

**Subchapter A. Basic Manual of Rules, Rates and Forms
for the Writing of Title Insurance in the State of Texas
28 TAC §9.1**

**Subchapter C. Texas Title Insurance Statistical Plan
28 TAC §9.401**

1. INTRODUCTION. The Commissioner of Insurance adopts amendments to §9.1 and §9.401, concerning the adoption by reference of certain amendments to the *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas* (Basic Manual) and to the Texas Title Insurance Statistical Plan (Statistical Plan). The amended sections are adopted with changes to the proposed text published in the December 21, 2007, issue of the *Texas Register* (32 TexReg 9526). The items adopted by reference include typographical corrections and other non-substantive changes based on public comments.

2. REASONED JUSTIFICATION. The amendments to the Basic Manual and Statistical Plan, which the amended sections adopt by reference, were considered at the rulemaking phase of the 2006 Texas Title Insurance Biennial Hearing (Biennial Hearing) held on September 5, 2007, Docket Number 2668. The rulemaking phase of the hearing was conducted pursuant to Insurance Code §2703.205. The adoption by reference of new rules and forms and the modification or replacement of currently existing rules and forms in the Basic Manual and Statistical Plan facilitate the administration and regulation of title insurance in this state. These amendments clarify and standardize the rules and forms regulating the writing and the business of title

insurance in the State of Texas. The amendments to the Basic Manual and Statistical Plan are identified by the item number used in the September 5 hearing. Pursuant to Commissioner's Order No. 08-0187, March 5, 2008, Items 2006-11, 2006-13, 2006-23, 2006-25, 2006-28, 2006-37, and 2006-64 were disapproved. The section of Item 2006-44 regarding the Specific Areas and Procedures 5 of the Minimum Standards, Specific Instructions and Report Forms for the Audit of Trust Funds of the Basic Manual was also disapproved. Items 2006-18, 2006-20, 2006-21, 2006-41, and 2006-67 were approved for withdrawal from consideration during the rulemaking phase of the hearing at the request of each entity that originally filed the items for consideration.

The effective date of the adopted amendments to §9.1 and §9.401 is May 1, 2008. In accordance with Insurance Code §2703.205(d), the ratemaking phase of the Biennial Hearing was referred to the State Office of Administrative Hearings (SOAH), SOAH Docket No. 454-07-3748.G. The ratemaking phase of the hearing was concluded on February 25, 2008, by settlement of the parties. Pursuant to Commissioner's Order No. 08-0160, dated February 25, 2008, the effective date of the amendments adopted pursuant to the ratemaking phase of the hearing will be May 1, 2008. The rate rules were adopted as part of the Basic Manual, and the Department has changed the text of the amendments to §9.1 in order to conform the effective date of the items adopted by reference in the rulemaking phase of the Biennial Hearing with the effective date of the items adopted in the ratemaking phase of the hearing. In addition, amendments to the Statistical Plan were adopted, and the Department has changed the text of the amendments to §9.401 in order to conform the effective date of

the amendments to the Statistical Plan adopted in the rulemaking phase of the Biennial hearing with the amendments to the Statistical Plan adopted in the ratemaking phase of the hearing. The Department also has made several non-substantive changes to the items adopted by reference. None of these changes, however, materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice.

The Department has made typographical corrections to items adopted by reference, including correcting a duplicate code reference for Rate Rule Reference R-29C on Table 4 of the Statistical Plan. The code for Rate Rule Reference R-29C on Table 4 of the Plan has been corrected to 0895. Additionally, in response to comments, the Department has made the following non-substantive changes to the items adopted by reference:

Item 2006-4 – The Department has capitalized the term “Land” in paragraph 1 of the amended Supplemental Coverage Manufactured Housing Unit Endorsement (T-31.1) in order to conform to the capitalization conventions adopted by Items 2006-24 and 2006-26.

Item 2006-5 – The Department has changed several references to “Conditions and Stipulations” to “Conditions” in order to conform to the language of the Loan Policy as amended by Item 2006-26. The Department has also changed a reference to the Amount of Insurance definition in paragraph 4 from Section 2(c)(ii) to Section 1(a) in order to reflect the correct paragraph number of the amended Loan Policy.

