of not less than 150,000 square  
2 feet; and

3 (E) is planned, developed, owned, and managed as a  
4 single property;

5 (2) be located not farther than three miles from an  
6 interchange with an eligible urban highway; and

7 (3) be located with driveway access to the eligible urban  
8 highway access road (frontage road), ramp, intersecting  
9 crossroad or city street.

10 (b) Variances.

11 (1) A person may request a variance from the requirements  
12 of the major shopping area guide sign program. A request for a  
13 variance will only be considered if the existing requirements  
14 preclude participation in the program.

15 (2) A variance may be requested for wavier of the  
16 requirement of:

17 (A) eligibility;

18 (B) location of the major shopping area;

19 (C) placement of the sign; or

20 (D) type of highway, except the highway must be on the  
21 state highway system.

22 (3) A person may submit a request for a variance to the  
23 department's local district engineer indicating:

1 (A) which requirement of the program it does not meet;

2 and

3 (B) the variance requested.

4 (4) The department may require additional documentation  
5 following generally accepted engineering standards, which shall  
6 include, but not be limited to:

7 (A) traffic studies;

8 (B) maps indicating ramps, major arterials, ingress and  
9 egress points, existing signs, and distances;

10 (C) traffic flow analysis including traffic counts to  
11 and from the major shopping area;

12 (D) crash data and analysis;

13 (E) detailed site plan of the major shopping area,  
14 including but not limited to available parking, driveways, and  
15 location in reference to eligible urban highways.

16 (5) The executive director may grant a variance if he or  
17 she determines it is feasible to place the sign at the location  
18 and the sign meets the requirements of the Texas MUTCD; and

19 (A) the variance will substantially promote traffic  
20 safety;

21 (B) the variance will substantially improve traffic  
22 flow;

23 (C) an overpass, highway sign, or other highway

1 structure unduly obstructs the visibility of an existing  
2 commercial sign; or

3 (D) the variance is necessary to substantially improve  
4 the efficiency and effectiveness of communicating the  
5 information needed by people to safely and efficiently use the  
6 transportation system.

7 (6) The executive director will indicate the reason for  
8 granting or denying a variance in writing.

9 (7) A variance will not be granted if the executive  
10 director finds that:

11 (A) a major shopping area is located on an intersecting  
12 crossroad or city street whose name can be easily identified  
13 with the major shopping area and has existing advance and exit  
14 guide signs; or

15 (B) the major shopping area parking is so insufficient  
16 that it causes undue congestion of the roadway system.

17

18 §25.407. Logo Sign Program Operation.

19 (a) Commercial establishment and major shopping area  
20 application.

21 (1) Applications for commercial establishments or major  
22 shopping areas desiring to participate in the information logo  
23 sign program are available upon request from the department.

1           (2) A commercial establishment or major shopping area  
2 desiring to participate in the information logo sign program  
3 must submit an application to the contractor and verify that all  
4 requirements are met. Applications must be submitted to the  
5 location as stated on the application form. The contractor will  
6 verify the eligibility of each applicant.

7           (3) For commercial establishments, a separate application  
8 is required for each primary motorist service per interchange  
9 per direction of travel. Only one application per commercial  
10 establishment per primary motorist service per direction of  
11 travel per interchange will be accepted.

12           (4) Applications will be reviewed by the contractor and  
13 applicants will be notified in writing if qualified or rejected.  
14 Rejected applications will be returned and deficiencies noted.

15           (5) Rejected applicants may resubmit their application  
16 when the noted deficiencies have been corrected.

17           (6) To be eligible for the selection process for the  
18 available business logo space(s), available first alternate  
19 position, or available second alternate position, a commercial  
20 establishment must have submitted a qualified application before  
21 the commercial establishment application deadline.

22           (7) The commercial establishment application deadline for  
23 the initial installation for a new or existing logo sign

1 assembly drawing will be set as specified by the contractor and  
2 approved by the department.

3 (8) Qualified applications received after the commercial  
4 establishment application deadline will be placed on file and  
5 considered eligible for future drawings.

6 (b) Commercial establishment selection.

7 (1) Available business logo space(s) and relative  
8 placement of business logos on the specific information logo  
9 sign, available first alternate position, and available second  
10 alternate position will be awarded by drawing of the qualified  
11 applications received before the commercial establishment  
12 application deadline. The relative placement of business logos  
13 in available space(s), in order of selection, is upper left,  
14 upper middle, upper right, lower left, lower middle, and lower  
15 right. For a specific information logo sign that includes more  
16 than one service, the relative placement of business logos in  
17 available space(s), in order of selection, is left to right and  
18 top to bottom for each portion of the sign designated for each  
19 service.

20 (2) The drawing will be held publicly by the contractor  
21 on a date specified by the contractor and approved by the  
22 department in the presence of two or more department employees.  
23 When business logo spaces become available, additional drawings

1 will be held publicly as needed in the presence of two or more  
2 department employees. Additional drawings of qualified  
3 applicants will be held no earlier than 20 days nor later than  
4 45 days after the commercial establishment application deadline.

5 (3) When a business logo space(s) becomes available, the  
6 first and second alternates have first right of refusal,  
7 respectively, for the available business logo space. If the  
8 first alternate accepts an available business logo space, the  
9 second alternate then becomes the first alternate with first  
10 right of refusal for any existing or future available business  
11 logo space. Any remaining available business logo space(s),  
12 available first alternate position, or available second  
13 alternate position are awarded by the drawings.

14 (4) If the number of qualified applicants is less than or  
15 equal to the number of available business logo space(s) at the  
16 time of the commercial application deadline, the available  
17 spaces will be awarded to the qualified applicants. The random  
18 drawing will determine only the relative placement of the  
19 business logo signs in the available space(s).

