

SUBCHAPTER MM. PREFERRED MORTALITY TABLES
28 TAC §3.9403 and §3.9404

1. INTRODUCTION. The Commissioner of Insurance (Commissioner) adopts amendments to §3.9403 and §3.9404, concerning the minimum reserve standards for life insurance. The amendments are adopted with changes to the proposed text published in the April 30, 2010 issue of the *Texas Register* (35 TexReg 3419).

2. REASONED JUSTIFICATION. The amendments are necessary to (i) allow life insurance companies the option to substitute the 2001 CSO Preferred Class Structure Mortality Table for the 2001 CSO Mortality Table as the minimum valuation standard for contracts issued on or after May 1, 2003, and prior to January 1, 2007, subject to certain specified conditions; (ii) make several reorganizational changes to existing §3.9403 for better organization and clarity of the proposed and existing rules; and (iii) correct a rule citation style error in adopted §3.9403(d). The amendments to §3.9403 and §3.9404 are modeled after and consistent with the National Association of Insurance Commissioner's (NAIC's) currently adopted Model Regulation 815. The amendments also are expected to align reserve mortality to expected mortality for certain policies issued by life insurance companies, while retaining reasonable conservatism in reserves for these policies. As a result, the amendments are expected to reduce reserves not needed to support benefits.

The following provides an overview of and explains additional reasoned justification for the amendments.

The amendments to §3.9403 and §3.9404 are necessary to allow insurance companies the option to calculate reserves using the 2001 CSO preferred Class Structure Mortality table for policies issued on and after May 1, 2003, and prior to January 1, 2007, in lieu of using the 2001 CSO Mortality Tables, subject to meeting certain specified conditions. Additionally, amendments to §3.9403 are necessary to re-organize existing subsection (a) into subsections (a), (c), and (d), add a new subsection (b), and redesignate existing subsection (b) into subsection (e) for purposes of better organization and clarity of the proposed and existing rules. Subsection titles are added to assist in organization and provide clarity. The amendment to §3.9403(a) adds the subsection title "Policies Issued On or After January 1, 2007" to assist in clarifying the applicability of the 2001 CSO Preferred Class Structure Mortality Table to policies issued during this timeframe. New §3.9403(b) adds the subsection title "Policies Issued On or After May 1, 2003, and Prior to January 1, 2007" to assist in clarifying the applicability of the 2001 CSO Preferred Class Structure Mortality Table to policies issued during this timeframe. New §3.9403(b) also specifies that an insurer may elect to use the 2001 CSO Preferred Class Structure Mortality Table as the minimum valuation standard for these policies, subject to the consent of the Commissioner and the conditions of §3.9404. New §3.9403(c) adds the subsection title "Requirements to Make Election" and changes the existing reference to "No such election" to "No election in subsection (a) or (b)". These amendments are necessary to clarify the applicability of certain requirements for an insurer that elects to use the 2001 CSO Preferred Class Structure Mortality Table under either the amendments to §3.9403(a) or under new

§3.9403(b). New §3.9403(d) adds the subsection title “2001 CSO Preferred Class Structure Mortality Table Treatment” to assist in clarifying that this preferred table is considered part of the 2001 CSO Mortality Table for purposes of reserves. New §3.9403(d) also replaces the word “title” with “chapter” to conform to current *Texas Register* citation style. Newly redesignated §3.9403(e) adds the subsection title “Adoption by Reference” to assist in clarifying that this redesignated subsection concerns the adoption by reference of the 2001 CSO Preferred Class Structure Mortality Table. New §3.9404(d) is necessary to enumerate the conditions to be met before an insurance company can utilize the optional minimum reserve standard for life insurance policies issued prior to January 1, 2007. The conditions require certain accounting treatment relating to the reinsurance of an insurance company’s life insurance policies, and focuses on the appropriate amount of reinsurance credit to be taken. Specifically, the conditions require an aggregate adjustment to compensate for any excess reinsurance credit in order to use the preferred tables for reserves for policies issued prior to January 1, 2007. Current requirements in existing §3.9403 and §3.9404 already allow for the 2001 CSO Preferred Class Structure Mortality Table to be used for policies issued on and after January 1, 2007. Additionally, current requirements in existing rules also require an annual actuarial certification from the appointed actuary which supports the use of these preferred tables for reserves.

While the Department did not receive any comments on the proposal, the Department has made nonsubstantive changes to the proposed text as adopted. The Department has determined that nonsubstantive changes are necessary in the following

provisions as proposed. The Department has made a nonsubstantive change in §3.9403(b) to replace the words “the commissioner’s” with the word “such” for purposes of ease of readability. The Department also has made a nonsubstantive change to new §3.9403(e), by replacing the capital “C” with a lower case “c” in the word “commissioner” and removing the words “of Insurance” for internal consistency in the use of the word “commissioner.” For clarity purposes, the Department has made a nonsubstantive change to new §3.9404(c) as proposed by inserting the word “experience” between the word “mortality” and the word “and” to read “mortality records and. . . “ Additionally, the Department has made a nonsubstantive change to the format of new §3.9404(d)(3), by removing the references to subparagraphs (A) and (B), for purposes of clarity. The Department also has made a nonsubstantive change to new §3.9404(d)(3), by replacing a semicolon with a comma after the word *asset*. None of the changes materially alter issues raised in the proposed rule, introduce new subject matter, or affect persons other than those previously on notice.

