

**NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
FIRST AMENDMENT TO 11 NYCRR 57
(INSURANCE REGULATION 113)**

SMOKER/NONSMOKER MORTALITY TABLES AND UNDERWRITING CLASSIFICATIONS

I, Benjamin M. Lawsky, Superintendent of Financial Services, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law, and Sections 301, 2403, 3201, 4217, 4221, 4224, 4511 and 4517 of the Insurance Law, do hereby promulgate the following amendment to 11 NYCRR Part 57 (First Amendment to Insurance Regulation 113), to take effect 180 days after publication in the State Register, except for Section 57.5 which shall take effect 270 days after publication in the State Register, to read as follows:

(MATTER IN BRACKETS IS DELETED. MATTER UNDERLINED IS NEW)

Sec.

57.1 Purpose and applicability

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Part 57 is hereby re-titled from “Smoker/Nonsmoker Mortality Tables For Use In Determining Minimum Nonforfeiture Benefits And Minimum Reserve Liabilities” to “Smoker/Nonsmoker Mortality Tables and Underwriting Classifications.”

Sections 57.1 to 57.4 are amended to read as follows:

§ 57.1 Purpose and applicability.

(a) The purpose of this Part is to establish standards and rules for classifying an insured as a smoker or a nonsmoker and for reclassifying an insured in accordance with section 57.5(d) of this Part and to permit the use of mortality tables that reflect differences in mortality between smokers and nonsmokers in determining minimum cash surrender values, minimum amounts and minimum periods of paid-up nonforfeiture benefits, and minimum reserve liabilities for plans of insurance with separate premium rates for smokers and nonsmokers. This Part, as amended, clarifies that if an insurer issues coverage to an insured not underwritten as a smoker at issue then the insurer may not subsequently treat the insured as a smoker for that coverage.

(b) This Part applies to every authorized life insurance company and authorized fraternal benefit society.

§ 57.2 Definitions.

As used in this Part:

(a) *1980 CSO Table with or without Ten-Year Select Mortality Factors* means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the Society of Actuaries Committee to Recommend New Mortality Tables for Valuation of Standard Individual Ordinary Life Insurance, incorporated in the 1980 NAIC Amendments to the Model Standard Nonforfeiture Law and Standard Valuation Law for Life Insurance, and referred to in those models as the Commissioners 1980 Standard Ordinary Mortality Table, with or without Ten-Year Select Mortality Factors. The same select factors will be used for both smoker and nonsmoker tables.

(b) *1980 CET Table* means that mortality table consisting of separate rates of mortality for male and female lives, developed by the Society of Actuaries Committee to Recommend New Mortality Tables for Valuation of Standard Individual Ordinary Life Insurance, incorporated in the 1980 NAIC Amendments to the Model Standard Nonforfeiture Law and Standard Valuation Law for Life Insurance, and referred to in those models as the Commissioners 1980 Extended Term Insurance Table.

(c) 2001 CSO Mortality Table has the same meaning as set forth in section 100.3 of Part 100 of this Title (Insurance Regulation 179).

(d) [The phrase *smoker*] Smoker and nonsmoker mortality tables [refers to] means mortality tables with separate rates of mortality for smokers and nonsmokers [derived from the tables, defined in subdivisions (a) and (b) of this section, which were developed by the Society of Actuaries Task Force on Smoker/Nonsmoker Mortality, recommended by the NAIC Technical Staff Actuarial Group and approved by the NAIC in December 1983].

[(d)](e) [The phrase *composite*] Composite mortality tables [refers to] means mortality tables[, defined in subdivisions (a) and (b) of this section, as they were originally published with rates of mortality] that do not distinguish between smokers and nonsmokers.

(f) Smoker means a proposed insured or an insured who has been classified by an insurer, based on current or past behavior within a specified timeframe in accordance with its standard underwriting rules or procedures, as one who smokes, uses tobacco or uses nicotine.

(g) Nonsmoker means a proposed insured or an insured who is classified as a nonsmoker at the time of application for life insurance or who at any subsequent time is reclassified as a nonsmoker in accordance with the insurer's underwriting procedures.

(h) Insurer means an authorized life insurance company or authorized fraternal benefit society.

§ 57.3 Alternate tables.

(a) In determining minimum cash surrender values, minimum amounts and minimum periods of paid-up nonforfeiture benefits and minimum reserve liabilities, for any policy of insurance delivered or issued for delivery in this State after the operative date of Insurance Law section 4221(k) [of the Insurance Law (formerly section 208-a[7-d])] for that policy form, at the option of the [company] insurer and subject to the conditions stated in section 57.4 of this Part:

(1) the 1980 CSO Smoker and Nonsmoker Mortality Tables, with or without Ten-Year Select Mortality Factors, may be substituted for the 1980 CSO Table, with or without Ten-Year Select Mortality Factors; and

(2) the 1980 CET Smoker and Nonsmoker Mortality Tables may be substituted for the 1980 CET Table.