20 (5) The contractor shall notify the commercial  
21 establishment by certified mail of the award of specific  
22 information business logo sign space within 10 calendar days of  
23 the date of the award. To accept the award, the commercial

1 establishment must execute a written participation agreement  
2 with the contractor within 30 calendar days of the date of the  
3 award. The participation agreement shall be in a form as  
4 prescribed by the department and shall, at a minimum, contain  
5 all applicable provisions prescribed by this undesignated head.

6 (c) Responsibilities and rights of commercial  
7 establishment.

8 (1) The commercial establishment must provide a business  
9 logo and, if necessary, ramp business logo(s) within 60 days of  
10 notification by the contractor of the contractor's intent to  
11 erect the specific information logo signs or ramp signs.

12 (2) A commercial establishment may renew its  
13 participation agreement with the contractor on an annual or  
14 multi-year basis no later than the date specified by the  
15 contractor and approved by the department. If the commercial  
16 establishment does not renew the agreement with the contractor,  
17 the contractor will remove the business logo at the end of the  
18 participation agreement, and will make the vacated space(s)  
19 available to other commercial establishments pursuant to  
20 subsection (b) of this section.

21 (d) Covering of business logo. A business logo and the  
22 ramp business logo(s) of a commercial establishment may be  
23 covered by the contractor if the commercial establishment is

1 temporarily closed for a period not exceeding 30 calendar days.  
2 Unless removed pursuant to subsection (e) of this section, the  
3 business logo and ramp business logo(s) will remain covered  
4 until the commercial establishment reopens.

5 (e) Removal of business logo.

6 (1) A business logo of a participating commercial  
7 establishment shall be removed by the contractor if the  
8 commercial establishment:

9 (A) ceases to exist;

10 (B) fails to pay the annual rental fee or other fees  
11 within 30 calendar days of the due date as specified on the  
12 agreement;

13 (C) is temporarily closed for more than 30 calendar  
14 days;

15 (D) does not meet the minimum eligibility requirements  
16 of §25.405 of this subchapter, and all corrections are not made  
17 within 30 calendar days of written notification;

18 (E) is sold, and the new commercial establishment does  
19 not continue the original primary motorist service or does not  
20 meet the minimum requirements for the primary motorist service;

21 (F) has not provided a replacement business logo sign  
22 within 60 calendar days of written notification that the  
23 business logo is missing, damaged, broken, or faded; or

1 (G) relocates and is no longer eligible for  
2 participation in the program.

3 (2) Removal of a business logo by the contractor will  
4 include the removal of the commercial establishment's ramp  
5 business logo sign(s).

6 (3) If the business logo is removed due to the default of  
7 the commercial establishment to perform within the terms of the  
8 participation agreement and this subchapter, the participation  
9 agreement is terminated between the commercial establishment and  
10 the contractor. All funds paid to the contractor by the  
11 commercial establishment are forfeited. Upon removal of a  
12 business logo, the vacated space becomes available pursuant to  
13 subsection (b) of this section. A replacement commercial  
14 business is selected, as stated in the commercial establishment  
15 selection process.

16 (4) If the business logo is removed permanently due to  
17 actions of the department, the participation agreement is  
18 terminated between the commercial establishment and the  
19 contractor. Advance funds paid to the contractor by the  
20 commercial establishment will be pro-rated as per the date of  
21 removal, and any remaining amounts refunded to the commercial  
22 establishment.

23 (f) Responsibilities and rights of the major shopping area.

1 The major shopping area may renew its participation agreement  
2 with the contractor on an annual or multi-year basis at a date  
3 specified by the contractor and approved by the department. If  
4 the major shopping area does not renew the agreement with the  
5 contractor, the contractor will remove the guide signs and ramp  
6 signs at the end of the participation agreement.

7 (g) Covering or removal of major shopping area guide sign.

8 (1) A major shopping area guide sign(s) of a major  
9 shopping area may be covered by the contractor if:

10 (A) the major shopping area is temporarily closed for a  
11 period not exceeding 30 calendar days; or

12 (B) the department finds the parking is so insufficient  
13 that it causes undue congestion to the state highway system.

14 (2) A major shopping area guide sign of a major shopping  
15 area may be covered until:

16 (A) the property reopens; or

17 (B) the department finds there is now sufficient  
18 parking.

19 (3) A major shopping area guide sign of a participating  
20 major shopping area shall be removed by the contractor if the  
21 major shopping area:

22 (A) ceases to exist;

23 (B) fails to pay the annual rental fee or other fees

1 within 30 calendar days of the due date as specified in the  
2 agreement;

3 (C) is temporarily closed for more than 30 calendar  
4 days;

5 (D) does not meet the minimum eligibility requirements  
6 of §25.406 of this subchapter, and all corrections are not made  
7 within 30 calendar days of written notification;

8 (E) is sold, and the new major shopping area does not  
9 continue as a public retail business; or

10 (F) does not correct the parking insufficiency within  
11 90-days notice by the department.

12 (4) Removal of a major shopping area guide sign by the  
13 contractor will include the removal of the major shopping area's  
14 ramp sign(s).

15 (5) If the major shopping area guide sign is removed due  
16 to the default of the major shopping area to perform within the  
17 terms of the participation agreement and the requirements as  
18 stated herein, the participation agreement is terminated between  
19 the major shopping area and the contractor. All funds paid to  
20 the contractor by the major shopping area are forfeited.

21 (6) If the major shopping area guide sign is removed  
22 permanently due to actions of the department, the participation  
23 agreement is terminated between the major shopping area and the

1 contractor. Advance funds paid to the contractor by the major  
2 shopping area will be pro-rated as per the date of removal, and  
3 any remaining amounts refunded to the major shopping area.

