

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. _____

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 1-26-84
DATE FOR REVIEW 2-3-84
DATE DUE 2-9-84

Adopted w/a hearing _____
Adopted w/o hearing ←
Temporary rule _____

Approved 2-9-84 Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State _____ Revisor approved 1.27.84 disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 1.16.84 Date

✓ Notice of Intent to Solicit Outside Opinion SR. 3.7.83 + comments

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice or rulemaking
12.9.83 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
12.12.83 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

Agency's Findings of Fact

✓ LCRAR Report or agency Affidavit

N/A Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness includes "small biz" statement.

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

DEPARTMENT ATTORNEY GENERAL

STATE OF MINNESOTA
Office Memorandum

TO : MICHAEL A. HATCH, COMMISSIONER OF COMMERCE DATE: 2/10/84

Attn: PEGGY L. BUNCH
Special Assistant Attorney General

FROM : LARRY D. STARNS
Special Assistant Attorney General

PHONE: 297-3493

SUBJECT: In the Matter of the proposed Adoption of Rules Relating to Variable Life Insurance

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register. This must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

LDS:ap

AG copy.

Department of Commerce

Adoption of Rules Relating to Variable Life Insurance

Rules as Adopted

4 MCAR S 1.9401 Authority and scope.

The following rules apply to all variable life insurance policies issued in this state, and are adopted under the authority of Minnesota Statutes, section 61A.20.

4 MCAR S 1.9402 Definitions.

A. Terms. For the purposes of 4 MCAR SS 1.9401-1.9411, the terms defined in this rule have the meanings given them.

B. Affiliate. "Affiliate" of an insurer means any person, directly or indirectly, controlling, controlled by, or under common control with the insurer; any person who regularly furnishes investment advice to the insurer with respect to its separate accounts for which a specific fee or commission is charged; or any director, officer, partner, or employee of an insurer, controlling or controlled person, or person providing investment advice or any member of the immediate family of this person.

C. Assumed investment rate. "Assumed investment rate" means the rate of investment return which would be required to be credited to a variable life insurance policy, after deduction of charges for taxes, investment expenses, and mortality and expense guarantees to maintain the variable death benefit equal at all times to the amount of death benefit, other than incidental insurance benefits, which would be payable under the plan of insurance if the death benefit did not vary according to the investment experience of the separate account.

D. Benefit base. "Benefit base" means the amount to which the net investment return is applied.

E. Control. "Control," including the terms "controlling," "controlled by," and "under common control with," means the possession, direct or indirect, of the power to direct or cause

the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing more than ten percent of the voting securities of any other person. This presumption may be rebutted by a showing made to the satisfaction of the commissioner that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

F. Flexible premium policy. "Flexible premium policy" means any variable life insurance policy other than a scheduled premium policy as specified in L.

G. General account. "General account" means all assets of the insurer other than assets in separate accounts established pursuant to Minnesota Statutes, section 61A.14, or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer, whether or not for variable life insurance.

H. Incidental insurance benefit. "Incidental insurance benefit" means all insurance benefits in a variable life insurance policy, other than the variable death benefit and the minimum death benefit, including accidental death and dismemberment benefits, disability benefits, guaranteed insurability options, family income, or term riders.

I. Minimum death benefit. "Minimum death benefit" means the amount of the guaranteed death benefit, other than incidental insurance benefits, payable under a variable life insurance policy regardless of the investment performance of the separate account.

J. Net investment return. "Net investment return" means the rate of investment return in a separate account to be applied to the benefit base.

K. Policy processing day. "Policy processing day" means the day on which charges authorized in the policy are deducted from the policy's cash value.

L. Scheduled premium policy. "Scheduled premium policy" means any variable life insurance policy under which both the amount and timing of premium payments are fixed by the insurer.

M. Separate account. "Separate account" means a separate account established for variable life insurance pursuant to Minnesota Statutes, section 61A.14, or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.

N. Variable death benefit. "Variable death benefit" means the amount of the death benefit, other than incidental insurance benefits, payable under a variable life insurance policy dependent on the investment performance of the separate account, which the insurer would have to pay in the absence of any minimum death benefit.

O. Variable life insurance policy. "Variable life insurance policy" means any individual policy which provides for life insurance the amount or duration of which varies according to the investment experience of any separate account or accounts established and maintained by the insurer as to this policy, pursuant to Minnesota Statutes, section 61A.14, or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.

P. Securities Act of 1933. "Securities Act of 1933" means the Federal Securities Act of 1933, 15 U.S.C., Section 77a et. seq.

Q. Securities Exchange Act of 1934. "Securities Exchange Act of 1934" means the Federal Securities Exchange Act of 1934, 15 U.S.C., Section 78a et. seq.

R. Investment Company Act of 1940. "Investment Company Act of 1940" means the Federal Investment Company Act of 1940, 15

U.S.C., Section 80a-1 et. seq.

S. Employee Retirement Income Security Act of 1974. "Employee Retirement Income Security Act of 1974" means the Federal Employee Retirement Income Security Act of 1974, 29 U.S.C., Section 1001 et. seq.

4 MCAR S 1.9403 Qualification of insurer to issue variable life insurance.

A. Compliance with laws and grant of authority. An insurer shall not deliver or issue for delivery in this state any variable life insurance policy unless it has complied with Minnesota Statutes, sections 61A.13 to 61A.21 and 4 MCAR SS 1.9401-1.9411, and the commissioner has granted the insurer the authority to issue variable life insurance policies in the state of Minnesota pursuant to Minnesota Statutes, section 61A.20.

B. Required filing. Before any insurer delivers or issues for delivery any variable life insurance policy in this state, it must file with the commissioner the information contained in 1.-4. for the consideration of the commissioner in making the determination required by Minnesota Statutes, section 61A.19.

1. Copies of and a general description of the variable life insurance policies it intends to issue.

2. A general description of the methods of operation of the variable life insurance business of the insurer, including methods of distribution of policies and the names of those persons or firms proposed to supply consulting, investment, administrative, custodial, or distribution services to the insurer.

3. With respect to any separate account maintained by an insurer for any variable life insurance policy, a statement of the investment policy the insurer intends to follow for the investment of the assets held in such separate account, and a statement of the procedures for changing such investment policy. The statement of investment policy shall include a description of the investment objective intended for the separate account.

4. A statement of the insurer's actuary describing the mortality and expense risks which the insurer will bear under

the policy.

C. Applicability. The requirements of this rule apply to all insurers either seeking authority to issue variable life insurance in this state or having authority to issue variable life insurance in this state.

4 MCAR S 1.9404 Insurance policy requirements.

A. Generally. The commissioner shall not accept the filing of any variable life insurance policy form unless it conforms to the requirements of 4 MCAR S 1.9404 and Minnesota Statutes, chapter 61A.

B. Mandatory policy benefit and design requirements. Variable life insurance policies delivered or issued for delivery in this state shall comply with the minimum requirements contained in 1.-7.

1. Mortality and expense risk shall be borne by the insurer. The mortality and expense charges shall be subject to the maximums stated in the contract.

2. For scheduled premium policies, a minimum death benefit shall be provided in an amount at least equal to the initial face amount of the policy so long as premiums are duly paid, subject to the provisions of 4 MCAR S 1.9404 D.2.

3. The policy shall reflect the investment experience of one or more separate accounts established and maintained by the insurer. The insurer must demonstrate that the reflection of investment experience in the variable life insurance policy is actuarially sound.

4. Each variable life insurance policy shall be credited with the full amount of the net investment return applied to the benefit base.