Items 2006-10 and 2006-16 – The Department has changed the references to

“Mortgagee Policy” and “Owner Policy” found in Items 2006-10 and 2006-16 to “Loan Policy” and “Owner’s Policy, respectively, in order to conform to the new naming conventions adopted by Items 2006-24 and 2006-26 and to be consistent with Item 2006-27. The Department has also updated the language of paragraph B(6) of Item 2006-10 to correspond with the new requirements of Procedural Rule 45, as amended by Item 2006-16.

Item 2006-26 – The Department has reformatted the Loan Policy of Title Insurance (T-2) form to include check boxes in front of option items within the form. The revised format is consistent with the format contained in Item 2006-26 as originally filed and considered at the September 5 hearing.

Item 2006-27 – The Department has revised paragraph bb to correct a software conversion problem that caused the language to be scrambled in the proposal. The revised language of paragraph bb is consistent with the language contained in Item 2006-27 as originally filed and considered at the September 5 hearing. The Department has also changed the form number of the Conditions of the Loan Policy in paragraph ee from “T-1” to “T-2” in order to reflect the correct form number of the policy.

Item 2006-38 – The Department has added the language “Procedural Rule 67, adopted on May 1, 2008, is effective October 1, 2008.” The Department believes that additional notice is warranted in order to provide a sufficient transition time for all underwriters affected by the rule, including additional time for the retooling of their databases and the upgrading of their data gathering capabilities, in order to meet the requirements of the rule.

Item 2006-65 – The Department has added the language “The amendments to P-24 adopted on May 1, 2008, are effective July 1, 2008.” The Department believes that additional notice is warranted in order to provide a sufficient transition time for all parties to negotiate prior written agreements under the new restrictions provided in the amended Procedural Rule 24 of the Basic Manual. The Department has also added the ‘%’ sign for the 90/10 category of premium splits.

3. HOW THE SECTIONS WILL FUNCTION. The amendments to §9.1 and §9.401 revise the date of the amended Basic Manual and Statistical Plan. The amendments to §9.1 also correct a typographical error by updating the zip code referenced in the rule. The items which are the subject of this adoption are as follows:

Item 2006-1 – Adoption of a new Co-Insurance Endorsement Form T-48 to accommodate commercial lenders and owners who often request this endorsement in multi-state, multi-site, and other large transactions.

Item 2006-2 – Adoption of an amendment to Procedural Rule P-6 to authorize a Co-insurer to issue a Co-insurance Endorsement to another Title Insurer’s Owner or Mortgagee Policy when the co-insurance transaction exceeds fifteen million dollars.

Item 2006-3 – A repeal of the current Verification of Services Rendered Form T-00 and adoption of a new Form T-00 to organize the information each entity participating in the transaction must provide and to assist underwriters in reporting that information to the Department.

Item 2006-4 – Adoption of an amendment to the Supplemental Coverage Manufactured Housing Unit Endorsement Form T-31.1 to conform to the new American Land Title Association form by clarifying the insurance against personal property liens and by ensuring that a foreclosure of an insured mortgage may be conducted by one procedure.

Item 2006-5 – Adoption of an amendment to the Revolving Credit Endorsement Form T-35 to change the name to the Revolving Credit/Future Advance Endorsement Form T-35 and to conform to the American Land Title Association form by expanding coverage to the lender.

Item 2006-6 – Adoption of an amendment to the Residential Real Property Affidavit T-47 by removing specific language in the affidavit that requires the name of the title company to be identified and to insert generic language to allow the affidavit to be prepared and executed early in the transaction process.

Item 2006-7 – Adoption of a new Procedural Rule (P-63) that incorporates the procedural portion of Rate Rule R-2.(d) concerning a policy issued to a qualified intermediary under IRS Code 1031 and also contains deletions and improved formatting.

Item 2006-8 – Adoption of a new Procedural Rule (P-64) regarding the treatment of subordinate liens and leases in order to better alert title companies to comply with the instruction in Procedural Rule P-11.b.(8).

Item 2006-9 – Adoption of a new Procedural Rule (P-65) in conformity with Insurance Code §2704.051 and §2704.052 to require an Owner's Policy be issued in connection with a Mortgagee Policy unless the person acquiring title rejects it.

Item 2006-10 – Adoption of a new Procedural Rule (P-66) to include procedures currently in other rate and procedural rules into one rule relating to determining the correct amount of insurance in owner and mortgagee policies.

Item 2006-12 – Adoption of an amendment to Procedural Rule P-7 to incorporate the language from Bulletin 157 into the procedural rules and to resolve the question as to whether it is permissible to include the "successor in ownership" language as part of the Proposed Insured in a Commitment.