4

5 \$25,408. TOD Sign Program Operation.

6 (a) Eligibility. A facility eligible for a TOD sign panel  
7 is a winery or other business or non-profit entity including a  
8 farm, ranch or other tourist activity that meets the following  
9 requirements:

10 (1) General criteria. An eligible facility must:

11 (A) derive a major portion of its income or visitors  
12 during the normal business season from highway users not  
13 residing within 50 miles from the facility;

14 (B) provide a tourist-oriented service or tourist-  
15 oriented product of significant interest to the traveling  
16 public;

17 (C) comply with all state and federal laws relating to:

18 (i) provision of public accommodation without regard  
19 to race, religion, color, age, sex, or national origin; and

20 (ii) licensing and approval of service facilities;

21 and

22 (D) be located within five driving miles from the  
23 eligible highway;

1 (E) provide modern restroom facilities and drinking  
2 water;

3 (F) be clean and in good repair; and

4 (G) be in compliance with provisions regarding illegal  
5 signs as defined in the Highway Beautification Act of 1965 (23  
6 USC 131).

7 (2) Specific requirements. In addition to the general  
8 requirements, an eligible facility must meet the following  
9 specific requirements for at least one of the following  
10 categories of TOD sign panels.

11 (A) Wineries. To be eligible for a TOD sign panel a  
12 winery must:

13 (i) produce wine on the premises;

14 (ii) conduct regularly scheduled public tours of the  
15 grounds or facilities or provide such tours upon walk-up  
16 request;

17 (iii) market the product on the premises as a retail  
18 sale;

19 (iv) have a wine tasting area on the premises; and

20 (v) have a winery permit issued by the State of  
21 Texas.

22 (B) Agritourism.

23 (i) To be eligible for a TOD sign panel an

1 agritourism applicant must:

2 (I) sow, cultivate, or produce an agricultural  
3 product on site;

4 (II) devote a minimum of five acres of land to the  
5 production of an agricultural product;

6 (III) conduct regularly scheduled public tours of  
7 the grounds or facilities or provides such tours upon walk-up  
8 request;

9 (IV) market the product on the premises as a retail  
10 sale; and

11 (V) be open twelve months a year or during the  
12 normal seasonal period.

13 (ii) Examples of eligible agritourism businesses  
14 include, but are not limited to, farms, ranches, nurseries,  
15 greenhouses, herb farms, wildflower farms, and farmers markets.

16 (C) Other commercial tourist-oriented businesses or  
17 entities.

18 (i) To be eligible for a TOD sign panel, an eligible  
19 commercial tourist-oriented applicant must:

20 (I) produce a unique or unusual commercial or non-  
21 profit service or product of significant interest to the tourist  
22 community;

23 (II) be open for business at least five days a week

1 that includes being open on Saturday and/or Sunday; and

2 (III) be an independent enterprise that is not part  
3 of a franchise or national chain.

4 (ii) Examples of eligible commercial tourist-oriented  
5 businesses include, but are not limited to, art/craft centers,  
6 art galleries, auction houses, amphitheaters, amusement parks,  
7 antique businesses, aquariums, arboretums, arenas, auditoriums,  
8 bed and breakfasts, boat landings/marinas, civic centers,  
9 concert halls, equestrian centers, fairgrounds, golf courses,  
10 museums, natural attractions, pavilions, stadiums, water  
11 oriented businesses, and wildlife preserves.

12 (3) Ineligible facilities. Facilities excluded from  
13 participation in the TOD sign program include, but are not  
14 limited to, adult entertainment facilities, animal shelters,  
15 cemeteries, convenience stores, funeral homes, gas stations,  
16 industrial parks or plants, media facilities, local jails, local  
17 police or sheriffs' offices, movie theaters, office parks, radio  
18 stations, television stations, truck terminals, post offices,  
19 medical facilities, retirement homes, veterans facilities,  
20 veterinary facilities, mobile home parks, and residential or  
21 commercial subdivisions.

22 (4) Final determination of eligibility. The department  
23 will make all final determinations regarding an applicant's

1 eligibility to participate in the TOD sign program.

2 (b) Application.

3 (1) Applications for eligible facilities desiring to  
4 participate in the TOD sign program are available upon request  
5 from the department.

6 (2) An eligible facility desiring to participate in the  
7 TOD sign program must submit an application to the contractor  
8 and verify that all eligibility requirements are met.  
9 Applications must be submitted to the location stated on the  
10 application form. The contractor will verify the eligibility of  
11 each applicant.

12 (3) Applications will be reviewed by the contractor and  
13 applicants will be notified in writing of the application being  
14 approved or disapproved according to the following schedule.

15 (A) Within 30 days the contractor will notify the  
16 business that:

17 (i) the application has been received; and

18 (ii) that the application is complete, or that  
19 additional information is required to complete the application.

20 (B) The contractor will approve or disapprove the  
21 application:

22 (i) within 60 days after the business submits the  
23 application if no additional information is required; or

1           (ii) within 30 days after the date the business submits  
2 all of the additional information requested by the contractor  
3 under subparagraph (A) of this paragraph.

4           (c) Specifications for TOD sign assemblies and sign panels.

5           (1) Sign assembly. A TOD sign assembly shall:

6           (A) have a blue background with a white reflective  
7 border;

8           (B) meet all applicable provisions of the MUTCD;

9           (C) have background material which conforms with  
10 department specifications for reflective sheeting; and

11           (D) be fabricated, erected, and maintained in  
12 conformance with department specifications and fabrication  
13 details.

14           (2) Order of priority. TOD sign panels will be assigned  
15 to eligible facilities in the following priority: wineries,  
16 agritourism, and other commercial tourist-oriented businesses.

