

SUBCHAPTER RR. VALUATION MANUAL
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 and related requirements. Section 3.9901 implements Insurance Code §425.073.

EXPLANATION. The amendment to §3.9901 is necessary to comply with Insurance Code §425.073, which requires the Commissioner to adopt a valuation manual that is substantially similar to the valuation manual adopted by the National Association of Insurance Commissioners (NAIC).

Under Insurance Code §425.073, the Commissioner must adopt the valuation manual, and any changes to it, by rule.

Under Insurance Code §425.073(c), when the NAIC adopts changes to the valuation manual, TDI must adopt substantially similar changes. This subsection also requires the Commissioner to determine that the NAIC's changes were approved by an affirmative vote representing at least three-fourths of the voting NAIC members, but not less than a majority of the total membership. In addition, the NAIC members voting in favor of amending the valuation manual must represent jurisdictions totaling greater than 75% of the direct written premiums as reported in the most recently available life, accident, and health/fraternal annual statements and health annual statements.

TDI originally adopted the valuation manual in §3.9901 on December 29, 2016, in compliance with Insurance Code §425.073. On August 13, 2022, the NAIC voted to adopt changes to the valuation manual. Forty-six jurisdictions, representing jurisdictions totaling 93.8% of the relevant direct written premiums, voted in favor of adopting the amendments to the valuation manual. The vote adopting changes to the NAIC valuation manual meets the requirements of Insurance Code §425.073(c).

This proposal includes provisions related to NAIC rules, regulations, directives, or standards. Under Insurance Code §36.004, TDI must consider whether authority exists to enforce or adopt it. In addition, under Insurance Code §36.007, an agreement that infringes on the authority of this state to regulate the business of insurance in this state has no effect unless the agreement is approved by the Texas Legislature. TDI has determined that neither §36.004 nor §36.007 prohibit the proposal because Insurance Code §425.073 requires TDI to adopt a valuation manual that is substantially similar to the valuation manual approved by the NAIC, and §425.073(c) expressly requires TDI to adopt changes to the valuation manual that are substantially similar to changes adopted by the NAIC.

In addition to clarifying existing provisions, the 2023 valuation manual includes changes that:

- require a hedging strategy be a Clearly Defined Hedging Strategy if modeling future hedging reduces the reserves under Valuation Manual Chapter 20 (VM-20) or Total Asset Recovery under Valuation Manual Chapter 21 (VM-21);
- add guidance and requirements for general assumptions and expense assumptions in VM-21;
- update prescribed swap spreads guidance in VM-20 to facilitate the London Interbank Offered Rate transition to the Secured Overnight Financing Rate; and
- add fields to experience reporting to reflect dividend plan code and COVID-19 indicator and the change field identifier.

The NAIC's adopted changes to the valuation manual can be viewed at content.naic.org/sites/default/files/pbr_data_valuation_manual_future_edition_redline.pdf. The proposed amendment to the section is described in the following paragraph.

Section 3.9901. TDI amends §3.9901 by striking the date on which the NAIC adopted its previous valuation manual and inserting the date on which the NAIC adopted its current valuation manual, changing it from August 17, 2021, to August 13, 2022.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Jamie Walker, deputy commissioner of the Financial Regulation Division, has determined that during each year of the first five years the amendment as proposed is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the amendment, other than that imposed by the statute. Ms. Walker made this determination because the proposed amendment does not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendment.

Ms. Walker 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 amendment as proposed is in effect, Ms. Walker expects that administering the rule will have the public benefit of ensuring that TDI's rules conform to Insurance Code §425.073.

Ms. Walker expects that the amendment as proposed will not increase the cost of compliance with Insurance Code §425.073 because the amendment does not impose requirements beyond those in the statute. Insurance Code §425.073 requires that changes to the valuation manual must be adopted by rule and must be substantially similar to changes adopted by the NAIC. As a result, any cost associated with adopting the changes to the valuation manual is a direct result of Insurance Code §425.073 and not the proposed amendment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the amendment as proposed will not have an adverse economic effect on small or micro businesses, or on rural communities. This is because the amendment does not impose any requirements beyond those required by 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 possible cost on regulated persons and no additional rule amendments are required. However, even if there was a cost, no additional rule amendments are required under Texas Government Code §2001.0045 because the proposed amendment is necessary to implement legislation. Specifically, the proposal implements Insurance Code §425.073, as added by Senate Bill 1654, 84th Legislature, 2015.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the amendment as proposed is in effect, the amendment:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will not expand, limit, or repeal an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

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. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on December 26, 2022. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, PO Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, PO Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by the TDI no later than 5:00 p.m., central time, on December 26, 2022. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

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STATUTORY AUTHORITY. TDI proposes the amendment to §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.

Insurance Code §36.001 provides that the Commissioner 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.

TEXT.

§3.9901. Valuation Manual.

(a) The Commissioner adopts by reference the National Association of Insurance Commissioners (NAIC) Valuation Manual, including subsequent changes that were adopted by the NAIC through August 13, 2022 [~~17, 2021~~], as required by Insurance Code §425.073.

(b) 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 legal authority to adopt.

Issued in Austin, Texas, on _____.

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Allison Eberhart, Deputy General Counsel
Texas Department of Insurance