Item 2006-14 – Adoption of an amendment to Procedural Rule P-21 to make the terms used in the rule consistent with Insurance Code §2651.203 and to update references to the Commissioner of Insurance.

Item 2006-15 – Adoption of an amendment to Procedural Rule P-28 to eliminate the need for a company owning multiple title insurance companies to make multiple course submissions and/or assignments between the related title insurance company providers.

Item 2006-16 – Adoption of an amendment to Procedural Rule P-45 to make the rule consistent with the federal requirements regarding the Maximum Claim Amount for FHA-insured loans and to allow the insured amount to be determined by lenders through a lender estimation of the maximum amount that may be secured by lien.

Item 2006-17 and Item 2006-42 (combined) – Adoption of an amendment to Procedural Rule P-53 to remove the sunset provision contained within the rule.

Item 2006-19 – Adoption of an amendment to Administrative Rule L-1 to provide that the Department send notice of renewal to each agent at least 45 days prior to the expiration of the agent's license and, if not renewed, within 45 days after the license expires. The notice provision applies only to active licenses, is administrative in nature, does not undermine the responsibility of the licensed agent to maintain a current license, and does not prejudice any enforcement action brought by the Department.

Item 2006-22 – Adoption of an amendment to the Minimum Standards, Specific Instructions and Report Forms for Audit of Trust Funds Required of Texas Title Insurance Agents, Direct Operations, Title Attorneys, and Attorney's Licensed as Escrow Officers pertaining to the Policy Guaranty Fee and Guaranty Assessment Recoupment Charge to provide that maintaining a policy guarantee fee escrow account and a guaranty assessment recoupment charge escrow account separate from the agent's standard audited escrow account is optional.

Item 2006-24 – Adoption of an amendment to the Owner Policy of Title Insurance Form T-1 based on the new 2006 American Land Title Association Owner's Policy.

Item 2006-26 – Adoption of an amendment to the Mortgagee Policy of Title Insurance Form T-2 based on the new 2006 American Land Title Association Loan Policy.

Item 2006-27 – Adoption of an amendment to Procedural Rule P-1 to rename the "Owner Policy" and the "Mortgagee Policy" to coincide with the terminology utilized in

the corresponding American Land Title Association policies and to provide that the new terminology be incorporated into newly printed or electronically generated forms.

Item 2006-29 – Adoption of an amendment to Procedural Rule P-32 to clarify time periods for retention of documents and to conform this procedural rule to the provisions of UETA and E-SIGN.

Item 2006-30 – Adoption of an amendment to Procedural Rule P-36 to conform with the proposed amendments to the Owner Policy and Mortgagee Policy and to increase the threshold for arbitral matters to two million dollars and delete the choice of law provision.

Item 2006-31 – Adoption of an amendment to Procedural Rule P-37 to conform to the proposed amendments to the Owner Policy and Mortgagee Policy.

Item 2006-32 – Adoption of an amendment to the Facultative Reinsurance Agreement Form T-18.1 based on changes contained in the new American Land Title Association's Reinsurance Agreement and to clarify a reinsurer's payment obligations.

Item 2006-33 – Adoption of an amendment to the Restrictions, Encroachments, Minerals Endorsement T-19 to conform to the new American Land Title Association Endorsement 9.3-06, which may be issued with the amended Mortgagee Policy T-2.

Item 2006-34 – Adoption of an amendment to the Restrictions, Encroachments, Minerals Endorsement - Owner Policy T-19.1 to conform to the new American Land Title Association Endorsement 9.5-06, which may be issued with the amended Owner Policy T-1.

Item 2006-35 – Adoption of an amendment to the Tertiary Facultative Reinsurance Agreement (Type I) Form T-21.1 to conform to the amendments to the Facultative Reinsurance Agreement Form T-18.1.

Item 2006-36 – Adoption of an amendment to the Tertiary Facultative Reinsurance Agreement (Type II) Form T-21.2 to conform to the amendments to the Facultative Reinsurance Agreement Form T-18.1.

Item 2006-38 – Adoption of a new Procedural Rule (P-67) to provide better auditing tools regarding Insured Closing and Settlement Letters and to ensure compliance with Texas Insurance Code Chapter 2702.