17           (3) Content. A TOD sign panel will contain no more than  
18 the following items as space limitations will allow:

19           (A) a maximum of two lines of text describing the  
20 name of the eligible facility;

21           (B) a directional arrow indicating the direction of  
22 and distance to the eligible facility; or

23           (C) a symbol or icon depicting the type of eligible

1 facility as designed and approved by the department.

2 (4) Panel limitations. Each TOD sign assembly may have  
3 no more than three TOD sign panels.

4 (5) Placement. Subject to approval by the department, a  
5 TOD sign assembly shall be installed or placed:

6 (A) only on TOD eligible highways as defined in this  
7 subchapter;

8 (B) to take advantage of natural terrain;

9 (C) to have the least impact on the scenic environment;

10 (D) to avoid visual conflict with other signs within  
11 the highway right-of-way;

12 (E) with a lateral offset equal to or greater than  
13 existing guide signs;

14 (F) in advance of the intersection or business entrance  
15 on the TOD eligible highway;

16 (G) at least 200 feet from any other traffic control  
17 devices; and

18 (H) so that it does not block motorists' visibility of  
19 existing traffic control and guide signs.

20 (6) Maximum number of TOD sign assemblies. The maximum  
21 number of TOD sign assemblies will be limited to three per  
22 intersection approach subject to the placement requirements  
23 contained in this subchapter.

1           (7) Existing signs. Existing regulatory, warning,  
2 destination, guide, recreation, and cultural interest signs will  
3 not be removed; provided, however, that subject to the written  
4 approval of the department, such existing signs may be relocated  
5 by special permission of the department at the sole expense and  
6 responsibility of the contractor and only to the extent  
7 necessary to accommodate TOD signs.

8           (d) TOD trailblazer signs.

9           (1) At each turn required to be made by the traveling  
10 public from a TOD sign to the participating facility, a TOD  
11 trailblazer sign shall be in place directing the turn.

12           (2) Any costs associated with installation and  
13 maintenance of trailblazer signs is the responsibility of the  
14 participating facility and is not part of the TOD contract  
15 between the department and contractor.

16           (3) No TOD sign will be installed until all necessary  
17 trailblazer signs have been installed by the participating  
18 facility.

19           (4) When trailblazer signs are required to be installed  
20 off the state highway system, it will be the participating  
21 facility's responsibility to contact the private property owner  
22 or appropriate local jurisdiction for approval to install these  
23 signs.

1 (5) If at any time the department determines that  
2 trailblazer signing off the state highway system is not adequate  
3 to direct the motorist, the participating facility shall be  
4 notified. If action is not taken by the participating facility  
5 to correct this problem within 60 days, the TOD sign panel on  
6 the state highway system shall be removed or covered at the  
7 discretion of the department.

8 (e) TOD sign panel order. Order of placement of TOD sign  
9 panels will be determined by the department so as to maximize  
10 the number of participating businesses.

11 (f) Removal of TOD sign panel.

12 (1) A TOD sign panel of an eligible facility shall be  
13 removed by the contractor if the facility:

14 (A) ceases to exist;

15 (B) fails to pay the annual rental fee or other fees  
16 within 30 calendar days of the due date as specified in the  
17 agreement;

18 (C) does not meet the minimum requirements as stated in  
19 subsection (a) of this section, and all corrections are not made  
20 within 30 calendar days of written notification;

21 (D) is sold, and the new eligible facility does not  
22 continue the original tourist-oriented activity or service, or  
23 does not meet the minimum requirements for a TODS eligible

1 facility; or

2 (E) relocates and is no longer eligible for  
3 participation in the program.

4 (2) If the TOD sign panel is removed due to the default  
5 of the eligible facility to perform within the terms of the  
6 participation agreement and this subchapter, the participation  
7 agreement is terminated between the eligible facility and the  
8 contractor. All funds paid to the contractor by the eligible  
9 facility are forfeited. Upon removal of a TOD sign panel, the  
10 vacated space becomes available pursuant to the procedures  
11 contained in this subchapter.

12 (3) If the TOD sign panel is removed permanently due to  
13 actions of the department, the participation agreement is  
14 terminated between the eligible facility and the contractor.  
15 Advance funds paid to the contractor by the eligible facility  
16 will be pro-rated as per the date of removal, and any remaining  
17 amounts refunded to the commercial establishment.

18 (g) Seasonal facilities. Seasonal facilities may  
19 participate in the TOD sign program provided they meet the  
20 general eligibility criteria for participation in the program.

21 (h) Existing winery signs. Wineries that currently have  
22 signs maintained by the department will be eligible to  
23 participate in the TOD sign program.

1 (i) Variances. Variances may not be requested for any  
2 eligibility requirements for TOD sign panels as described in  
3 this section.

4 (j) Allocation process for excess demand. The contractor  
5 will hold a public drawing to assign TOD sign panel spaces when  
6 there are more eligible facilities wishing to participate in the  
7 program than TOD panel spaces available at a given location.

8 (1) To be eligible for the selection process for the  
9 available TOD space(s), an eligible facility must have submitted  
10 a qualified application before the TOD sign program application  
11 deadline.

12 (2) The application deadline for the initial installation  
13 for a new or existing TOD sign assembly drawing will be set at a  
14 date specified by the contractor and approved by the department.

15 (3) Qualified applications received after the deadline  
16 will be placed on file and considered eligible for future  
17 drawings.

18 (4) Selection.

19 (A) Available TOD sign panel space(s) on the specific  
20 TOD sign assembly will be awarded by drawing of the qualified  
21 applications received before the application deadline.

22 (B) Spaces will be awarded based on the following  
23 priority: wineries, agritourism and other commercial tourist-

1 oriented businesses.

