

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #7

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Filing Date

FILED

2007 MAR 22 PM 2: 21

OFFICE WEST VIRGINIA
SECRETARY OF STATE
Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: Offices of the Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY WV Code §§ 33-2-10 and 33-7-9(d)(1)(C)(iii)

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 69A

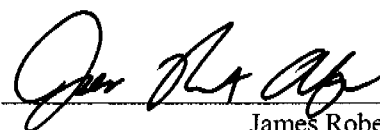
TITLE OF RULE BEING AMENDED: Recognition Of Preferred Mortality Tables For

Use In Determining Minimum Reserve Liabilities

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

PLEASE SEE ATTACHED



James Robert Alsop
Cabinet Secretary
West Virginia Department of Revenue

Use additional sheets if necessary

NOTICE OF AN EMERGENCY RULE (FORM #7) - ATTACHMENT

FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY:

The emergency rule recognizes, permits and prescribes the use of the Regulation Permitting the Recognition of Preferred Mortality Tables For Use in Determining Minimum Reserve Liabilities in accordance with W. Va. Code §§ 33-7-9(d)(1)(C)(iii) and 33-13-30(4c)(h)(vii) and subsection 4.1 and 4.2 of WV 114CSR 68. This rule, was recently adopted (October 2006) by the National Association of Insurance Commissioners as a model regulation in 2006. The rule recognizes, permits and prescribes the use of mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities for life insurance policies. The existing 2001 CSO mortality table, as adopted by the NAIC and West Virginia, does not make allowances for preferred mortality underwriting classes, and therefore can be extremely conservative for life insurance policies. These mortality tables reduce reserve requirements for products with the most significant reserve redundancies, thereby allowing companies to deliver a more appropriately priced life insurance policy to consumers. These new tables are for the valuation of reserves, and thus do not require a filing or a re-filing and approval of policy forms by the West Virginia Insurance Commissioner to be fully implemented. To date, over half of the states have committed to adopt the Preferred Mortality Tables for policies written on or after April 1, 2007. (To date, seven (7) states have adopted the rule, twenty (20) states have issued a proposed rule). This rule would allow West Virginia consumers and insurance companies to expeditiously reap the benefits that the use of the Preferred Mortality Tables are expected to produce. Accordingly, to delay the advantages born by the rule would be detrimental to the public's interest.

The Commissioner's adoption of this emergency rule has been in a timely manner. Because the regulation was adopted by the NAIC too late during 2006 to meet the West Virginia administrative procedures time requirements, it must be adopted as an emergency rule to be effective for April 1, 2007.

QUESTIONNAIRE

DATE: March 22, 2007

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: OFFICE OF THE INSURANCE COMMISSIONER
Robert Rodak, Associate Counsel
Legal Division
Post Office Box 50540
Charleston, West Virginia 25305-0540
(304) 558-6279, Ext. 1261

EMERGENCY RULE TITLE: Recognition Of Preferred Mortality Tables
For Use In Determining Minimum Reserve
Liabilities (Title 114, Series 69A)

1. Date of Filing:

March 22, 2007.

2. Statutory authority for promulgating emergency rule:

West Virginia Code §§ 33-2-10 and 33-7-9(d)(1)(C)(iii).

3. Date of filing of proposed legislative rule:

4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?

The emergency rule adds a new series, Series 69A, to the Insurance Commission rules (Title 114 of the Code of State Rules). The rule is new.

5. Has the same or similar emergency rule previously been filed and expired?

No.

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety and welfare.

The emergency rule is not being promulgated for the immediate preservation of public peace, health, safety and welfare.

Recognition of Preferred Mortality Tables For
Use In Determining Minimum Reserve Liability
(Title 114, Series 69A)
EMERGENCY RULE

7. **If the emergency rule was promulgated in order to comply with a time limit established by the Code of federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.**

The emergency rule is not being promulgated in order to comply with a time limit established pursuant to a federal statute or regulation.