Item 2006-39 – Adoption of a new Procedural Rule (P-68) to clarify that Insurance Code §§521.101 - 521.103 applies to the title industry and to ensure title industry compliance with the statute.

Item 2006-40 – Adoption of an amendment to Procedural Rule P-1, subparagraph f to conform the definition of closing the transaction to the statutory definition of closing the transaction in Insurance Code §2501.006.

Item 2006-43 – Adoption of an amendment to Insuring Forms T-7, T-1, T-1R, T-2, T-2R, and T-44 to remove outdated language regarding the consumer complaint notice.

Item 2006-44 (partial) – Amended submission to amend the Minimum Standards, Specific Instructions and Report Forms for Audit of Trust Funds Required of Texas Title Insurance Agents, Direct Operations, Title Attorneys and Attorneys Licensed as Escrow

Officers in Section V to add language to Minimum Escrow Account Procedures and Internal Controls 18 to help identify fraudulent real estate transactions.

Item 2006-45 – Adoption of an amendment to Administrative Rule L-1 to clarify that a title insurance agent may not commence business in a county until authorized by the Department.

Item 2006-46 – Adoption of an amendment to Administrative Rule L-2 to require attorneys who are licensed escrow officers to close the transaction in the title agent's name, to require attorneys who are licensed escrow officers to use the title agent's escrow account, and to require escrow officers to keep a current address on file with the Department.

Item 2006-47 – Adoption of an amendment to Administrative Rule L-2 to clarify that a non-attorney employee of an attorney must be licensed as escrow officer prior to performing the duties of an escrow officer.

Item 2006-48 – Adoption of an amendment to Administrative Rules L-1 and L-2 to ensure that the Title Agent and Escrow Officer licensing procedures are consistent with the Texas Business Organizations Code, which went into effect on January 1, 2006, and to simplify the merger, exchange, and conversion process when an organizational restructuring results in a less than 50% change in ownership.

Item 2006-49 – Adoption of an amendment to Administrative Rule G-1 to clarify that Policy Guaranty Fees must be postmarked on or before the due date to be considered timely.

Item 2006-50 – Adoption of an amendment to the Texas Title Insurance Statistical Plan to correct the listing of the County Code for Nolan County, to remove the Property Classification Codes for Texas Operations, and to add a new Standard Endorsement Code for Texas Operations relating to the Restrictions, Encroachment, Minerals Endorsement – Owner’s Policy (T-19.1).

Item 2006-65 – Adoption of an amendment to Procedural Rule P-24 to provide restrictions on a title insurance company, agent, or direct operation regarding prior written agreements that deviate from the premium split set forth in P-24. The amendment changes the premium split for transactions involving an insured policy amount in excess of \$125,000 by requiring that payment shall not exceed fifty percent for furnishing title evidence, or furnishing title evidence and title examination, and shall not exceed fifty percent for closing the transaction, or closing the transaction and title examination. The amendment also restricts prior written agreement arrangements by requiring that prior written agreements must be entered into 90 days prior to closing and by stipulating that the parties to the agreement must be licensed in the same or in contiguous counties when an insured policy amount is \$125,000 or less. The amendment further requires that all payments must be remitted within 30 days after the date of recording of the conveying instrument and that the prior written agreement restrictions apply also to escrow officers.

The Department has filed a copy of each of the amendments adopted by reference with the Secretary of State’s *Texas Register* Section. Persons desiring copies of the adopted amendments may obtain them from the Office of the Chief Clerk,

Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78701-3938. To request copies, please contact Sylvia Gutierrez at 512/463-6327.

4. SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Item 2006-4

Comment: One commenter noted that the reference to the term “land” in paragraph 1 of Item 2006-4, regarding T-31.1, should be capitalized to conform to capitalization standards used in Items 2006-24 and 2006-26.

Agency Response: The Department agrees that the reference to the term “land” should be “Land” and has made the correction for consistency and clarity. This comment was received after the expiration of the comment period but has been included to address a nonsubstantive typographical correction.

Item 2006-5

Comment: One commenter noted that Item 2006-5, regarding Form T-35, refers to paragraphs in the old Mortgagee Policy which will be replaced with new references with the adoption of Item 2006-26.

Agency Response: The Department agrees that the reference to “Conditions and Stipulations” should be “Conditions.” The Department also agrees that the reference to Section 2(c)(ii) in paragraph 4 should be Section 1(a). The Department has corrected these errors for consistency and clarity. This comment was received after the expiration of the comment period but has been included to address a nonsubstantive

typographical correction.