2 (C) The drawing will be held publicly by the contractor  
3 at a date specified by the contractor and approved by the  
4 department in the presence of two or more department employees.  
5 When additional TOD sign panel spaces become available,  
6 additional drawings will be held as needed at a date specified  
7 by the contractor and approved by the department.

8 (D) The contractor shall notify applicants by certified  
9 mail of the award of the TOD sign panel space within 10 calendar  
10 days of the date of the award. To accept the award, the  
11 applicant must execute a written participation agreement with  
12 the contractor within 30 calendar days of the date of the award.  
13 The participation agreement shall be in a form as prescribed by  
14 the department and shall, at a minimum, contain all applicable  
15 provisions prescribed in this subchapter.

16

17 §25.409. Appeal.

18 (a) Contractor. A contractor may appeal any adverse  
19 decision by the department by filing a petition for an  
20 administrative hearing pursuant to §§1.21-1.26 of this title  
21 (relating to Procedures in Contested Cases). Any dispute as to  
22 the terms of the contract will be governed by §9.2 of this title  
23 (relating to Contract Claim Procedure).

1 (b) Commercial establishment or TOD facility. A commercial  
2 establishment or TOD facility may petition the Traffic  
3 Operations Division director (director) to appeal an adverse  
4 decision of the program contractor.

5 (1) The petition must be in writing and received by the  
6 director at 125 E. 11<sup>th</sup> Street, Austin, Texas 78701-2483 within  
7 30 days of the contractor's adverse decision.

8 (2) The petition must include:

9 (A) an explanation of the adverse decision made by the  
10 contractor;

11 (B) statement of facts as to why the contractor's  
12 decision is in error; and

13 (C) any supporting documentation to be considered by  
14 the director, such as drawings or photographs.

15 (3) The decision by the director is final.

16 (4) If the petition is denied the department will send a  
17 written decision to the petitioner stating the reasons for  
18 denial.



1 STATUTORY AUTHORITY

2 The repeals are adopted under Transportation Code, §201.101,  
3 which provides the Texas Transportation Commission with the  
4 authority to establish rules for the conduct of the work of the  
5 department, and more specifically, Transportation Code, §391.099  
6 which provides the commission the authority to establish rules  
7 for the Tourist-Oriented Sign Program.

8

9 CROSS REFERENCE TO STATUTE: Transportation Code 391.099.

1 SUBCHAPTER K. MAJOR AGRICULTURAL INTEREST SIGN PROGRAM

2 §25.700. Purpose. Transportation Code, §§391.097-391.098,  
3 requires the commission to contract with a person, firm, group,  
4 or association in the State of Texas to erect and maintain major  
5 agricultural interest signs within eligible rural highway rights  
6 of way. The sections further require the commission to adopt  
7 rules necessary to regulate the content, composition, placement,  
8 erection, and maintenance of the major agricultural interest  
9 signs and their supports. This subchapter prescribes the  
10 policies and procedures for the implementation of the major  
11 agricultural interest sign program.

12  
13 §25.701. Definitions. The following words and terms, when used  
14 in this subchapter, shall have the following meanings, unless  
15 the context clearly indicates otherwise.

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

17 (2) Contractor--A person, firm, group, or association in  
18 the State of Texas that acts as the authorized agent of the  
19 department in the operation of the major agricultural interest  
20 sign program.

21 (3) Department--The Texas Department of Transportation.

22 (4) Driveway access--A vehicle entrance, built in  
23 compliance with state and local standards and regulations, for

1 use by the public providing access from a public street or  
2 highway to a major agricultural interest.

3 (5) Eligible rural highway--A highway that has  
4 noncontrolled access and is outside the corporate limits of a  
5 municipality.

6 (6) Major agricultural interest sign--A rectangular  
7 supplemental sign panel with the name of the major agricultural  
8 interest and directional information.

9 (7) Major agricultural interest--A farm, ranch, winery,  
10 nursery, greenhouse or other agricultural facility.

11 (8) Texas MUTCD--Texas Manual on Uniform Traffic Control  
12 Devices for Streets and Highways, latest edition, issued by the  
13 Texas Department of Transportation.

14 (9) Trailblaze--To place multiple signs along a route or  
15 routes directing someone to a specific location.

16  
17 \$25.702. Program.

18 (a) Award. The department may award a contract or  
19 contracts to a person, firm, group, or association in the State  
20 of Texas, for an initial period not to exceed five years, to  
21 develop, erect, operate, and maintain major agricultural  
22 interest signs at appropriate locations, subject to the  
23 following terms and conditions.

1 (b) Marketing. In marketing the sign program, the  
2 contractor shall:

3 (1) advertise the sign program in local papers and post  
4 notices at appropriate locations at the county seats;

5 (2) send letters explaining the program to potential  
6 eligible major agricultural interests who request information;  
7 and

8 (3) contact prior businesses that are participating or  
9 have participated in the program.

10 (c) Site plans. Prior to construction of a sign at an  
11 approved location, the contractor must submit a site plan to the  
12 department. Upon approval of the site plan, the contractor may  
13 begin work at the location described.

14 (d) As-built plans. The contractor shall submit as-built  
15 plans to the department within 45 calendar days upon completion  
16 of the installation of a sign.

17 (e) Contacting participating businesses. In the first  
18 three months of a contract between the department and  
19 contractor, the contractor shall contact all participating  
20 businesses with logo signs to coordinate any renewal issues with  
21 the participating businesses.

22 (f) Cooperation with other contractors. The contractor is  
23 required to cooperate with any contractor working on the state

1 highway system as well as any other contractors operating major  
2 agricultural interest sign programs within the state. Upon  
3 request by a potential lessee, the department, or a member of  
4 the public, the contractor will furnish the name, address, and  
5 telephone number of other operating major agricultural interest  
6 sign contractors.