5. Any changes in variable death benefits of each variable life insurance policy shall be determined at least annually.

6. The cash value of each variable life insurance policy shall be determined at least monthly. The method of computation of cash values and other non-forfeiture benefits, as described either in the policy or in a statement filed with the

commissioner or person fulfilling the equivalent function of the state in which the policy is delivered, or issued for delivery, shall be in accordance with actuarial procedures that recognize the variable nature of the policy. The method of computation must be such that, if the net investment return credited to the policy at all times from the date of issue should be equal to the assumed investment rate with premiums and benefits determined accordingly under the terms of the policy, then the resulting cash values and other non-forfeiture benefits must be at least equal to the minimum values required by Minnesota Statutes, section 61A.24, the Standard Non-Forfeiture Law, for a general account policy with these premiums and benefits. The assumed investment rate shall not exceed the maximum interest rate permitted under Minnesota Statutes, section 61A.24. If the policy does not contain an assumed investment rate, this demonstration must be based on the maximum interest rate permitted under Minnesota Statutes, section 61A.24. The method of computation may disregard incidental minimum guarantees as to the dollar amounts payable. Incidental minimum guarantees include, for example, but are not to be limited to, a guarantee that the amount payable at death or maturity shall be at least equal to the amount that otherwise would have been payable if the net investment return credited to the policy at all times from the date of issue had been equal to the assumed investment rate.

existing language

7. The computation of values required for each variable life insurance policy may be based upon reasonable and necessary approximations.

C. Mandatory policy provisions. Every variable life insurance policy filed for approval in this state shall contain at least the following:

1. the cover page or pages corresponding to the cover page of each policy shall contain:

a. a prominent statement in either contrasting color or in boldface type that the amount or duration of death benefit may be variable or fixed under specified conditions;

b. a prominent statement in either contrasting color or in boldface type that cash values may increase or decrease in accordance with the experience of the separate account subject to any specified minimum guarantees;

c. a statement describing any minimum death benefit required pursuant to 4 MCAR S 1.9404 B.3.;

d. the method, or a reference to the policy provision, which describes the method for determining the amount of insurance payable at death;

e. a captioned provision that the policyholder may return the variable life insurance policy within ten days of receipt of the policy by the policyholder, and receive a refund as required by state law.

f. such other items as are currently required by Minnesota Statutes, chapter 61A.;

2. a. For scheduled premium policies, a provision for a grace period of not less than 31 days from the premium due date which shall provide that where the premium is paid within the grace period, policy values will be the same, except for the deduction of any overdue premium, as if the premium were paid on or before the due date;

b. For flexible premium policies, a provision for a grace period beginning on the policy processing day when the total charges authorized by the policy that are necessary to keep the policy in force until the next policy processing day exceed the amounts available under the policy to pay these charges in accordance with the terms of the policy. The grace period shall end on a date not less than 61 days after the mailing date of the Report to Policyholders required by 4 MCAR S 1.9409 C.

The death benefit payable during the grace period will equal the death benefit in effect immediately prior to the period less any overdue charges. If the policy processing days occur monthly, the insurer may require the payment of not more than three times the charges which were due on the policy processing day on which the amounts available under the policy

were insufficient to pay all charges authorized by the policy that are necessary to keep the policy in force until the next policy processing day;

3. For scheduled premium policies, a provision that the policy will be reinstated at any time within three years from the date of default upon the written application of the insured and evidence of insurability, including good health, satisfactory to the insurer, unless the cash surrender value has been paid or the period of extended insurance has expired, upon the payment of any outstanding indebtedness arising subsequent to the end of the grace period following the date of default together with accrued interest thereon to the date of reinstatement and payment of an amount not exceeding the greater of:

a. all overdue premiums with interest at a rate not exceeding eight percent per annum compounded annually and any indebtedness in effect at the end of the grace period following the date of default with interest at a rate not exceeding eight percent per annum compounded annually; or

b. 110 percent of the increase in cash value resulting from reinstatement plus all overdue premiums for incidental insurance benefits with interest at a rate not exceeding eight percent per annum compounded annually;

4. a full description of the benefit base and of the method of calculation and application of any factors used to adjust variable benefits under the policy;

5. a provision designating the separate account to be used and stating that:

a. the assets of the separate account shall be available to cover the liabilities of the general account of the insurer only to the extent that the assets of the separate account exceed the liabilities of the separate account arising under the variable life insurance policies supported by the separate account; and

b. the assets of the separate account shall be valued at least as often as any policy benefits vary but at least

monthly.

6. a provision stating that the approval process for a change in the investment policy of the separate account is on file with the commissioner;

7. a provision that the policy shall be incontestable by the insurer after it has been in force for two years during the lifetime of the insured, provided, however, that any increase in the amount of the policy's death benefits subsequent to the policy issue date, which increase occurred upon a new application or request of the owner and was subject to satisfactory proof of the insured's insurability, shall be incontestable after an increase has been in force, during the lifetime of the insured, for two years from the date of issue of the increase;

8. a provision that payment of variable death benefits in excess of any minimum death benefits, cash values, policy loans, or partial withdrawals (except when used to pay premiums) or partial surrenders may be deferred:

a. for up to six months from the date of request, if such payments are based on policy values which do not depend on the investment performance of the separate account; or

b. otherwise, for any period during which the New York Stock Exchange is closed for trading (except for normal holiday closing) or when the Securities and Exchange Commission has determined that a state of emergency exists which may make such payment impractical;

9. if settlement options are provided, at least one option shall be provided on a fixed basis only;

10. a description of the basis for computing the cash value and the surrender value under the policy shall be included;

11. premiums or changes for incidental insurance benefits shall be stated separately;

12. a provision for non-forfeiture insurance benefits. The insurer may establish a reasonable minimum cash value below which non-forfeiture insurance options will not be available.

D. Policy loan provisions. Every variable life insurance

policy, other than term insurance policies and pure endowment policies, delivered or issued for delivery in this state must contain provisions for policy loans after the policy has been in force for three full years which are not less favorable to the policyholder than the following:

1. at least 75 percent of the policy's cash surrender value may be borrowed;

2. the amount borrowed shall bear interest at a rate not to exceed that permitted by Minnesota Statutes, section 61A.03;

3. any indebtedness shall be deducted from the proceeds payable on death;

4. any indebtedness shall be deducted from the cash surrender value upon surrender or in determining any non-forfeiture benefit;

5. for scheduled premium policies, whenever the indebtedness exceeds the cash surrender value, the insurer shall give notice of any intent to cancel the policy if the excess indebtedness is not repaid within 31 days after the date of mailing of the notice. For flexible premium policies, whenever the total charges authorized by the policy that are necessary to keep the policy in force until the next following policy processing day exceed the amounts available under the policy to pay these charges, a report must be sent to the policyholder containing the information specified by 4 MCAR S 1.9409 C.;

6. the policy may provide that if, at any time, so long as premiums are duly paid, the variable death benefit is less than it would have been if no loan or withdrawal had ever been made, the policyholder may increase such variable death benefit up to what it would have been if there had been no loan or withdrawal by paying an amount not exceeding 110 percent of the corresponding increase in cash value and by furnishing such evidence of insurability as the insurer may request;

7. the policy loan provisions shall be constructed so that variable life insurance policyholders who have not exercised this provision are not disadvantaged by the exercise of it;

8. amounts paid to the policyholders upon the exercise of any policy loan provision shall be withdrawn from the separate account and shall be returned to the separate account upon repayment except that a stock insurer may provide the amounts for policy loans from the general account.

E. Other policy provisions.

1. Incidental insurance benefits, if offered, may be offered on a fixed or variable basis.

2. Policies issued on a participating basis shall offer to pay dividend amounts in cash. In addition, the policies may offer the following dividend options:

a. the amount of the dividend may be credited against premium payments;

b. the amount of the dividend may be applied to provide amounts of additional fixed or variable benefit life insurance;

c. the amount of the dividend may be deposited in the general account at a specified minimum rate of interest;

d. the amount of the dividend may be applied to provide paid-up amounts of fixed benefit one-year term insurance;

e. the amount of the dividend may be deposited as a variable deposit in a separate account.

3. A provision allowing the policyholder to elect in writing in the application for the policy or thereafter an automatic premium loan on a basis not less favorable than that required of policy loans under 4 MCAR S 1.9404 D., except that a restriction that no more than two consecutive premiums can be paid under this provision may be imposed.

4. An exclusion for suicide within two years of the issue date of the policy. However, to the extent of the increased death benefits only, the policy may provide an exclusion for suicide within two years of any increase in death benefits which results from an application of the owner subsequent to the policy issue date.