Item 2006-10 and Item 2006-16

Comment: One commenter generally noted that Item 10, regarding P-66, may be inconsistent with Item 16, regarding P-45. Another commenter suggested that Paragraph B(6) of Item 2006-10, regarding P-66, should include the same language as Item 2006-16 regarding the proposed P-45 so that both rules read consistently. The commenter also suggested that the term “Mortgagee Policy” should be revised to “Loan Policy” to be consistent with Item 2006-26 and Item 27. The commenter further suggested that the term “Owner Policy” should be revised to “Owner’s Policy” to be consistent with Item 24 and Item 27.

Agency Response: The Department agrees and has made the requested changes for clarity and consistency.

Item 24 and Item 26

Comment: One commenter generally suggested that adoption Items 2006-24 and 2006-26 may necessitate a need for amendments to the Owner Policy Rejection Form (T-56).

Agency Response: The Department will review and consider all future proposals regarding this issue. This comment was received after the expiration of the comment period but has been included to acknowledge the concern raised by the commenter.

Item 2006-27

Comment: One commenter suggested that paragraph bb of Item 27 regarding the proposed P-1 should be revised to correct a software conversion problem that caused the language to be scrambled in the proposal. The commenter has requested that the paragraph be revised to reflect proper grammar as contained in the original filing on August 30, 2007, and considered at the September 5 hearing. The commenter further suggested that paragraph ee of P-1 incorrectly references the Conditions of the Loan Policy as “T-1” and that the form number should be revised to “T-2” to reflect the correct form number the Conditions of the Loan Policy.

Agency Response: The Department agrees and has made the requested changes for clarity and consistency.

Item 2006-38

Comment: One commenter requested that the effective date for Item 2006-38, regarding P-67, be either October 1, 2008, or six months from the date of the Commissioner’s Order adopting the rule in order to provide sufficient lead time for underwriters to retool their databases to capture all of the items listed in P-67 and to upgrade their data gathering capabilities to comply with the new rule. The commenter also requested that language be added to P-67 to expressly provide that title insurance companies may restrict the online access of title insurance agents and direct operations to only that portion of the electronic database record which pertains to the transactions in which real estate loans were closed or will be closed by that title insurance agent or

direct operation. The commenter further requested that a document retention requirement of three years from the date the insured closing letter is issued be added to the rule.

Agency Response: The Department agrees that providing sufficient lead time for underwriters to retool their databases is reasonable. The effective date of Item 2006-38 will be October 1, 2008, in order to provide a sufficient transition time for all underwriters affected by the rule changes. The Department declines, however, to add language to expressly provide that title insurance companies may restrict the online access of title insurance agents and direct operations to only that portion of the electronic database record which pertains to the transactions in which real estate loans were closed or will be closed by that title insurance agent or direct operation. The language of P-67(a) already provides that title insurance companies “must maintain an electronic database record of each identifiable, specific transaction,” and the record for which title insurance agents and direct operations are allowed access is the specific record created by that transaction. The singular reference to “the record” is sufficient to restrict the access of title insurance agents and direct operations to the electronic database record which pertains to the transactions in which real estate loans were closed or will be closed by that title insurance agent or direct operation. The Department also declines to include additional document retention requirements in P-67, as such an addition may be construed as a substantive change which would require publication in the *Texas Register* and a 30-day comment period.

Item 2006-44

Comment: Many commenters stated positions in opposition to Item 2006-44 regarding the proposed changes to Specific Areas and Procedures 5 of the Minimum Standards, Specific Instructions and Report Forms for the Audit of Trust Funds of the Basic Manual. Commenters generally expressed concern regarding Departmental interpretation of the proposed changes, noting that the proposed version of Item 2006-44 excludes language that would have expressly included “search services” as a pass-through fee chargeable to consumers. Many commenters suggested that failure to allow the tax search service as an allowable pass-through fee would ultimately hurt consumers causing delays in closings and that the cost of multiple certificates from multiple taxing jurisdictions can exceed the cost of a single statement from a tax search service provider. Several commenters stated that failure to allow the tax search service as an allowable pass-through fee would also result in upward pressure on rates as the expense would be absorbed by title companies electing to use the service. Many commenters suggested that local taxing jurisdictions are not properly staffed to handle the volume of certificate requests that would occur should there be a shift from the usage of tax search services. Some commenters pointed out that these services have been in usage for at least two decades. Many commenters raised concern over the current and projected backlog of requests through local taxing jurisdictions and suggested that this would cause significant delays in processing real estate closings. Several commenters suggested that the residential contract forms promulgated by the Texas Real Estate Commission (TREC) provide that it is the seller’s responsibility to pay for “tax statements or