8. **State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to public interest.**

The emergency rule recognizes, permits and prescribes the use of the Regulation Permitting the Recognition of Preferred Mortality Tables For Use in Determining Minimum Reserve Liabilities in accordance with W. Va. Code §§ 33-7-9(d)(1)(C)(iii) and 33-13-30(4c)(h)(vii) and subsection 4.1 and 4.2 of WV 114 CSR 68. This rule, was recently adopted (October 2006) by the National Association of Insurance Commissioners as a model regulation in 2006. The rule recognizes, permits and prescribes the use of mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities for life insurance policies. The existing 2001 CSO mortality table, as previously adopted by the NAIC and West Virginia, does not make allowances for preferred mortality underwriting classes, and therefore can be extremely conservative for life insurance policies. These mortality tables reduce reserve requirements for products with the most significant reserve redundancies, thereby allowing companies to deliver a more appropriately priced life insurance policy to consumers. These new tables are for the valuation of reserves, and thus do not require a filing or a re-filing and approval of policy forms by the West Virginia Insurance Commissioner to be fully implemented. To date, over half of the states have committed to adopt the Preferred Mortality Tables for policies written on or after January 1, 2007. (To date, seven (7) states have adopted the rule, twenty (20) states have issued a proposed rule). This rule would allow West Virginia consumers and insurance companies to expeditiously reap the benefits that the use of the Preferred Mortality Tables are expected to produce. Accordingly, to delay the advantages born by the rule would be detrimental to the public's interest.

The Commissioner's adoption of this emergency rule has been in a timely manner. Because the regulation was adopted by the NAIC too late during 2006 to meet the West Virginia administrative procedures time requirements, it must be adopted as an emergency rule to be effective for April 1, 2007.

Insurance Commissioner
Emergency Rule
Title 114, Series 69A

**RECOGNITION OF PREFERRED MORTALITY TABLES
FOR USE IN DETERMINING MINIMUM RESERVE LIABILITIES**

TITLE 114, SERIES 69A

BRIEF SUMMARY OF EMERGENCY RULE

The emergency rule recognizes, permits and prescribes the use of the Regulation Permitting the Recognition of Preferred Mortality Tables For Use in Determining Minimum Reserve Liabilities in accordance with W. Va. Code §§ 33-7-9(d)(1)(C)(iii) and 33-13-30(4c)(h)(vii) and subsection 4.1 and 4.2 of WV 114 CSR 68. This rule, was recently adopted (October 2006) by the National Association of Insurance Commissioners as a model regulation in 2006. The rule recognizes, permits and prescribes the use of mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities for life insurance policies and allows insurance companies to substitute this table in place of the 2001 CSO Standard Mortality Table. The existing 2001 CSO Mortality Table, as previously adopted by the NAIC and West Virginia, does not make allowances for preferred mortality underwriting classes, and therefore can be extremely conservative for life insurance policies. These mortality tables reduce reserve requirements for products with the most significant reserve redundancies, thereby allowing companies to deliver a more appropriately priced life insurance policy to consumers. These new tables are for the valuation of reserves, and thus do not require a filing or a re-filing and approval of policy forms by the West Virginia Insurance Commissioner to be fully implemented.

Insurance Commissioner
Emergency Rule
Title 114, Series 69A

**RECOGNITION OF PREFERRED MORTALITY TABLES
FOR USE IN DETERMINING MINIMUM RESERVE LIABILITIES**

TITLE 114, SERIES 69A

STATEMENT OF CIRCUMSTANCES

A mortality table is a key factor in determining how much consumers pay for life insurance. The longer policyholders live, the longer the insurance companies get to hold onto premium dollars. As a result, insurers can afford to charge less in premiums. In 2002, the National Association of Insurance Commissioners (NAIC) adopted, through a model regulation, the 2001 Commissioners Standard Ordinary (CSO) Mortality Table which West Virginia has adopted in WV 114CSR69. This emergency rule supplements the CSO Mortality Table by allowing insurers to substitute the 2001 Preferred Class Structure Mortality Table in place of the 2001 Standard Smoker or Nonsmoker Mortality Table and adopts the use of the 2001 Preferred Class Structure Mortality Table by reference. The rule sets forth conditions for use of the preferred tables and requires each insurer who opts to use them to file statistical reports showing experience, which can be used in future updates. This rule reflects the recent adoption of the table by the NAIC.