5. A provision allowing the policyholder to make partial withdrawals.

6. Any other policy provision not inconsistent with 4 MCAR SS 1.9401-1.9411 or Minnesota law.

4 MCAR S 1.9405 Reserve liabilities for variable life insurance.

A. Establishment. Reserve liabilities for variable life insurance policies shall be established under the Standard Valuation Law, Minnesota Statutes, section 61A.25, in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

B. Scheduled premium policies. For scheduled premium policies, reserve liabilities for the guaranteed minimum death benefit shall be the reserve needed to provide for the contingency of death occurring when the guaranteed minimum death benefit exceeds the death benefit that would be paid in the absence of the guarantee, and shall be maintained in the general account of the insurer and shall be not less than the greater of the following minimum reserves:

1. The aggregate total of the term costs, if any, covering a period of one full year from the valuation date, of the guarantee on each variable life insurance contract, assuming an immediate one-third depreciation in the current value of the assets of the separate account followed by a net investment return equal to the assumed investment rate; or

2. The aggregate total of the "attained age level" reserves on each variable life insurance contract. The "attained age level" reserve on each variable life insurance contract shall not be less than zero and shall equal the "residue," as described in paragraph a. below, of the prior year's "attained age level" reserve on the contract, with any such "residue," increased or decreased by a payment computed on an attained age basis as described in paragraph b. below.

a. the "residue" of the prior year's "attained age level" reserve on each variable life insurance contract shall not be less than zero and shall be determined by adding interest at the valuation interest rate to such prior year's reserve, deducting the tabular claims based on the "excess," if any, of the guaranteed minimum death benefit over the death benefit that

would be payable in the absence of such guarantee, and dividing the net result by the tabular probability of survival. The "excess" referred to in the preceding sentence shall be based on the actual level of death benefits that would have been in effect during the preceding year in the absence of the guarantee, taking appropriate account of the reserve assumptions regarding the distribution of death claim payments over the year.

b. the payment referred to in 4 MCAR S 1.9405 B.2. shall be computed so that the present value of a level payment of that amount each year over the future premium paying period of the contract is equal to (A) minus (B) minus (C), where (A) is the present value of the future guaranteed minimum death benefits, (B) is the present value of the future deathbenefits that would be payable in the absence of such guarantee, and (C) is any "residue," as described in paragraph a. above, of the prior year's "attained age level" reserve on such variable life insurance contract. If the contract is paid-up, the payment shall equal (A) minus (B) minus (C). The amounts of future death benefits referred to in (B) shall be computed assuming a net investment return of the separate account which may differ from the assumed investment rate and/or the valuation interest rate but in no event may exceed the maximum interest rate permitted for the valuation of life contracts.

3. The valuation interest rate and mortality table used in computing the two minimum reserves described in paragraphs 1. and 2. above shall conform to permissible standards for the valuation of life insurance contracts. In determining such minimum reserve, the company may employ suitable approximations and estimates, including but not limited to groupings and averages.

C. Flexible premium policies. For flexible premium policies, reserve liabilities for any guaranteed minimum death benefit shall be maintained in the general account of the insurer and shall be not less than the aggregate total of the term costs, if any, covering the period provided for in the guarantee not otherwise provided for by the reserves held in the

separate account assuming an immediate one-third depreciation in the current value of the assets of the separate account followed by a net investment return equal to the valuation interest rate.

The valuation interest rate and mortality table used in computing this additional reserve, if any, shall conform to permissible standards for the valuation of life insurance contracts. In determining the minimum reserve, the company may employ suitable approximations and estimates, including but not limited to groupings and averages.

D. Reserve liabilities for all fixed incidental insurance benefits and any guarantees associated with variable incidental insurance benefits shall be maintained in the general account and reserve liabilities for all variable aspects of the variable incidental insurance benefits must be maintained in a separate account in amounts determined in accordance with the actuarial procedures appropriate to such benefit.

4 MCAR S 1.9406 Separate accounts.

The following requirements apply to the establishment and administration of variable life insurance separate accounts by any domestic insurer:

A. Establishment and administration of separate accounts. Any domestic insurer issuing variable life insurance shall establish and administer one or more separate accounts pursuant to Minnesota Statutes, section 61A.14.

1. All persons with access to the cash, securities, or other assets of the separate account shall be under bond in an amount not less than $3,000,000.

2. The assets of these separate accounts shall be valued at least as often as variable benefits are determined but in any event at least monthly.

B. Amounts in the separate account. The insurer shall maintain in each separate account assets with a value at least equal to the greater of the valuation reserves for the variable portion of the variable life insurance policies or the benefit base for such policies.

C. Investments by the separate account. The separate

account shall have sufficient net investment income and readily marketable assets to meet anticipated withdrawals under policies funded by the account and be registered under the Investment Company Act of 1940.

D. Limitations on ownership.

1. A separate account shall not purchase or otherwise acquire the securities of any issuer, other than securities issued or guaranteed as to principal and interest by the United States, if immediately after the purchase or acquisition the value of the investment, together with prior investments of the account in the security valued as required by this rule, would exceed ten percent of the value of the assets of the separate account. The commissioner shall waive this limitation in writing if he believes the waiver will not render the operation of the separate account hazardous to the public or the policyholders in this state.

2. No separate account shall purchase or otherwise acquire the voting securities of any issuer if as a result of the acquisition the insurer and its separate accounts, in the aggregate, will own more than ten percent of the total issued and outstanding voting securities of the issuer. The commissioner shall waive this limitation in writing if he believes the waiver will not render the operation of the separate account hazardous to the public or the policyholders in this state or jeopardize the independent operation of the issuer of the securities.

3. The percentage limitation specified in D.1. shall not be construed to preclude the investment of the assets of separate accounts in shares of investment companies registered pursuant to the Investment Company Act of 1940 or other pools of investment assets if the investments and investment policies of the investment companies or asset pools comply substantially with the provisions of C. and other applicable portions of this rule.

E. Valuation of separate account. Investments of the separate account shall be valued at their market value on the

date of valuation, or at amortized cost if it approximates market value.

F. Separate account investment policy. The investment policy of a separate account operated by a domestic insurer filed under 4 MCAR S 1.9403 B.3. shall not be changed without first filing the change with the commissioner.

G. Charges against a variable life insurance separate account. The insurer must disclose in writing, prior to or contemporaneously with delivery of the policy, all charges that may be made against the separate account, including, but not limited to the following:

1. taxes or reserves for taxes attributable to investment gains and income of the separate account;

2. actual cost of reasonable brokerage fees and similar direct acquisition and sales costs incurred in the purchase or sale of separate account assets;

3. actuarially determined costs of insurance (tabular costs) and the release of reserves and benefit base consistent with the release of separate account liabilities;

4. charges for administrative expenses and investment management expenses, including internal costs attributable to the investment management of assets of the separate account;

5. a charge, at a rate specified in the policy for mortality and expense guarantees;

6. any amounts in excess of those required to be held in the separate account;

7. charges for incidental insurance benefits.

4 MCAR S 1.9407 Information furnished to applicants.

The requirements of 4 MCAR S 1.9407 shall be deemed to have been satisfied to the extent that a disclosure containing information required by 4 MCAR S 1.9407 is delivered, either in the form of (1) a prospectus included in a registration statement relating to the policies which satisfies the requirements of the Securities Act of 1933 and which was declared effective by the Securities and Exchange Commission; or (2) all information and reports required by the Employee

Retirement Income Security Act of 1974 if the policies are exempted from the registration requirements of the Securities Act of 1933 pursuant to Section 3(a)(2) thereof. An insurer delivering or issuing for delivery in this state any variable life insurance policies shall deliver to the applicant for the policy, and obtain a written acknowledgement of receipt from the applicant coincident with or prior to the execution of the application, the following information:

A. a summary explanation, in non-technical terms, of the principal features of the policy, including a description of the manner in which the variable benefits will reflect the investment experience of the separate account and the factors which affect the variation. The explanation must include notices of the provision required by 4 MCAR S 1.9404 C.1.e. and Minnesota Statutes, section 61A.03, clause (3).