7 (g) Annual report. The contractor shall furnish an annual  
8 report to the department. The annual report will include the  
9 signs erected and number of participation agreements completed.  
10 Other reports may also be required throughout the year as  
11 determined by the department.

12 (h) Meetings. The contractor is required to attend  
13 meetings with the department or department representatives at  
14 least once per calendar year at a date and location determined  
15 by the department to discuss program operation. The department  
16 may also require other meetings as necessary to ensure  
17 compliance with this subchapter.

18 (i) Installation by contractor. Installation of signs may  
19 only be performed by the contractor, a subcontractor approved by  
20 the department, or, in emergency situations, by the department.  
21 In the event that the department undertakes installation or  
22 other duties of the contractor, the contractor shall immediately  
23 remit to the department the specified fee or cost of such work.

NOTE: Repealed Sections

Exhibit E

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1 (j) Department review. Prior to installation, the design  
2 and location of signs must be submitted to the department for  
3 review. The department shall inspect installation and monitor  
4 maintenance.

5 (k) Sign relocation or removal. If the department  
6 determines that additional regulatory, warning, or signing is  
7 needed at any location along the eligible rural highway,  
8 existing or planned signs shall be removed or relocated by the  
9 contractor as directed by the department and at the sole expense  
10 of the contractor. If the department determines that  
11 construction or maintenance activities within highway rights of  
12 way will create conditions where existing signs will not be in  
13 compliance with Transportation Code, §§391.097-391.098, or  
14 provisions of this subchapter, the contractor shall:

15 (1) remove the affected signs; and  
16 (2) reimburse advance rental fees paid by the  
17 agricultural interest prorated as per the date of removal of the  
18 sign.

19 (1) Sign maintenance. The signs shall be maintained by the  
20 contractor in a manner and condition that is:

21 (1) a distinct benefit to the safety of the public;  
22 (2) a benefit to the major agricultural interest; and  
23 (3) to the satisfaction of the department.

1 (m) Fees.

2 (1) The contractor shall assess a fee covering the  
3 installation, annual rental, covering, maintenance and  
4 replacement costs for the signs, and shall remit to the  
5 department the amount specified in the contract no later than  
6 the seventh business day following the last day of the month  
7 such fees are received by the contractor.

8 (2) Reduced fees. The contractor shall reduce the annual  
9 rental fee to a prorated amount for each calendar day when:

10 (A) the sign has not been erected; or

11 (B) a sign is obscured from view of the motorists for a  
12 period of time exceeding 10 consecutive calendar days.

13 (3) Non-reducible fee. A contractor may not reduce the  
14 annual fee for the period a sign is covered at the request of  
15 the major agricultural interest.

16 (n) Bonding. The contractor shall satisfy all requirements  
17 of Government Code, Chapter 2253, concerning bonds.

18 (o) Permits, licenses, and taxes. The contractor shall:

19 (1) procure all permits and licenses;

20 (2) pay all charges, fees, and taxes;

21 (3) give all notices necessary and incidental to the due  
22 and lawful prosecution of the work; and

23 (4) furnish the department with evidence of compliance

1 with the permit, license, and tax requirements upon request.

2 (p) Records. The contractor shall:

3 (1) consistent with generally accepted accounting  
4 principles, maintain all books, documents, papers, advertising  
5 contracts, accounting records, and other evidence pertaining to  
6 the contract with the department; and

7 (2) furnish the department, its designee, or the state  
8 auditor such documents, records, and information for examination  
9 upon request.

10 (q) Termination. The department or the contractor may  
11 terminate the contract upon default of the other party.

12 (1) If the contractor terminates the contract or defaults  
13 prior to the conclusion date of any five-year term, ownership of  
14 the contract rights and any rights in signs constructed along  
15 the eligible rural highways shall immediately pass to and vest  
16 in the department on the effective date of termination, and the  
17 contractor shall not be entitled to any compensation.

18 (2) If the department terminates the contract, before the  
19 contract's termination date, for reasons other than default of  
20 the contractor, the contractor will be paid for the depreciated  
21 value, as established by the department, for each of the signs  
22 erected. The percentages are as follows (based on the elapsed  
23 time since sign installation and the expiration year's statewide

1 average square foot bid price for a small ground mounted sign):

2 (A) less than one year-90%;

3 (B) one year or more but less than two years-50%;

4 (C) two years or more but less than three years-25%;

5 and;

6 (D) three years or more-0%.

7 (3) Contract termination.

8 (A) If the contract terminates at its specified  
9 termination date, the existing contractor is not awarded the  
10 contract, and the existing contractor's contract contains  
11 payment terms for economic value at the end of the specified  
12 termination date, then the subsequent contractor will pay the  
13 department the following economic value based on elapsed time  
14 since sign installation and the expiration year's statewide  
15 average square foot bid price for a small ground mounted sign:

16 (i) less than one year-90%;

17 (ii) one year or more but less than two years-50%;

18 (iii) two years or more but less than three years-  
19 25%; and

20 (iv) three years or more-0%.

21 (B) The department will pay the existing contractor the  
22 amount indicated in subparagraph (A) of this paragraph.

23 (C) An existing sign contractor receiving a new

1 contract will not be eligible for compensation upon expiration  
2 of the contract.

3 (D)The department will provide an estimate of the  
4 economic value of these signs in the department's request for  
5 offer.

6 (r) Sale, transfer, and assignment of contract. The  
7 contractor shall not sell, transfer, assign, or otherwise  
8 dispose of the contract or any portion thereof, or of its right,  
9 title, or interest therein, without the prior written consent of  
10 the department.

11  
12 §25.703. Notice and Proposal Submission.