The existing 2001 CSO Mortality Table, as previously adopted by the NAIC and West Virginia, does not make allowances for preferred mortality underwriting classes, and therefore may be quite conservative for life insurance policies in certain circumstances. These proposed mortality tables reduce reserve requirements for products with the most significant reserve redundancies, thereby allowing companies to deliver more appropriately priced life insurance policies to consumers.

APPENDIX B
FISCAL NOTE FOR PROPOSED RULES

Rule Title: Recognition Of Preferred Mortality Tables For Use In Determining Minimum Reserve Liabilities

Type of Rule: Legislative Interpretive Procedural Emergency

Agency: Insurance Commissioner

Address: Post Office Box 50540
1124 Smith Street, Greenbrooke Building
Charleston, West Virginia 25305-0540

Phone Number: (304) 558-6279, Ext. 1261 Email: Robert.Rodak@wvinsurance.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This rule will have virtually no impact on costs or revenues of the state. A slight decrease in the cost of insurance may impact premium tax collections to a minimal degree. There will be no increase in the cost of government resulting from this rule.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs & Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	negligible	negligible	negligible

Rule Title: Recognition Of Preferred Mortality Tables For Use In Determining Minimum Reserve Liabilities

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

N/A

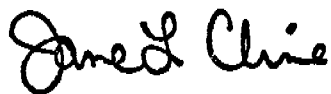
MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

N/A

Date: March 22, 2007

Signature of Agency Head or Authorized Representative



Jane L. Cline, Insurance Commissioner

114CSR69A

**EMERGENCY RULE
INSURANCE COMMISSIONER**

**SERIES 69A
RECOGNITION OF PREFERRED MORTALITY TABLES FOR
USE IN DETERMINING MINIMUM RESERVE LIABILITIES**

Section

- 114-69A-1. General.
- 114-69A-2. Definitions.
- 114-69A-3. 2001 CSO Preferred Class Structure Table.
- 114-69A-4. Conditions.
- 114-69A-5. Separability.

114CSR69A

**EMERGENCY RULE
INSURANCE COMMISSIONER**

**SERIES 69A
RECOGNITION OF PREFERRED MORTALITY TABLES FOR
USE IN DETERMINING MINIMUM RESERVE LIABILITIES**

§114-69A-1. General.

1.1. Scope. -- The purpose of this rule is to recognize, permit and prescribe the use of mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities in accordance with W. Va. Code §§33-7-9(d)(1)(C)(iii) and 33-13-30(4c)(h)(vii) and subsections 4.1 and 4.2 of WV 114CSR68.

1.2. Authority. -- This rule is promulgated pursuant to the authority of W. Va. Code §§33-2-10 and 33-7-9(d)(1)(C)(iii).

1.3. Filing Date. -- March 22, 2007.

1.4. Effective Date. --

§114-69A-2. Definitions.

2.1. "2001 CSO Mortality Table" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the National Association of Insurance Commissioners (NAIC) in December 2002. The 2001 CSO Mortality Table is included in the *Proceedings of the NAIC (2nd Quarter 2002)* and supplemented by the 2001 CSO Preferred Class Structure Mortality Table defined below in subdivision b. Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables. Mortality tables in the 2001 CSO Mortality Table include the following:

a. "2001 CSO Mortality Table (F)" means that mortality table consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table.

b. "2001 CSO Mortality Table (M)" means that mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table.

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2007 MAR 22 PM 2:22

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**Insurance Commissioner
Title 114, Series 69A
Emergency Rule**

c. "Composite mortality tables" means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.

d. "Smoker and nonsmoker mortality tables" means mortality tables with separate rates of mortality for smokers and nonsmokers.