B. a statement of the investment policy of the separate account, including:

1. a description of the investment objective intended for the separate account and the principal types of investments intended to be made; and

2. any restriction or limitations on the manner in which the operations of the separate account are intended to be conducted.

C. a statement of the net investment return of the separate account for each of the last ten years or a lesser period the separate account was in existence;

D. a statement of the charges levied against the separate account during the previous year;

E. a summary of the method to be used in valuing assets held by the separate account;

F. a summary of the federal income tax aspects of the policy applicable to the insured, the policyholder, and the beneficiary;

G. illustrations of benefits payable under the variable life insurance contract. The illustrations must be prepared by the insurer and must not include projections of past investment experience into the future or attempted predictions of future

investment experience, provided that nothing contained herein prohibits use of hypothetical assumed rates of return to illustrate possible levels of benefits if it is made clear that the assumed rates are hypothetical only.

4 MCAR S 1.9409 Reports to policyholders.

Any insurer delivering or issuing for delivery in this state any variable life insurance policies shall mail to each variable life insurance policyholder at his or her last known address the following reports:

A. Within 30 days after each anniversary of the policy, a statement or statements of the cash surrender value, death benefit, any partial withdrawal or policy loan, any interest charge, and any optional payments allowed pursuant to 4 MCAR S 1.9404 C. under the policy computed as of the policy anniversary date. Provided, however, that such statement may be furnished within 30 days after a specified date in each policy year so long as the information contained therein is computed as of a date not more than 60 days prior to the mailing of the notice. This statement shall state that, in accordance with the investment experience of the separate account, the cash values and the variable death benefit may increase or decrease, and shall prominently identify any value described therein which may be recomputed prior to the next statement required by 4 MCAR S 1.9409. If the policy guarantees that the variable death benefit on the next policy anniversary date will not be less than the variable death benefit specified in the statement, the statement shall be modified to so indicate. For flexible premium policies, the report must contain a reconciliation of the change since the previous report in cash value and cash surrender value, if different, because of payments made, less deductions for expense charges, withdrawals, investment experience, insurance charges, and any other charges made against the cash value. In addition, the report must show the projected cash value and cash surrender value, if different, as of one year from the end of the period covered by the report assuming that: planned periodic premiums, if any, are paid as

scheduled; guaranteed costs of insurance are deducted; and the net investment return is equal to the guaranteed rate or, in the absence of a guaranteed rate, is not greater than zero. If the projected value is less than zero, a warning message must be included that states that the policy may be in danger of terminating without value in the next 12 months unless additional premium is paid.

B. Annually, a statement or statements including:

1. a summary of the financial statement of the separate account based on the annual statement last filed with the commissioner;

2. the net investment return of the separate account for the last year and, for each year after the first, a comparison of the investment rate of the separate account during the last year with the investment rate during prior years, up to a total of not less than five years when available;

3. a list of investments held by the separate account as of a date not earlier than the end of the last year for which an annual statement was filed with the commissioner;

4. any charges levied against the separate account during the previous year;

5. a statement of any change, since the last report, in the investment objective and orientation of the separate account, in any investment restriction or material quantitative or qualitative investment requirement applicable to the separate account or in the investment adviser of the separate account.

C. For flexible premium policies, a report must be sent to the policyholder if the amounts available under the policy on any policy processing day to pay the charges authorized by the policy are less than the amount necessary to keep the policy in force until the next following policy processing day. The report must indicate the minimum payment required under the terms of the policy to keep it in force and the length of the grace period for payment of the amount.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
FEB 10 1984
9:52 A.M
Joan Anderson G.
Secretary of State

APPROVED AS TO LEGALITY
February 9, 1984
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY
SPECIAL ASSISTANT ATTORNEY GENERAL

Rules as Proposed

4 MCAR S 1.9401~~.~~ Authority and scope.

The following ~~regulations are applicable~~ rules apply to all variable life insurance policies issued in this state, and are ~~promulgated~~ adopted under the authority of Minnesota Statutes, section 61A.20.

4 MCAR S 1.9402~~.~~ Definitions.

~~As used in this regulation:~~

A. Terms. For the purposes of 4 MCAR SS 1.9401-1.9411, the terms defined in this rule have the meanings given them.

B. Affiliate. "Affiliate" of an insurer means any person, directly or indirectly, controlling, controlled by, or under common control with the insurer; any person who regularly furnishes investment advice to the insurer with respect to its separate accounts for which a specific fee or commission is charged; or any director, officer, partner, or employee of an insurer, controlling or controlled person, or person providing investment advice or any member of the immediate family of this person.

~~A.~~ C. Assumed investment rate. "Assumed investment rate" means the rate of investment return which would be required to be credited to a variable life insurance policy, after deduction of charges for taxes, investment expenses, and mortality and expense guarantees to maintain the variable death benefit equal at all times to the amount of death benefit, other than incidental insurance benefits, which would be payable under the plan of insurance if the death benefit did not vary according to the investment experience of the separate account.

~~B.~~ D. Benefit base. "Benefit base" means the amount~~,~~ ~~not less than the amount specified under 4 MCAR Section 1.9406 B.2. specified by the terms of the variable life insurance policy~~ to which ~~the difference between~~ the net investment return ~~and the assumed investment rate~~ is applied ~~in determining the variable benefits of the policy~~.

E. Control. "Control," including the terms "controlling,"

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"controlled by," and "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing more than ten percent of the voting securities of any other person. This presumption may be rebutted by a showing made to the satisfaction of the commissioner that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

F. Flexible premium policy. "Flexible premium policy" means any variable life insurance policy other than a scheduled premium policy as specified in L.

~~C.~~ G. General account. "General account" means all assets of the insurer other than assets in separate accounts established pursuant to Minnesota Statutes, section 61A.14, or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer, whether or not for variable life insurance.

~~D.~~ H. Incidental insurance benefit. "Incidental insurance benefit" means all insurance benefits in a variable life insurance policy, other than the variable death benefit and the minimum death benefit, including accidental death and dismemberment benefits, disability ~~income~~ benefits, guaranteed insurability options, family income, or ~~fixed-benefit~~ term riders.

~~E.~~ I. Minimum death benefit. "Minimum death benefit" means the amount of the guaranteed death benefit, other than

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incidental insurance benefits, payable under a variable life insurance policy regardless of the investment performance of the separate account.

~~F.~~ J. Net investment return. "Net investment return" means the rate of investment return in a separate account to be applied to the benefit base ~~after-deduction-of-charges-for taxes,-investment-expenses-and-mortality-and-expense-guarantees in-accordance-with-the-terms-of-the-policy~~.

K. Policy processing day. "Policy processing day" means the day on which charges authorized in the policy are deducted from the policy's cash value.

L. Scheduled premium policy. "Scheduled premium policy" means any variable life insurance policy under which both the amount and timing of premium payments are fixed by the insurer.

~~G.~~ M. Separate account. "Separate account" means a separate account established for variable life insurance pursuant to Minnesota Statutes, section 61A.14, or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.

~~H.~~ N. Variable death benefit. "Variable death benefit" means the amount of the death benefit, other than incidental insurance benefits, payable under a variable life insurance policy dependent on the investment performance of the separate account, which the insurer would have to pay in the absence of ~~the~~ any minimum death benefit.

~~I.~~ O. Variable life insurance policy. "Variable life insurance policy" means any individual policy which provides for life insurance the amount or duration of which varies according to the investment experience of any separate account or accounts established and maintained by the insurer as to ~~such~~ this policy, pursuant to Minnesota Statutes, section 61A.14, or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.

~~J.~~ P. Securities Act of 1933. "Securities Act of 1933" means the Federal Securities Act of 1933, 15 U.S.C., Section 77a et. seq.

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K. Q. Securities Exchange Act of 1934. "Securities Exchange Act of 1934" means the Federal Securities Exchange Act of 1934, 15 U.S.C., Section 78a et. seq.

L. R. Investment Company Act of 1940. "Investment Company Act of 1940" means the Federal Investment Company Act of 1940, 15 U.S.C., Section 80a-1 et. seq.

M. S. Employee Retirement Income Security Act of 1974. "Employee Retirement Income Security Act of 1974" means the Federal Employee Retirement Income Security Act of 1974, 29 U.S.C., Section 1001 et. seq.