3. HOW THE SECTIONS WILL FUNCTION. Section 3.9403(a) has been re-organized into subsections (a), (c), and (d). Section 3.9403(a) also adds the subsection title “Policies Issued On or After January 1, 2007” to assist in clarifying the applicability of the 2001 CSO Preferred Class Structure Mortality Table to policies issued during this timeframe. A new subsection (b) also has been added to §3.9403, with the added title “Policies Issued On or After May 1, 2003, and Prior to January 1, 2007” to assist in clarifying the applicability of the 2001 CSO Preferred Class Structure Mortality Table to

policies issued during this timeframe. New §3.9403(b) also specifies that an insurer may elect to use of the 2001 CSO Preferred Class Structure Mortality Table as the minimum valuation standard for these policies, subject to the consent of the Commissioner and the conditions of §3.9404. Existing subsection (b) has been redesignated as subsection (e) for purposes of better organization and clarity. New §3.9403(c) adds the subsection title “Requirements to Make Election” and changes the existing reference to “No such election” to “No election in subsection (a) or (b)”. These changes clarify the applicability of certain requirements for an insurer that elects to use the 2001 CSO Preferred Class Structure Mortality Table under either §3.9403(a) or (b). New §3.9403(d) adds the subsection title “2001 CSO Preferred Class Structure Mortality Table Treatment” to assist in clarifying that this preferred table is considered part of the 2001 CSO Mortality Table for purposes of reserves. Newly redesignated §3.9403(e) adds the subsection title “Adoption by Reference” to assist in clarifying that this redesignated subsection concerns the adoption by reference of the 2001 CSO Preferred Class Structure Mortality Table. New §3.9404(d) enumerates the conditions to be met before an insurance company can utilize the optional minimum reserve standard for life insurance policies issued prior to January 1, 2007. The conditions require certain accounting treatment relating to the reinsurance of an insurance company’s life insurance policies, and focuses on the appropriate amount of reinsurance credit to be taken. Specifically, the conditions require an aggregate adjustment to compensate for any excess reinsurance credit in order to use the preferred tables for reserves for policies issued prior to January 1, 2007.

4. SUMMARY OF COMMENTS. The Department did not receive any comments on the published proposal.

5. STATUTORY AUTHORITY. The amendments are adopted under the Insurance Code §§421.001(c), 425.054, 425.058(c)(3), and 36.001. Section 421.001(c) requires the Commissioner to adopt each current formula recommended by the National Association of Insurance Commissioners for establishing reserves for each line of insurance. Section 425.054(c) provides the Commissioner by rule shall specify the requirements of an actuarial opinion including any matters considered necessary to the opinion's scope. Section 425.058(c) provides that for an ordinary life insurance policy issued on the standard basis, excluding any disability or accidental death benefits in the policy and to which Subchapter B, Chapter 1105, applies, the applicable mortality table is the Commissioners' 1980 Standard Ordinary Mortality Table; at the insurer's option for one or more specified life insurance plans, the Commissioners' 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors; or any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by Commissioner rule for use in determining the minimum standard valuation for a policy to which this subdivision applies. Section 36.001 provides that the Commissioner may 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.

6. TEXT.**§3.9403. 2001 CSO Preferred Class Structure Table.**

(a) Policies Issued On or After January 1, 2007. At the election of the insurer, for each calendar year of issue, for any one or more specified plans of insurance and subject to satisfying the conditions stated in this subchapter, the 2001 CSO Preferred Class Structure Mortality Table may be substituted in place of the 2001 CSO Smoker or Nonsmoker Mortality Table as the minimum valuation standard for policies issued on or after January 1, 2007.

(b) Policies Issued On or After May 1, 2003, and Prior to January 1, 2007. At the election of the insurer and with the consent of the commissioner, for policies issued on or after May 1, 2003, and prior to January 1, 2007, the 2001 CSO Preferred Class Structure Mortality Table may be substituted in place of the 2001 CSO Smoker or Nonsmoker Mortality Table as the minimum valuation standard subject to the conditions of §3.9404 of this subchapter (relating to Conditions). In determining such consent, the commissioner may rely on the consent of the commissioner of the insurer's state of domicile.

(c) Requirement to Make Election. No election in subsection (a) or (b) of this section shall be made until the insurer demonstrates that at least 20 percent of the business to be valued on this table is in one or more of the preferred classes.