(b) The 1980 CSO and 1980 CET Smoker and Nonsmoker Mortality Tables in subdivision (a) of this section are sex-distinct tables. They may be gender-blended in accordance with the provisions of Part 47 of this Title (Insurance [Department] Regulation [Number] 112).

(c) The rates of mortality for the various smoker and nonsmoker mortality tables are shown in the Appendix to this Part (Appendix 21 of this Title).

§ 57.4 Conditions.

(a) For each plan of insurance with separate premium rates for smokers and nonsmokers, an insurer may:

(1) use composite mortality tables to determine minimum cash surrender values, minimum amounts and minimum periods of paid-up nonforfeiture benefits and minimum reserve liabilities.

(2) use smoker and nonsmoker mortality tables to determine the valuation net premiums and additional minimum reserves, if any, required by Insurance Law section 4218 [of the Insurance Law (formerly section 206)], and use composite mortality tables to determine minimum cash surrender values, and minimum amounts and minimum period of paid-up nonforfeiture benefits and basic minimum reserve liabilities; or

(3) use smoker and nonsmoker mortality tables to determine minimum cash surrender values, minimum amounts and minimum periods of paid-up nonforfeiture benefits and minimum reserve liabilities.

(b) Once an insurer has selected a method as described in paragraph (1), (2) or (3) of subdivision (a) of this section to apply [with respect] to a specific series of issues of a particular plan of insurance, [such] that method must be continued for [such] that block of business unless [and until] the superintendent [shall have approved] approves a request for a change in method.

(c) For policies with separate premium rates for smokers and nonsmokers, delivered or issued for delivery in this State prior to [the effective date of this Part] September 19, 1984, with nonforfeiture values based upon 1980 CSO and 1980 CET composite mortality tables, aggregate basic reserve liabilities (exclusive of any additional minimum reserves required by Insurance Law section 4218 [of the Insurance Law, formerly section 206]) must not be less than aggregate minimum basic reserves according to the same composite mortality tables. For such policies, the insurer may use 1980 CSO and 1980 CET smoker and nonsmoker mortality tables to determine the valuation net premiums and additional minimum reserves, if any, required by Insurance Law section 4218 [of the Insurance Law (formerly section 206)].

(d) The reserve actually held for each policy (including any additional minimum reserve required by Insurance Law section 4218 [of the Insurance Law, formerly section 206]) must not be less than the cash surrender value of such policy at the same duration.

(e) In accordance with section 57.5(e) of this Part, an insurer may use composite mortality tables when a policy is issued to any individual up to an age identified in the policy between ages 15 and 18, inclusive, and smoker/nonsmoker mortality tables when the policy is issued to any individual over that age.

New sections 57.5 and 57.6 are added to read as follows:

§ 57.5 Classification and reclassification.

(a) An insured may only be treated as a smoker for rating and benefit purposes if:

(1) the insurer has determined that the insured is a smoker in accordance with subdivision (b) of this section; and

(2) subject to underwriting in accordance with subdivision (b) of this section, the insurer treats any other insured who is not determined to be a smoker as a non-smoker for rating and benefit purposes.

(b) If, based on its underwriting procedures, an insurer determines, at the time of policy application or at the time of a request for an increase in insurance coverage where evidence of insurability is required under the terms of the policy with respect to the amount of the increase, that an insured is a smoker, the policy must specify when the rates or benefits of the policy will be based on the insured's classification as a smoker.

(c) A policy on an insured classified as a smoker must identify any amounts of coverage to which the smoker classification is being applied and, if applicable, any amounts of coverage to which the smoker classification does not apply.

(d) If the insurer has any procedures for the insured to seek a more favorable underwriting classification, then the insurer must describe those procedures in any policy issued after the effective date of this section. Amounts of coverage issued on an insured may not subsequently be reclassified to a less favorable underwriting classification. This subdivision does not apply to any increases in insurance coverage for which evidence of insurability is required.

(e) For any policy issued under the 2001 CSO Mortality Table at ages for which the table does not have distinct mortality rates for smokers and nonsmokers, an insurer may either:

(1) use the composite mortality table for all attained ages; or

(2) use the composite mortality table for attained ages up to an age identified in the policy between ages 15 and 18, inclusive, and thereafter use smoker and non-smoker tables in accordance with Part 100 of this Title (Insurance Regulation 179) and as provided in this section.

(f) This section applies to all policies issued on or after the effective date of this section.

§ 57.6 Determined violation.

A contravention of section 57.5 of this Part shall be deemed to be an unfair method of competition or an unfair or deceptive act and practice in the conduct of the business of insurance in this State, and shall be deemed to be a trade practice constituting a determined violation, as defined in Insurance Law section 2402(c), in violation of Insurance Law section 2403.