4 MCAR S 1.9403. Qualification of insurer to issue variable life insurance.

A. Compliance with laws and grant of authority. An insurer shall not deliver or issue for delivery in this state any variable life insurance policy unless it has complied with Minnesota Statutes, sections 61A.13 to 61A.21 and 4 MCAR SS 1.9401-1.9411, and the commissioner has granted the insurer the authority to issue variable life insurance policies in the state of Minnesota pursuant to Minnesota Statutes, section 61A.20.

B. Required filing. Before any insurer ~~shall deliver~~ delivers or ~~issue~~ issues for delivery any variable life insurance policy in this state, it must file with the commissioner the ~~following~~ information contained in 1.-4. for the consideration of the commissioner in making the determination required by Minnesota Statutes, section 61A.19.

1. Copies of and a general description of the variable life insurance policies it intends to issue.

2. A general description of the methods of operation of the variable life insurance business of the insurer, including methods of distribution of policies and the names of those persons or firms proposed to supply consulting, investment, administrative, custodial, or distribution services to the insurer.

3. With respect to any separate account maintained by an insurer for any variable life insurance policy, a statement of the investment policy the insurer intends to follow for the

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investment of the assets held in such separate account, and a statement of the procedures for changing such investment policy. The statement of investment policy shall include a description of the investment objective ~~and orientation~~ intended for the separate account.

4. A statement of the insurer's actuary describing the mortality and expense risks which the insurer will bear under the policy.

C. Applicability. The requirements of this rule apply to all insurers either seeking authority to issue variable life insurance in this state or having authority to issue variable life insurance in this state.

4 MCAR S 1.9404~~.~~ Insurance policy requirements.

A. Generally. The commissioner shall not accept the filing of any variable life insurance policy form unless it conforms to the requirements of 4 MCAR S 1.9404 and Minnesota Statutes, chapter 61A.

B. Mandatory policy benefit and design requirements. Variable life insurance policies delivered or issued for delivery in this state shall comply with the ~~following~~ minimum requirements~~:~~ contained in 1.-7.

1. ~~Coverage shall be provided for the lifetime of the insured with the~~ Mortality and expense risk shall be borne by the insurer. The mortality and expense charges shall be subject to the maximums stated in the contract.

2. ~~Gross premiums for death benefits shall be a level amount for the duration of the premium payment period, but this subdivision shall not be construed to prohibit temporary or permanent additional premiums for incidental insurance benefits or substandard risks. This subdivision shall not be deemed to prohibit the use of fixed benefit preliminary term insurance for a period not to exceed 120 days from the date of the application for a variable life insurance policy. The premium rate for such preliminary term insurance shall be stated separately in the application or receipt.~~

~~3.~~ For scheduled premium policies, a minimum death

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benefit shall be provided in an amount at least equal to the initial face amount of the policy so long as premiums are duly paid ~~(~~, subject to the provisions of 4 MCAR S 1.9404 C~~)~~D.2.~~.~~

~~4.~~ 3. The policy shall ~~provide that the variable death benefit shall~~ reflect the investment experience of ~~the variable life insurance~~ one or more separate ~~account~~ accounts established and maintained by the insurer ~~and that the excess, positive or negative, of the net investment return over the assumed investment rate, as applied to the benefit base of each variable life insurance policy, shall be used to provide either:~~

~~a. fully paid up variable life insurance providing coverage for the same period as the basic insurance under the policy or fully paid up term insurance amounts for a term of annual periods of not less than one year nor more than five years, positive or negative, as the case may be, or a combination thereof; or~~

~~b. variable life insurance amounts, positive or negative, as the case may be, so that the reserve maintains the same percentage relationship to the variable death benefit as it would have on a corresponding fixed benefit policy.~~ The insurer must demonstrate that the reflection of investment experience in the variable life insurance policy is actuarially sound.

~~5.~~ 4. Each variable life insurance policy shall be credited with the full amount of the net investment return applied to the benefit base.

~~6.~~ 5. Any changes in variable death benefits of each variable life insurance policy shall be determined at least annually.

~~7.~~ 6. The cash value of each variable life insurance policy shall be determined at least monthly. The method of computation of cash values and other non-forfeiture benefits, as described either in the policy or in a statement filed with the commissioner or person fulfilling the equivalent function of the state in which the policy is delivered, or issued for delivery, shall be in accordance with actuarial procedures that recognize the variable nature of the policy. The method of computation

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must be such that, if the net investment return credited to the policy at all times from the date of issue should be equal to the assumed investment rate with premiums and benefits determined accordingly under the terms of the policy, then the resulting cash values and other non-forfeiture benefits must be at least equal to the minimum values required by Minnesota Statutes, section 61A.24 ~~(~~, the Standard Non-Forfeiture Law~~)~~, for a ~~fixed-benefit~~ general account policy with ~~such~~ these premiums and benefits. The assumed investment rate shall not exceed the maximum interest rate permitted under ~~the-Standard Non-Forfeiture-Law-of-this-state~~ Minnesota Statutes, section 61A.24. If the policy does not contain an assumed investment rate, this demonstration must be based on the maximum interest rate permitted under Minnesota Statutes, section 61A.24. The method of computation may disregard incidental minimum guarantees as to the dollar amounts payable. Incidental minimum guarantees include, for example, but are not to be limited to, a guarantee that the amount payable at death or maturity shall be at least equal to the amount that otherwise would have been payable if the net investment return credited to the policy at all times from the date of issue had been equal to the assumed investment rate.

~~8.~~ 7. The computation of values required for each variable life insurance policy may be based upon reasonable and necessary approximations.

~~9.-In-determining-the-net-investment-return-to-be-applied to-the-benefit-base-the-insurer-may-deduct-only-the-charges described-in-4-MCAR-Section-1.9406-G.1.a.,-b.,-d.,-and-e.~~

C. Mandatory policy provisions. Every variable life insurance policy filed for approval in this state shall contain at least the following:

1. the cover page or pages corresponding to the cover page of each ~~such~~ policy shall contain:

a. a prominent statement in either contrasting color or in boldface type ~~at-least-four-points-larger-than-the-type size-of-the-largest-type-used-in-the-text-of-any-provision-on~~

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~~that-page,~~ that the amount or duration of death benefit may be variable or fixed under specified conditions;

b. a prominent statement in either contrasting color or in boldface type ~~at-least-four-points-larger-than-the-type size-of-the-largest-type-used-in-the-text-of-any-provision-on that-page~~ that cash values may increase or decrease in accordance with the experience of the separate account subject to any specified minimum guarantees;

c. a statement ~~that-the~~ describing any minimum death benefit ~~will-be-at-least-equal~~ required pursuant to ~~the-initial face-amount-at-the-date-of-issue-if-premiums-are-duly-paid-and if-there-are-no-outstanding-policy-loans,-partial-withdrawals, or-partial-surrenders~~ 4 MCAR S 1.9404 B.3.;

d. the ~~rule~~ method, or a reference to the policy provision, which describes the method for determining the ~~variable~~ amount of insurance payable at death;

e. a captioned provision ~~or-endorsement-to-the-policy which-provides~~ that the policyholder may ~~cancel~~ return the variable life insurance policy ~~by-delivering-or-mailing-a written-notice-or-sending-a-telegram-to-the-insurer-and-by returning~~ within ten days of receipt of the policy ~~before midnight-of-the-tenth-day-after-the-date-the-policyholder receives-the-policy,-or-before-midnight-of-the-forty-fifth-day after-the-date-of-the-execution-of-the-application,-whichever-is later.--Notice-given-by-mail-and-return-of-the-policy-are effective-on-being-postmarked-properly-addressed-and-postage prepaid.--The-insurer-must-return-all-payments-made-for-the policy-within-ten-days-after-it-receives-notice-of-cancellation and-the-returned-policy~~ by the policyholder, and receive a refund as required by state law.

f. such other items as are currently required by Minnesota Statutes, chapter 61A.;

2. a. For scheduled premium policies, a provision for a grace period of not less than ~~thirty-one~~ 31 days from the premium due date which shall provide that where the premium is paid within the grace period, policy values will be the same

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except for the deduction of any overdue premium, as if the premium were paid on or before the due date;

b. For flexible premium policies, a provision for a grace period beginning on the policy processing day when the total charges authorized by the policy that are necessary to keep the policy in force until the next policy processing day exceed the amounts available under the policy to pay these charges in accordance with the terms of the policy. The grace period shall end on a date not less than 61 days after the mailing date of the Report to Policyholders required by 4 MCAR S 1.9409 C.