certificates.” Several commenters interpreted this language to mean that failure to allow the tax search service as an allowable pass-through fee conflicts with the TREC promulgated contract forms. Several commenters noted that a certificate from a taxing authority provides information on taxes levied by that authority only but that a tax search service provides comprehensive information from multiple taxing authorities in one service. Several commenters stated that tax information is not part of the title plant and that title companies must rely on third-party sources, either the taxing authority or a search service, for tax information. Many commenters also suggested that tax search services are more reliable, produce fewer claims than government issued certificates, and are not subject to state sovereign immunity when search mistakes do occur. Several commenters noted that tax search companies currently guarantee the accuracy of the information they provide. Several commenters also noted that the usage of tax search services reduces the cost of tax information through competition and that a shift to the exclusive usage of government issued certificates would increase the cost of the searches by eliminating competition. Several commenters also pointed out that tax search services provide additional information, such as Home Owner Association dues and assessments, that is not otherwise readily available. One commenter pointed out that the proposed instruction does not provide any guidance to the industry regarding the Department’s position on the tax search service fee.

Agency Response: The Department will not adopt the proposed changes to Specific Areas and Procedures 5 of the Minimum Standards, Specific Instructions and Report Forms for the Audit of Trust Funds of the Basic Manual at this time. However, the

Department is aware of industry practices which may go beyond the scope of the current Specific Areas and Procedures 5 and will review any suggestions for future proposals regarding the issue of pass-through fees. Additionally, tax search services have always been considered to be part of overhead and that a fee for such services is not enumerated as a consumer pass-through fee in the language of the current Specific Areas and Procedures 5. The Department's decision not to adopt changes to Specific Areas and Procedures 5 at this time does not in any way alter the Department's position on this issue. Specific Areas and Procedures 5 does not disallow the use of tax search services, but merely reflects that such fees have already been accounted for in the rate for title insurance.

Item 2006-65

Comment: One commenter noted that the second paragraph of Item 2006-65 regarding the proposed changes to P-24 omits the '%' sign for the 90/10 category of the premium spits.

Agency Response: The Department agrees and has made the correction.

Comment: One commenter stated that the last sentence of the third paragraph of Item 2006-65 regarding the proposed changes to P-24, as written, may be erroneously construed to apply the 30-day payment requirement to subparagraph (ii) but not to subparagraph (i).

Agency Response: The Department disagrees that the wording of the paragraph is ambiguous. The Department, however, clarifies that the last sentence of the third

paragraph is intended to apply to all payments, including payments made under both subparagraphs (i) and (ii) in the second sentence of the third paragraph of the amendment.

Comment: One commenter requested that the effective date for the third paragraph of Item 2006-65 regarding the proposed changes to P-24 be 120 days after the date of the Commissioner's Order adopting the rule in order to provide sufficient lead time for the parties to negotiate and execute prior written agreements. One commenter objected to the prior written agreements requirement in its entirety, stating that if the "payment shall not exceed language" requires a 50% payment for title evidence in the absence of a contract 90 days in advance and that such a requirement would make it uneconomical to handle title transactions for refinance lenders in numerous rural counties. The commenter further stated that restricting prior written agreements to contiguous counties for policy amounts of \$125,000 and under would make it uneconomical to handle title transactions outside the urban areas if the "payment shall not exceed" language requires that the payment must be exactly 90%.

Agency Response: The Department agrees that providing sufficient lead time for parties to negotiate prior written agreements under the new restrictions provided in the amended P-24 is reasonable. The effective date of Item 2006-65 will be July 1, 2008, in order to provide a sufficient transition time for all parties affected by the rule changes. The Department clarifies that the "payment shall not exceed" language of the rule necessarily means that the percentage splits in the rule apply in the absence of a prior written agreement. The Department disagrees that this requirement will make title

transactions uneconomical for lenders in rural counties, because the July 1, 2008, effective date provides sufficient lead time for parties to negotiate prior written agreements. The Department further disagrees that restricting prior written agreements to contiguous counties for policy amounts of \$125,000 and under will make title transactions uneconomical for urban title companies. The overall promulgated premium is designed to be nonconfiscatory to all segments of the industry. P-24, as amended by Item 2006-65, protects smaller, rural agents from overreaching by larger, urban agents. The adopted amendments to P-24 were proposed by industry leaders in response to Departmental concerns regarding overreaching, and the Department believes that the current proposal provides safeguards against overreaching in the current market conditions. The Department will review and consider future proposals for adjustments to P-24 as market conditions evolve.

