

SUBCHAPTER RR
28 TAC §3.9901

INTRODUCTION. The Texas Department of Insurance (TDI) proposes to amend 28 TAC §3.9901, concerning the adoption of a valuation manual for reserving requirements. Section 3.9901 implements SB 1654, 84th Legislature, Regular Session (2015).

EXPLANATION. It is necessary to amend §3.9901 to implement the requirements of Insurance Code §425.073, which requires the commissioner to adopt a valuation manual that is substantially similar to the valuation manual approved by the National Association of Insurance Commissioners (NAIC). The NAIC Valuation Manual may be viewed through the following link:

www.naic.org/documents/cmte_a_latf_related_val_2018_edition_adopted_170808.pdf

TDI originally adopted the NAIC Valuation Manual through §3.9901 on January 13, 2017, in compliance with Insurance Code §425.073, which required the commissioner to adopt a valuation manual substantially similar to the valuation manual approved by the NAIC.

Under Insurance Code §425.073(c), after the commissioner adopts the manual by rule, changes to the manual must be adopted by rule and the changes must be substantially similar to changes adopted by the NAIC. The changes must be adopted with an effective date of no earlier than January 1 of the year immediately following a determination by the commissioner that changes to the valuation manual have been adopted by the NAIC. The NAIC's changes must be approved by an affirmative vote representing at least three-fourths of the members of the NAIC voting, but not less than a majority of the total membership, and by NAIC members representing jurisdictions totaling greater than 75 percent of the direct written premiums as reported in the most recently available life insurance and accident and health annual statements, health annual statements, and fraternal annual statements.

On August 9, 2017, the NAIC adopted changes to the NAIC Valuation Manual with a vote meeting the requirements set out in Insurance Code §425.073(c). On September 19, 2017, the commissioner issued Commissioner's Order No. 2017-5219, making the determination that the §423.073(c) threshold requirements regarding the NAIC vote had been met.

The NAIC Valuation Manual amendments proposed to be adopted by the commissioner provide updated reserving and reporting requirements for the valuation manual, in order to make it substantially similar to changes adopted by the NAIC. The proposed amendments would be applicable January 1, 2018.

This proposal includes provisions related to National Association of Insurance Commissioner rules, regulations, directives, or standards, and under Insurance Code §36.004 and §36.007, TDI must consider whether authority exists to enforce or adopt it. TDI has determined that Insurance Code §36.004 and §36.007 do not prohibit the proposed rule, because Insurance Code §425.073 requires TDI to adopt a valuation manual and subsection (b) of the section expressly authorizes TDI to adopt changes to the Valuation Manual that are substantially similar to changes adopted by the NAIC.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Doug Slape, deputy commissioner of the Financial Regulation Division, has determined that for each year of the first five years the proposed amendment is in effect, there will be no measurable fiscal impact on state and local governments as a result of the enforcement or administration of this proposal.

Mr. Slape does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendment is in effect, Mr. Slape expects that administering the proposed amendment will have the public benefits of ensuring that TDI's rules conform to Insurance Code §425.073 and the adoption of the amendments to the valuation manual, which increase the uniformity of reserving requirements amongst the states and simplify insurers' compliance with these requirements.

Mr. Slape expects that the proposed amendment will not increase the cost of compliance with Insurance Code §425.073 because it does not impose requirements beyond those in the statute. Insurance Code §425.073 requires that standard prescribed by the valuation manual is the minimum standard of valuation required under Insurance Code §425.0535. Insurance Code §425.073 requires that changes to valuation manual must be adopted by rule and must be substantially similar to changes adopted by the NAIC. As a result, the cost associated with the actions the rule requires does not result from the enforcement or administration of the proposed amendment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendment will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. Insurance Code §425.077 provides the commissioner with authority to grant exemptions for specific products or product lines of a domestic

company that is only doing business in Texas if certain conditions are met. TDI cannot consider other regulatory methods because the requirement to adopt the valuation manual and the requirement to use the valuation manual reserving methods are set out in the statute. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a cost on regulated persons.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. Submit any written comments on the proposal no later than 5 p.m., Central time, on November 13, 2017. TDI requires two copies of your comments. Send one copy to ChiefClerk@tdi.texas.gov, or to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Send the other copy to fin-gm@tdi.texas.gov, or to Doug Slape, Deputy Commissioner, Financial Regulation Division, Mail Code 112-1F, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The commissioner will also consider written and oral comments on the proposal in a public hearing under Docket No. 2803 at 10:30 a.m., Central time, on November 7, 2017, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas.

STATUTORY AUTHORITY. TDI proposes §3.9901 under Insurance Code §425.073 and §36.001.

Insurance Code §425.073 requires the commissioner to adopt changes to the valuation manual that are substantially similar to the changes to the valuation manual adopted by the NAIC, and it provides that after a valuation manual has been adopted by the commissioner by rule, any changes to the valuation manual must be adopted by rule and must be substantially similar to changes adopted by the National Association of Insurance Commissioners.

Insurance Code §36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 3.9901 implements Insurance Code §425.073, enacted by SB 1654, 84th Legislature, Regular Session (2015).

TEXT.

§3.9901. Adoption of Valuation Manual [~~Purpose~~] and Operative Date.

(a) The commissioner adopts [~~purpose of this subchapter is to adopt~~] by reference the National Association of Insurance Commissioners (NAIC) Valuation Manual, including subsequent changes that were adopted by the NAIC through August 9, 2017, as required by Insurance Code §425.073 [~~and to implement Insurance Code §425.077~~].

(b) [~~The commissioner adopts by reference the NAIC Valuation Manual.~~

[(c)] The operative date of the NAIC Valuation Manual in Texas is January 1, 2017.

CERTIFICATION. This agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 29, 2017.



Norma Garcia, General Counsel
Texas Department of Insurance