The death benefit payable during the grace period will equal the death benefit in effect immediately prior to the period less any overdue charges. If the policy processing days occur monthly, the insurer may require the payment of not more than three times the charges which were due on the policy processing day on which the amounts available under the policy were insufficient to pay all charges authorized by the policy that are necessary to keep the policy in force until the next policy processing day;

3. For scheduled premium policies, a provision that the policy will be reinstated at any time within three years from the date of default upon the written application of the insured and evidence of insurability, including good health, satisfactory to the insurer, unless the cash surrender value has been paid or the period of extended insurance has expired, upon the payment of any outstanding indebtedness arising subsequent to the end of the grace period following the date of default together with accrued interest thereon to the date of reinstatement and payment of an amount not exceeding the greater of:

a. all overdue premiums with interest at a rate not exceeding eight ~~(8%)~~ percent per annum compounded annually and any indebtedness in effect at the end of the grace period following the date of default with interest at a rate not exceeding eight ~~(8%)~~ percent per annum compounded annually; or

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b. 110% percent of the increase in cash ~~surrender~~ value resulting from reinstatement plus all overdue premiums for incidental insurance benefits with interest at a rate not exceeding eight ~~(8%)~~ percent per annum compounded annually~~.~~;

4. a full description of the benefit base and of the method of calculation and application of any factors used to adjust variable benefits under the policy;

5. a provision designating the separate account to be used and stating that:

a. ~~such separate account shall be used to fund only variable life insurance benefits;~~

~~b.~~ the assets of ~~such~~ the separate account shall be available to cover the liabilities of the general account of the insurer only to the extent that the assets of the separate account exceed the liabilities of the separate account arising under the variable life insurance policies supported by the separate account; and

~~c.~~ b. the assets of ~~such~~ the separate account shall be valued at least as often as any policy benefits vary but at least monthly.

6. a provision stating that the approval process for a change in the investment policy of the separate account is on file with the commissioner;

7. a provision that the policy shall be incontestable by the insurer after it has been in force for two years during the lifetime of the insured, provided, however, that any increase in the amount of the policy's death benefits subsequent to the policy issue date, which increase occurred upon a new application or request of the owner and was subject to satisfactory proof of the insured's insurability, shall be incontestable after an increase has been in force, during the lifetime of the insured, for two years from the date of issue of the increase;

8. a provision that payment of variable death benefits in excess of ~~the~~ any minimum death benefits, cash values, policy loans, or partial withdrawals (except when used to pay premiums)

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or partial surrenders may be deferred:

a. for up to six months from the date of request, if such payments are based on policy values which do not depend on the investment performance of the separate account~~,~~; or

b. otherwise, for any period during which the New York Stock Exchange is closed for trading (except for normal holiday closing) or when the Securities and Exchange Commission has determined that a state of emergency exists which may make such payment impractical~~.~~;

~~8.~~ 9. if settlement options ~~which~~ are provided, at least one option shall be provided on a fixed basis only;

~~9.~~ 10. a description of the basis for computing the cash value and the surrender value under the policy shall be included ~~.--Such-surrender-value-may-be-expressed-as-either:~~

~~a.--a-schedule-of-cash-value-amounts-per-one-thousand dollars-of-variable-face-amount-at-each-attained-age-or-policy year-for-at-least-20-years-from-issue,-or-for-the-premium-paying period,-if-less-than-20-years;-or~~

~~b.--one-cash-value-schedule-as-described-in-paragraph 1.-for-the-death-benefit,-or-for-each-one-thousand-dollars-of death-benefit,-which-would-be-in-effect-if-the-net-investment return-is-always-equal-to-the-assumed-investment-rate-and-a second-schedule-applicable-to-any-adjustments-to-the-death benefit-(disregarding-the-minimum-death-benefit-guarantee-and term-insurance-amounts)-if-the-net-investment-return-does-not equal-the-assumed-investment-rate-at-each-age-for-at-least-20 years-from-issue,-or-for-the-premium-paying-period-if-it-is-less than-20-years.~~;

~~10.~~ 11. premiums or changes for incidental insurance benefits shall be stated separately~~.~~;

~~B.-Non-forfeiture,-partial-withdrawal,-policy-loan,-and partial-surrender-provisions.-Every-variable-life-insurance policy-delivered-or-issued-for-delivery-in-this-state-shall contain-provisions-which-are-not-less-favorable-to-the policyholder-than-the-following:~~

~~1.~~ 12. a provision for non-forfeiture insurance benefits

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~~so-that-at-least-one-such-benefit-is-offered-on-a-fixed-basis from-the-due-date-of-the-premium-in-default.~~

~~a.-Variable-extended-term-insurance-may-not-be-offered.~~

~~b.-A-given-non-forfeiture-option-need-not-be-offered-on both-a-fixed-and-a-variable-basis.~~

~~c.~~ The insurer may establish a reasonable minimum cash ~~surrender~~ value below which ~~any-such~~ non-forfeiture insurance options will not be available.

~~2.-A-provision-for-policy-loans-after-three-full-years" premiums-have-been-paid-(which-may-at-the-option-of-the-insurer be-entitled-and-referred-to-as-a-partial-withdrawal-provision)~~

D. Policy loan provisions. Every variable life insurance policy, other than term insurance policies and pure endowment policies, delivered or issued for delivery in this state must contain provisions for policy loans after the policy has been in force for three full years which are not less favorable to the policyholder than the following:

~~a.--Up-to~~ 1. at least ~~75%-but-if-the-loan-is-made-from the-general-account-not-more-than-90%~~ percent of the policy's cash surrender value may be borrowed;

~~b.-The-amount-borrowed,-or-any-repayment-thereof,-shall not-affect-the-amount-of-the-premium-payable-under-the-policy;~~

~~c.~~ 2. the amount borrowed shall bear interest at a rate not to exceed ~~8%-per-year-compounded-annually~~ that permitted by Minnesota Statutes, section 61A.03;

~~d.~~ 3. any indebtedness shall be deducted from the proceeds payable on death;

~~e.~~ 4. any indebtedness shall be deducted from the cash surrender value upon surrender or in determining any non-forfeiture benefit;

~~f.~~ 5. for scheduled premium policies, whenever the indebtedness exceeds the cash surrender value, the insurer shall give notice of any intent to cancel the policy if the excess indebtedness is not repaid within ~~thirty-one~~ 31 days after the date of mailing of ~~such~~ the notice. For flexible premium policies, whenever the total charges authorized by the policy

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that are necessary to keep the policy in force until the next following policy processing day exceed the amounts available under the policy to pay these charges, a report must be sent to the policyholder containing the information specified by 4 MCAR S 1.9409 C.;

~~g.~~ 6. the policy may provide that if, at any time, so long as premiums are duly paid, the variable death benefit is less than it would have been if no loan or withdrawal had ever been made, the policyholder may increase such variable death benefit up to what it would have been if there had been no loan or withdrawal by paying an amount not exceeding 110% percent of the corresponding increase in cash value and by furnishing such evidence of insurability as the insurer may request;

~~h. In addition to the foregoing, the policy may contain a partial surrender provision; however, any such provision shall provide that the policyholder may request part of the cash value and both the variable and minimum death benefits will be reduced in proportion to the percentage of the cash value received by the policyholder and the premium for the remaining amount of insurance will also be reduced to the appropriate rates for the reduced amount of insurance. The policy may provide that a partial surrender provision shall not require the insurer to reduce the amount of the minimum death benefit to less than the lowest amount of minimum death benefit which would have been issued to the insured under the insurance plans of the insurer at the time the policy was issued. The policy must clearly provide that the policyholder has the option of electing to exercise the cash value privileges of the policy loan or partial withdrawal provision rather than the partial surrender provision;~~

~~i.~~ All 7. the policy loan~~, partial withdrawal, or partial surrender~~ provisions shall be constructed so that variable life insurance policyholders who have not exercised such this provision are not disadvantaged by the exercise ~~thereof~~ of it;

~~j.~~ Monies 8. amounts paid to the policyholders upon the exercise of any policy loan~~, partial withdrawal, or partial~~

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surrender provision shall be withdrawn from the separate account and shall be returned to the separate account upon repayment except that a stock insurer may provide the ~~monies~~ amounts for policy loans from the general account.