13 (a) Notice. The department will publish a notice of intent  
14 to award a major agricultural sign program contract in industry  
15 related publications and the Texas Register at least 45 calendar  
16 days prior to contractor selection. The notice shall include  
17 proposal requirements for potential contractors.

18 (b) Eligibility. A contractor must submit a sealed  
19 proposal to the director of the Traffic Operations Division by  
20 mail or overnight delivery in compliance with the location,  
21 date, and time requirements of the notice.

22 (c) Contents. The proposal shall contain:

23 (1) the identity of key individuals, including

1 subcontractors, who are proposed to be part of the contractor's  
2 project team together with their respective qualifications and  
3 experience on similar or related projects, the expected amount  
4 of involvement, and the time commitment for each individual and  
5 subcontractor;

6 (2) a description of the contractor's:

7 (A) capability for undertaking and performing the work,  
8 including the types and locations of similar work performed in  
9 the last three years that best characterize the quality and cost  
10 control of the contractor as well as the names, addresses, and  
11 phone numbers of knowledgeable individuals who can be contacted;  
12 and

13 (B) internal policies and procedures related to work  
14 quality, cost control, and resources, including management and  
15 organization capabilities currently available for performing the  
16 work;

17 (3) a demonstration of the contractor's understanding of  
18 the project, based on information available from the department,  
19 site visits by the contractor, and knowledge of applicable  
20 regulations or requirements;

21 (4) a realistic, clear, and concise approach or course of  
22 action to meet the goals and objectives of the project that  
23 identifies potential impacts, impediments, or conflicts;

1 (5) a description of internal methods for schedule  
2 control, including current references that confirm the  
3 contractor's ability for the timely completion of project work;

4 (6) the location or locations where the work will be  
5 accomplished by the contractor and any subcontractor, the  
6 identities of those who will be involved at each work location  
7 for the major work elements on the project, the location of the  
8 business offices, and the location where the signs will be  
9 fabricated;

10 (7) an audited financial statement dated no later than  
11 the fiscal year immediately preceding the date of the proposal;

12 (8) supporting documentation such as graphs, charts,  
13 photos, resumes, and references; and

14 (9) the best value for the state which shall include:

15 (A) the proposed return to the department from fees  
16 collected from program participants (the minimum return that a  
17 contractor may propose for return to the department is 10%) for  
18 the installation fee, annual rental fee, covering fee, and sign  
19 replacement fee; and

20 (B) the proposed amount for the rental and installation  
21 fees that will be charged to a participant in the program.

22 (d) Page limits. The entire proposal should not exceed 25  
23 pages. A page is defined as an 8.5 by 11 inch or 11 by 17 inch

1 sheet containing text, pictures, graphs, charts, plan sheets, or  
2 any other graphics. Not more than five 11 by 17 inch sheets may  
3 be used in conjunction with pictures, graphs, charts, plans, and  
4 other graphics. If 11 by 17 inch sheets contain text only, they  
5 will be counted as two pages.

6

7 \$25.704. Evaluation.

8 (a) Ineligible proposal. The department will not consider  
9 a proposal that:

10 (1) fails to comply with any requirement of the notice;

11 or

12 (2) fails to guarantee a percentage to be paid to the  
13 department of 10% of the fees collected from program  
14 participants.

15 (b) Evaluation. The department will determine the best  
16 value to the state by evaluating the contractor's:

17 (1) proposed team and the time commitment for each team  
18 member;

19 (2) capability for undertaking and performing the work;

20 (3) understanding of the project;

21 (4) quality of the services offered;

22 (5) financial resources and ability to perform the work;

23 (6) approach or course of action to meeting the goals and

1 objectives;

2 (7) ability to meet the schedule;

3 (8) ability to fulfill any other criteria listed in the  
4 notice;

5 (9) proposed percentage to be paid to the department from  
6 fees collected from program participants; and

7 (10) proposed amount for the rental and installation fees  
8 that will be charged to participants in the program.

9 (c) Award of contract.

10 (1) All proposals received by the director of the Traffic  
11 Operations Division will be evaluated by a panel of department  
12 employees to determine which proposal will be the best value for  
13 the state, and a recommendation for award will be forwarded to  
14 the commission to accept or reject.

15 (2) The department will notify the contractor by  
16 certified mail of the award of the sign program contract within  
17 10 calendar days of the date of the award. To accept the award,  
18 the contractor must execute a contract with the department  
19 within 30 calendar days of the date of the award.

20 (3) The contract shall be in a form prescribed by the  
21 department and shall, at a minimum, include all terms and  
22 conditions prescribed by this subchapter and such other terms  
23 and conditions the department deems advantageous to the state.

NOTE: Repealed Sections

Exhibit E

OGC: 07/17/05 8:44 AM

1 §25.705. Specifications.

2 (a) Design. A sign shall:

3 (1) have a brown background with a white reflective  
4 legend and border;

5 (2) meet the applicable provisions of the Texas MUTCD;

6 (3) have background, legend, and border material which  
7 conforms with department specifications for reflective sheeting;

8 (4) be fabricated, erected, and maintained in conformance  
9 with department specifications and fabrication details; and

10 (5) not be illuminated internally or externally.

11 (b) Content. A sign shall:

12 (1) contain the name of the agricultural interest as it  
13 is commonly known to the public, the mileage to the agricultural  
14 interest and a directional arrow or other directional  
15 information;

16 (2) contain a maximum of two lines of legend including  
17 all directional information for each authorized agricultural  
18 interest;

19 (3) not contain a corporate or trademark symbol;

20 (4) not contain a message, symbol, or trademark that  
21 resembles an official traffic control device;

22 (5) show a maximum of two authorized major agricultural  
23 interests per sign assembly;

1 (6) show the authorized major agricultural interest on  
2 the sign in the following order when more than one major  
3 agricultural interests is shown on the same sign assembly:

4 (A) major agricultural interests for the left  
5 direction;

6 (B) major agricultural interests for the right  
7 direction; and

8 (C) major agricultural interests for the straight ahead  
9 direction;

10 (7) not trailblaze; and

11 (8) show straight ahead signing for eligible major  
12 agricultural interests that are located on property contiguous  
13 to an eligible rural highway with the sign assembly located only  
14 at or near an intersection.