(d) 2001 CSO Preferred Class Structure Mortality Table Treatment. A table from the 2001 CSO Preferred Class Structure Mortality Table used in place of a 2001 CSO

Mortality Table, pursuant to the requirements of this subchapter, will be treated as part of the 2001 CSO Mortality Table only for purposes of reserve valuation pursuant to the requirements of §§3.9101 - 3.9106 of this chapter (relating to 2001 CSO Mortality Table).

(e) Adoption by Reference. The commissioner adopts by reference the 2001 CSO Preferred Class Structure Mortality Table. The table is available from the Actuarial Division, Texas Department of Insurance, Mail Code 302-3A, P.O. Box 149104, Austin, Texas 78714-9104 or on the internet by accessing the Department's website at www.tdi.state.tx.us/company/ficso.html.

§3.9404. Conditions.

(a) For each plan of insurance with separate rates for preferred and standard nonsmoker lives, an insurer may use the super preferred nonsmoker, preferred nonsmoker, and residual standard nonsmoker tables to substitute for the nonsmoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, except for business valued under the residual standard nonsmoker table, the appointed actuary shall certify that:

(1) the present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class; and

(2) the present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.

(b) For each plan of insurance with separate rates for preferred and standard smoker lives, an insurer may use the preferred smoker and residual standard smoker tables to substitute for the smoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, for business valued under the preferred smoker table, the appointed actuary shall certify that:

(1) the present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the preferred smoker valuation basic table; and

(2) the present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the preferred smoker valuation basic table.

(c) Unless exempted by the commissioner, every insurer using the 2001 CSO

Preferred Class Structure Table shall annually file with the commissioner, with the NAIC, or with a statistical agent designated by the NAIC and acceptable to the commissioner, statistical reports showing mortality and such other information as the commissioner may deem necessary or expedient for the administration of the provisions of this regulation. The form of the reports shall be established by the commissioner, or the commissioner may require the use of a form established by the NAIC or by a statistical agent designated by the NAIC and acceptable to the commissioner. The form of the statistical reports shall be promulgated by rule. Insurers are not required to file such statistical reports until such rule has been adopted by the commissioner. At the commissioner's discretion, the commissioner may request mortality experience and other information at any time.

(d) The use of the 2001 CSO Preferred Class Structure Table for the valuation of policies issued prior to January 1, 2007, shall not be permitted in any statutory financial statement in which a company reports, with respect to any policy or portion of a policy coinsured, either of the following:

(1) In cases where the mode of payment of the reinsurance premium is less frequent than the mode of payment of the policy premium, a reserve credit that exceeds, by more than the amount specified in this paragraph as Y, the gross reserve calculated before reinsurance. Y is the amount of the gross reinsurance premium that:

(A) provides coverage for the period from the next policy period premium due date to the earlier of the end of the policy year and the next reinsurance premium due date; and

(B) would be refunded to the ceding entity upon the termination of the policy.

(2) In cases where the mode of payment of the reinsurance premium is more frequent than the mode of payment of the policy premium, a reserve credit that is less than the gross reserve, calculated before reinsurance, by an amount that is less than the amount specified in this paragraph as Z. Z is the amount of gross reinsurance premium that the ceding entity would need to pay the assuming company to provide reinsurance coverage from the period of the next reinsurance premium due date to the next policy premium due date minus any liability established for the proportionate amount not remitted to the reinsurer.

(3) For purposes of the conditions stated in paragraphs (1) and (2) of this subsection, the reserve for the mean reserve method shall be defined as the mean reserve minus the deferred premium asset, and for the mid-terminal reserve method shall include the unearned premium reserve. A company may estimate and adjust its accounting on an aggregate basis in order to meet the conditions to use the 2001 CSO Preferred Class Structure Table.

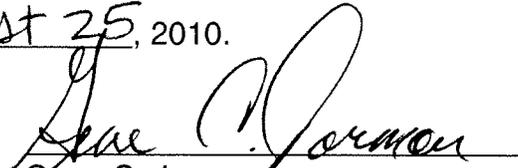
7. CERTIFICATION. This agency hereby certifies that the adopted amendments have been reviewed by legal counsel and found to be within the agency's authority to adopt.

10-0779

TITLE 28. INSURANCE
Part 1. Texas Department of Insurance
Chapter 3. Life, Accident and Health Insurance and Annuities

Adopted Sections
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Issued at Austin, Texas, on August 25, 2010.

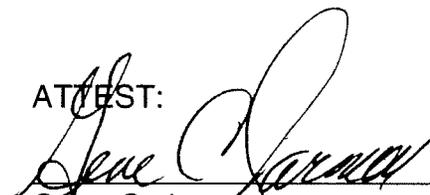

Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that amendments to §3.9403 and §3.9404 specified herein, concerning the minimum reserve standards for life insurance, 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. **10-0779**
AUG 25 2010