E. Other policy provisions.

1. Incidental insurance benefits, if offered, ~~shall~~ may be offered on a fixed or variable basis ~~only;~~.

2. Policies issued on a participating basis shall offer to pay dividend amounts in cash. In addition, ~~such~~ the policies may offer the following dividend options:

a. the amount of the dividend may be credited against premium payments;

b. the amount of the dividend may be applied to provide ~~paid-up~~ amounts of additional fixed or variable benefit ~~whole~~ life insurance;

~~c. the amount of the dividend may be applied to provide paid-up amounts of additional variable life insurance;~~

~~d.~~ c. the amount of the dividend may be deposited in the general account at a specified minimum rate of interest;

~~e.~~ d. the amount of the dividend may be applied to provide paid-up amounts of fixed benefit one-year term insurance~~.~~ ;

e. the amount of the dividend may be deposited as a variable deposit in a separate account.

3. A provision allowing the policyholder to elect in writing in the application for the policy or thereafter an automatic premium loan on a basis not less favorable than that required of policy loans ~~or partial withdrawals~~ under 4 MCAR S 1.9404 D., except that a restriction that no more than two consecutive premiums can be paid under this provision may be imposed.

4. An exclusion for suicide within two years of the issue date of the policy. However, to the extent of the increased death benefits only, the policy may provide an exclusion for suicide within two years of any increase in death benefits which results from an application of the owner subsequent to the

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policy issue date.

5. A provision allowing the policyholder to make partial withdrawals.

6. Any other policy provision not inconsistent with 4 MCAR SS 1.9401-1.9411 or Minnesota law.

4 MCAR S 1.9405. Reserve liabilities for variable life insurance.

A. Establishment. Reserve liabilities for variable life insurance policies shall be established under the Standard Valuation Law, Minnesota Statutes, section 61A.25, in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

B. Scheduled premium policies. For scheduled premium policies, reserve liabilities for the guaranteed minimum death benefit shall be the reserve needed to provide for the contingency of death occurring when the guaranteed minimum death benefit exceeds the death benefit that would be paid in the absence of the guarantee, and shall be maintained in the general account of the insurer and shall be not less than the greater of the following minimum reserves:

1. The aggregate total of the term costs, if any, covering a period of one full year from the valuation date, of the guarantee on each variable life insurance contract, assuming an immediate one-third depreciation in the current value of the assets of the separate account followed by a net investment return equal to the assumed investment rate; or

2. The aggregate total of the "attained age level" reserves on each variable life insurance contract. The "attained age level" reserve on each variable life insurance contract shall not be less than zero and shall equal the "residue," as described in paragraph a. below, of the prior year's "attained age level" reserve on the contract, with any such "residue," increased or decreased by a payment computed on an attained age basis as described in paragraph b. below.

a. the "residue" of the prior year's "attained age level" reserve on each variable life insurance contract shall not be less than zero and shall be determined by adding interest

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at the valuation interest rate to such prior year's reserve, deducting the tabular claims based on the "excess," if any, of the guaranteed minimum death benefit over the death benefit that would be payable in the absence of such guarantee, and dividing the net result by the tabular probability of survival. The "excess" referred to in the preceding sentence shall be based on the actual level of death benefits that would have been in effect during the preceding year in the absence of the guarantee, taking appropriate account of the reserve assumptions regarding the distribution of death claim payments over the year.

b. the payment referred to in 4 MCAR S 1.9405 B.2. shall be computed so that the present value of a level payment of that amount each year over the future premium paying period of the contract is equal to (A) minus (B) minus (C), where (A) is the present value of the future guaranteed minimum death benefits, (B) is the present value of the future deathbenefits that would be payable in the absence of such guarantee, and (C) is any "residue," as described in paragraph a. above, of the prior year's "attained age level" reserve on such variable life insurance contract. If the contract is paid-up, the payment shall equal (A) minus (B) minus (C). The amounts of future death benefits referred to in (B) shall be computed assuming a net investment return of the separate account which may differ from the assumed investment rate and/or the valuation interest rate but in no event may exceed the maximum interest rate permitted for the valuation of life contracts.

3. The valuation interest rate and mortality table used in computing the two minimum reserves described in paragraphs 1. and 2. above shall conform to permissible standards for the valuation of life insurance contracts. In determining such minimum reserve, the company may employ suitable approximations and estimates, including but not limited to groupings and averages.

C. Flexible premium policies. For flexible premium policies, reserve liabilities for any guaranteed minimum death benefit shall be maintained in the general account of the

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insurer and shall be not less than the aggregate total of the term costs, if any, covering the period provided for in the guarantee not otherwise provided for by the reserves held in the separate account assuming an immediate one-third depreciation in the current value of the assets of the separate account followed by a net investment return equal to the valuation interest rate.

The valuation interest rate and mortality table used in computing this additional reserve, if any, shall conform to permissible standards for the valuation of life insurance contracts. In determining the minimum reserve, the company may employ suitable approximations and estimates, including but not limited to groupings and averages.

D. Reserve liabilities for all fixed incidental insurance benefits and any guarantees associated with variable incidental insurance benefits shall be maintained in the general account and reserve liabilities for all variable aspects of the variable incidental insurance benefits must be maintained in a separate account in amounts determined in accordance with the actuarial procedures appropriate to such benefit.

4 MCAR S 1.9406~~.~~ Separate accounts.

The following requirements apply to the establishment and administration of variable life insurance separate accounts by any domestic insurer:

A. Establishment and administration of separate accounts. ~~An~~ Any domestic insurer issuing variable life insurance ~~in this state~~ shall establish and administer one or more separate accounts pursuant to Minnesota Statutes, section 61A.14.

1. All persons with access to the cash, securities, or other assets of the separate account shall be under bond in an amount not less than $3,000,000.

~~2. If an insurer establishes more than one separate account for variable life insurance, justification for the establishment of each additional separate account shall also be filed with the commissioner. The creation of additional separate accounts to avoid lower maximum charges against the separate account is prohibited.~~

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3. The assets of ~~such~~ these separate accounts ~~established for variable life insurance policies~~ shall be valued at least as often as variable benefits are determined but in any event at least monthly.

~~4. A separate account exempt pursuant to Section 3(c)(11) of the Investment Company Act of 1940 because of the tax qualified status of the policies funded thereby shall not be used to fund other variable life insurance policies.~~

~~5. Except for separate accounts exempt pursuant to Section 3(c)(11) of the Investment Company Act of 1940, variable life insurance separate accounts shall not be used for variable annuities or for the investment of funds corresponding to dividend accumulations or other policyholder liabilities not involving life contingencies.~~

B. Amounts in the separate account.

1. The insurer shall maintain in each ~~variable life~~ insurance separate account assets with a ~~fair market~~ value at least equal to the greater of the valuation reserves for the variable portion of the variable life insurance policies or the benefit base for such policies.