15 (c) Placement. Subject to approval of the department, a  
16 sign shall be installed or placed:

17 (1) to take advantage of natural terrain;

18 (2) to have the least impact on the scenic environment;

19 (3) to avoid visual conflict with other signs within the  
20 highway right of way;

21 (4) with a lateral offset equal to or greater than  
22 existing signs;

23 (5) with each authorized major agricultural interest

1 appearing a maximum of one time for each direction of travel on  
2 the eligible rural highway;

3 (6) without blocking motorists' visibility of existing  
4 traffic control and signs;

5 (7) in locations that are not overhead unless approved by  
6 the department;

7 (8) in the following order for the direction of traffic  
8 when approaching an approved location where more than one sign  
9 assembly is to be located:

10 (A) first, major agricultural interests signed for the  
11 left direction;

12 (B) second, major agricultural interests signed for the  
13 right direction;

14 (C) third, major agricultural interests signed for the  
15 straight ahead direction, with the sign placed at the far right  
16 corner of an intersection; and

17 (9) with at least the minimum longitudinal spacing  
18 between signs and/or other traffic control devices as required  
19 by the Texas MUTCD based on the speed of the eligible roadway.

20  
21 §25.706. Eligibility. To be eligible to have a sign, the  
22 agricultural interest must:

23 (1) be a farm, ranch, winery, nursery, greenhouse or other

1 facility that:

2 (A) sows or cultivates an agricultural product;

3 (B) devotes a minimum of five acres of land to the  
4 production of the agricultural product;

5 (C) markets the product on the premises as a retail sale;

6 (D) conducts public tours of the grounds or facilities;

7 and

8 (E) is located within five miles of an intersection with  
9 an eligible rural highway;

10 (2) be located with driveway access to an eligible rural  
11 highway or intersecting crossroad;

12 (3) be visible, or have on-premise signing visible, from  
13 the major agricultural interest's driveway access or eligible  
14 rural highway, or crossroad;

15 (4) comply with all applicable laws concerning the  
16 provisions of public accommodations without regard to race,  
17 religion, color, sex, or national origin;

18 (5) post its hours of operation on or near the main  
19 entrance so that they are visible to the public during opened  
20 and closed hours;

21 (6) provide modern restroom facilities and drinking water;

22 (7) provide adequate parking accommodations; and

23 (8) not qualify for a specific information logo sign

NOTE: Repealed Sections

Exhibit E

OGC: 07/17/05 8:44 AM

1 program sign pursuant to Subchapter G of this chapter.

2

3 §25.707. Program Operation.

4 (a) Application.

5 (1) Applications are available upon request from the  
6 Texas Department of Transportation, Traffic Operations Division,  
7 125 E. 11th Street, Austin, Texas 78701-2483.

8 (2) A major agricultural interest desiring to participate  
9 in the sign program must submit an application to the contractor  
10 and verify that all requirements are met. Applications must be  
11 submitted to the location as stated on the application form.  
12 The contractor will verify the eligibility of each applicant.

13 (3) Only one application per agricultural interest per  
14 direction of travel per eligible highway will be accepted.

15 (4) Applications will be reviewed by the contractor and  
16 applicants notified in writing of being qualified or rejected.  
17 Rejected applications will be returned and deficiencies noted.

18 (5) Rejected applicants may resubmit their application  
19 when the noted deficiencies have been corrected.

20 (b) Responsibilities and rights.

21 (1) The major agricultural interest may renew its  
22 participation agreement with the contractor on an annual or  
23 multi-year basis no later than 60 days from the termination date

1 of the contract. If the major agricultural interest does not  
2 renew the agreement with the contractor, the contractor will  
3 remove the signs at the end of the participation agreement.

4 (2) A sign of a major agricultural interest may be  
5 covered by the contractor if the major agricultural interest is  
6 temporarily closed for a period not exceeding 30 calendar days.  
7 The signs shall remain covered until the major agricultural  
8 interest reopens.

9 (c) Removal of sign.

10 (1) A sign shall be removed by the contractor if the  
11 major agricultural interest:

12 (A) ceases to exist;

13 (B) fails to pay the annual rental fee or other fees  
14 within 30 calendar days of the due date as specified on the  
15 agreement;

16 (C) is temporarily closed for more than 30 calendar  
17 days;

18 (D) does not meet the minimum requirements as stated  
19 herein, and all corrections are not made within 30 calendar days  
20 of written notification; or

21 (E) is sold, and the new major agricultural interest  
22 does not continue as an eligible major agricultural interest.

23 (2) If the sign is removed due to the default of the

1 major agricultural interest to perform within the terms of the  
2 participation agreement and the requirements as stated herein,  
3 the participation agreement is terminated between the major  
4 agricultural interest and the contractor. All funds paid to the  
5 contractor by the major agricultural interest are forfeited.

6  
7 \$25.708. Appeal.

8 (a) Contractor. Any dispute as to the terms of the  
9 contract or an appeal of a decision made by the department will  
10 be governed by §9.2 of this title (relating to Contract Claim  
11 Procedure).

12 (b) Major agricultural interest. A major agricultural  
13 interest may appeal a decision by filing a petition for an  
14 administrative hearing pursuant to §§1.21-1.61 of this title  
15 (relating to Contested Case Procedure).