Comment: One commenter stated general opposition to Item 2006-65 regarding the changes to P-24, noting that the language of the rule regarding premium splits could be interpreted to mean that all premium splits must be based on net premium instead of gross premium.

Agency Response: The Department understands the concern raised by the commenter and would point out that P-24 has always been promulgated to require premium splits to be based on the net premium rather than the gross premium. This comment was received after the expiration of the comment period but has been included to provide guidance to the industry regarding the Department's position on the issue raised by the commenter.

5. NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTIONS.

For With Changes: National Closing Solutions; Texas Land Title Association; and Winstead.

Against Item 2006-44: Alamo Title Company; Alliant National Title Insurance Company; Data Trace; Edwards Abstract and Title Co.; Ellis County Abstract & Title Company, Inc.; Federal Title, Inc.; First American Title Insurance Company; Flint-Lambert; Gracy Title Company; Heath, Davis & McCalla; Heartland Security Insurance Group; Independence Title Company; Jefferson County Title Company; Kincy Abstract & Sabine Title Company; Land America Commonwealth Title Co.; Law Offices of John King; National Taxnet; North American Title; Nueces Title Company; Permian Abstract; Rattikin Title; Republic Title; San Jacinto Title Services; Sneed, Vine & Perry on behalf of Texas Land Title Association; Williams, Birnberg & Anderson, LLP; Winstead; Yoakum County Abstract Company; individual title agents; attorneys; and interested members of the public.

6. STATUTORY AUTHORITY. The amendments are adopted pursuant to Insurance Code §§2551.003, 2703.153, 2703.203, 2703.205 and 36.001. Section 2551.003 authorizes the Commissioner to adopt and enforce rules that prescribe underwriting standards and practices on which a title insurance contract must be issued, that define risks that may not be assumed under a title insurance contract, including risks that may not be assumed because of the insolvency of the parties to the transaction, and that the

Commissioner determines are necessary to accomplish the purposes of Insurance Code Title 11, which concerns the regulation of title insurance. Section 2703.153 authorizes and requires the Commissioner to collect data from each title insurance company and title insurance agent engaged in the business of title insurance relating to loss experience, expense of operation, and other material matters necessary for the fixing of premium rates. Section 2703.203 authorizes and requires the Commissioner to hold a biennial public hearing to consider adoption of premium rates and other matters relating to regulating the business of title insurance that an association, title insurance company, title insurance agent, or member of the public requests to be considered or that the Commissioner determines necessary to consider. Section 2703.205 authorizes and requires the Commissioner to consider rules, forms, endorsements, and related matters that do not have rate implications at the rulemaking phase of the biennial public hearing. Section 36.001 authorizes the Commissioner of Insurance to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

7. TEXT.

SUBCHAPTER A. Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas

§9.1. Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas. The Texas Department of Insurance adopts by reference the *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of*

Texas as amended effective May 1, 2008. The document is available from and on file at the Texas Department of Insurance, Title Division, Mail Code 106-2T, 333 Guadalupe Street, Austin, Texas 78701-3938.

SUBCHAPTER C. Texas Title Insurance Statistical Plan

§9.401. Texas Title Insurance Statistical Plan. The Texas Department of Insurance adopts by reference the rules contained in the *Texas Title Insurance Statistical Plan* as amended effective May 1, 2008. This document is published by the Texas Department of Insurance and is available from the Property and Casualty Data Services Division, Mail Code 105-5D, Texas Department of Insurance, William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104.

CERTIFICATION. This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on _____, 2008.

Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that amendments to §9.1 and §9.401, concerning the adoption by reference of certain amendments to the *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas* and to the Texas Title Insurance Statistical Plan specified herein, are adopted.

AND IT IS SO ORDERED.

MIKE GEESLIN
COMMISSIONER OF INSURANCE

ATTEST:

Gene C. Jarmon
General Counsel and Chief Clerk

COMMISSIONER'S ORDER NO. _____