2.2. "2001 CSO Preferred Class Structure Mortality Table" means mortality tables with separate rates of mortality for super preferred nonsmokers, preferred nonsmokers, residual standard nonsmokers, preferred smokers, and residual standard smoker splits of the 2001 CSO Nonsmoker and Smoker Tables, as adopted by the NAIC at the September, 2006 national meeting and published in the *NAIC Proceedings {3rd Quarter 2006}*. Unless the context indicates otherwise, the "2001 CSO Preferred Class Structure Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table. It includes both the smoker and nonsmoker mortality tables. It includes both the male and female mortality tables and the gender composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality table.

2.3. "Statistical agent" means an entity with proven systems for protecting the confidentiality of individual insured and insurer information; demonstrated resources for and history of ongoing electronic communications and data transfer ensuring data integrity with insurers, which are its members or subscribers; and a history of and means for aggregation of data and accurate promulgation of the experience modifications in a timely manner.

§114-69A-3. 2001 CSO Preferred Class Structure Table.

3.1. At the election of the company, for each calendar year of issue, for any one or more specified plans of insurance and subject to satisfying the conditions stated in this rule, 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 April 1, 2007. No such election shall be made until the company demonstrates at least 20% of the business to be valued on this table is in one or more of the preferred classes. 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 rule, will be treated as part of the 2001 CSO Mortality Table only for purposes of reserve valuation pursuant to the requirements of WV 114 CSR 69.

§114-69A-4. Conditions.

4.1. 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

**Insurance Commissioner
Title 114, Series 69A
Emergency Rule**

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:

a. 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.

b. 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.

4.2. 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:

a. 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 corresponding to the valuation table being used for that class.

b. 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.

4.3. Unless exempted by the commissioner, every authorized 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 rule. 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.

**Insurance Commissioner
Title 114, Series 69A
Emergency Rule**

§114-69A-5. Separability.

5.1. If any provisions of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected.

Insurance emergency rule

Judy Cooper

From: ROBERT RODAK [ROBERT.RODAK@wvinsurance.gov]
Sent: Thursday, March 29, 2007 2:35 PM
To: Judy Cooper
Cc: Joy Zirkle; Timothy Murphy
Subject: Spam:Insurance emergency rule

Judy,

The real emergency circumstance of the rule is based in the nature and timing of the passage of the rule by the Association of Insurance Commissioners (NAIC). As a bit of history, the NAIC is a national association of all state commissioners that acts as a unified voice for state insurance commissioner with regard to many national insurance issues. In the course of their functions, they will adopt rules, voted upon by the commissioners, to be adopted by the various states to promote uniformity of insurance policies and practices among the states.

The current rule is one of these uniformity rules that applies a use of a uniform and updated mortality table to be used by insurance companies in costing their insurance premiums and which was adopted unanimously by the various state commissioners. The crux of the emergency is really a timing issue brought about by the late adoption of the new rule which occurred in September 2006 and intended to be effective January 1, 2007. As such, under our rule procedure it is difficult to enact regular legislative rules which would be effective Jan. 1, 2007. Consequently, in order to have rule in a timely fashion, it needed to be filed as an emergency rule.

To further update other state's actions with respect to this rule; 18 states have already adopted the rule effective January 1, 2007. 25 others have issued proposed rule which will be effective January 1, 2007 when adopted.

Please note that if this rule is adopted, before it is formally adopted as an emergency rule, we would like to amend the effective date to January 1, 2007. (April 1, 2007 is contained in current version).

As stated in our initial explanation of emergency circumstances, failure to implement this rule, effective January 1, 2007, would require insurance companies operating in West Virginia to calculate their reserve requirements based on the less favorable mortality tables, and different from most other states. This would result in delaying the resulting advantages of lower insurance rates to West Virginia policy holders. Consequently, we believe that this rule needs to be adopted as an emergency rule to promptly effect the NAIC adopted rule in an expeditious manner in an effort to maximize its benefits to West Virginia consumers.

If you have any further questions or wish to discuss this further in person, please let us know. Also, could you please let us know what we need to do in order to change the internal effective date from April 1, 2007 to January 1, 2007. My telephone number is 558-6279 ext1261. Thank you for all your assistance in this matter.

Bob Rodak
Associate Counsel
Legal Division
West Virginia Offices of the Insurance Commissioner
1124 Smith Street
Charleston, WV 25305
304-558-6279x1261

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