~~2. The benefit base of any variable life insurance policy as of the beginning of any valuation period shall not be less than the sum of the following factors after deducting amounts of any indebtedness pursuant to 4 MCAR Section 1.9404 D.2.:~~

~~a. the valuation net premium for such period, for the variable portion of the policy, minus the discounted cost of term insurance for such period, based on the tabular mortality and interest rates used in determining valuation reserves; and~~

~~b. the valuation terminal reserve, for the variable portion of the policy, at the end of the immediately preceding valuation period adjusted for the net investment return of such preceding period.~~

~~3. In lieu of the minimum benefit base requirement specified above, an insurer may otherwise qualify under 4 MCAR Section 1.9406 B. if the policy benefits obtained over a 20 year period from the date of issue by the use of the insurer's~~

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~~benefit-base-are-at-least-substantially-equivalent-in-value-to the-benefits-obtained-by-the-use-of-the-minimum-benefit-base specified-above.~~

~~4.-Notwithstanding-the-actual-reserve-basis-used-for policies-that-do-not-meet-standard-underwriting-requirements, the-benefit-base-for-such-policies-may-be-the-same-as-for corresponding-policies-which-do-meet-standard-underwriting requirements.~~

C. Investments by the separate account. The separate account shall have sufficient net investment income and readily marketable assets to meet anticipated withdrawals under policies funded by the account and be registered under the Investment Company Act of 1940.

~~1.-Assets-allocated-to-a-variable-life-insurance-separate account-shall-be-held-in-cash-or-investments-having-a-reasonably ascertainable-market-price.-For-purposes-of-this-subdivision, only-the-following-shall-be-considered-"investments-having-a reasonably-ascertainable-market-price:"~~

~~a.-liens-in-favor-of-the-insurer-against-separate account-policy-reserves-resulting-from-use-by-policyholders-of cash-values;~~

~~b.-securities-listed-and-traded-on-the-New-York-Stock Exchange,-the-American-Stock-Exchange,-or-regional-stock exchanges-or-successors-to-such-exchanges-having-the-same-or similar-qualifications;~~

~~c.-securities-listed-on-the-National-Association-of Securities-Dealers-Automated-Quotations-System-(hereinafter referred-to-as-the-"NASDAQ-System");~~

~~d.-shares-of-an-investment-company-registered-pursuant to-the-Investment-Company-Act-of-1940.-Where-such-an-investment company-issues-book-shares-in-lieu-of-share-certificates,-such book-shares-shall-be-deemed-to-be-adequate-evidence-of-ownership;~~

~~e.-obligations-of-or-guaranteed-by-the-United-States Government,-the-Canadian-Government,-any-state,-or-municipality or-governmental-subdivision-of-a-state;~~

~~f.-commercial-paper-issued-by-business-corporations~~

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~~when the total of such paper issued by the corporation does not exceed in value a guaranteed short line of credit by a bank;~~

~~g. certificates of deposit issued by financial institutions, the deposits of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation; and~~

~~h. new bond or debt issues which may reasonably be expected to be listed on an exchange regulated by the Securities Exchange Act of 1934.~~

~~2. Assets allocated to a variable life insurance separate account shall not be invested in:~~

~~a. commodities or commodity contracts;~~

~~b. put and call options or combinations of such options;~~

~~c. short sales;~~

~~d. purchases on margins;~~

~~e. letter or restricted stock;~~

~~f. units or other evidences of ownership of a separate account of another insurer, except those registered under the Investment Company Act of 1940; or~~

~~g. real estate other than shares of a real estate investment trust listed as described in 4 MCAR Section 1.9406 C.1.b.~~

D. Limitations on ownership.

1. A ~~variable life insurance~~ separate account shall not purchase or otherwise acquire the securities of any issuer, other than securities issued or guaranteed as to principal and interest by the United States, if immediately after ~~such~~ the purchase or acquisition the value of ~~such~~ the investment, together with prior investments of ~~such~~ the account in ~~such~~ the security valued as required by this ~~regulation~~ rule, would exceed ~~10%~~ ten percent of the value of the assets of the separate account. The commissioner shall waive this limitation in writing if he believes ~~such~~ the waiver will not render the operation of the separate account hazardous to the public or the policyholders in this state.

2. No separate account shall purchase or otherwise

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acquire the voting securities of any issuer if as a result of ~~such~~ the acquisition the insurer and its separate accounts, in the aggregate, will own more than ~~10%~~ ten percent of the total issued and outstanding voting securities of ~~such~~ the issuer. The commissioner shall waive this limitation in writing if he believes ~~such~~ the waiver will not render the operation of the separate account hazardous to the public or the policyholders in this state or jeopardize the independent operation of the issuer of ~~such~~ the securities.

3. The percentage limitation specified in ~~4-MCAR-Section 1.9406~~ D.1. shall not be construed to preclude the investment of the assets of separate accounts in shares of investment companies registered pursuant to the Investment Company Act of 1940 or other pools of investment assets if the investments and investment policies of ~~such~~ the investment companies or asset pools comply substantially with the provisions of ~~4-MCAR-Section 1.9406~~ C. and other applicable portions of this ~~regulation~~ rule.

E. Valuation of ~~assets-of-a-variable-life-insurance~~ separate account.

~~1.~~ Investments of the separate account shall be valued at their market value on the date of valuation, or at amortized cost if it approximates market value.

~~a.-Market-value-for-investments-traded-on-the recognized-exchanges-means-the-last-reported-sale-price-on-the date-of-valuation.-If-there-has-been-no-sale-on-that-date,-the market-value-means-the-last-reported-bid-quotation-on-the-date of-valuation.~~

~~b.-Market-value-for-investments-listed-on-the-NASDAQ System-means-the-last-representative-bid-quotation-on-the valuation-date.-If-an-investment-ceases-to-be-listed-but continues-to-be-traded-over-the-counter,-it-shall-be-valued-at the-lowest-bid-quotation-as-it-appears-on-the-National-Quotation Bureau-sheets.~~

~~c.-If-the-valuation-date-referred-to-in-paragraphs-a. and-b.-above-is-a-day-when-the-exchange-or-the-NASDAQ-System-is not-open-for-business,-the-valuation-date-shall-be-the-last-date~~

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~~when the exchange or the NASDAQ System was open for business.~~

~~2. If an investment ceases to be traded, it shall be valued at fair value as determined in good faith by or at the direction of the Board of Directors of the insurer but not in excess of the last reported bid quotation.~~

~~3. Notification of cessation of trading of any investment shall be reported by the insurer to the Commissioner within thirty days thereof.~~

F. Separate account investment policy. The investment policy of a separate account operated by a domestic insurer filed under 4 MCAR S 1.9403 B.3. shall not be changed without first filing the change with the commissioner.

~~1. The commissioner shall have sixty days after the date the change is filed with him to notify the insurer of his determination that the proposed change is a material change in the insurer's investment policy.~~

~~2. If the change is deemed material by the commissioner he shall hold a public hearing to determine whether the change is detrimental to the interests of the policyholders of the insurer.~~

~~3. At least thirty days prior to any public hearing under paragraph 2. above, the insurer shall mail a notice to each policyholder and to the Insurance Commissioner of each state in which the affected variable life insurance policies are being sold. Such notice shall describe the proposed change in investment policy, list the reasons therefor, designate the date and place of the public hearing, inform the policyholder of the procedures to be followed in commenting on the change, and describe the conduct of the meeting.~~

~~4. Within sixty days after such public hearing, the Commissioner shall notify the insurer of his determination, and if it is that the change is detrimental to the interests of the policyholders of the insurer, the insurer shall not be allowed to make such change.~~

~~5. Should any policyholder object to the proposed change and the change is allowed by the Commissioner the objecting~~

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policyholder shall be given the option within sixty days of notification to the policyholder of the allowance by the Commissioner of such change, or converting, without evidence of insurability, under one of the following options, to a fixed benefit life insurance policy issued by the insurer or an affiliate:

a. If the policy is in force on a premium paying basis, either:

(1) conversion as of the original issue age to a substantially comparable permanent form of fixed benefit life insurance, based on the insurer's premium rates for fixed benefit life insurance at the original issue age, for an amount of insurance not exceeding the death benefit of the variable life insurance policy on the date of conversion;

(2) conversion as of the attained age to a substantially comparable permanent form of fixed benefit life insurance for an amount of insurance not exceeding the excess of the death benefit of the variable life insurance policy on the date of conversion over:

(a) its cash value on the date of conversion if the policyholder elects to surrender the variable life policy for its cash value, or

(b) the death benefit payable under any paid up insurance option if the policyholder elects such nonforfeiture option under the variable life policy.

b. If the policy is in force as paid up variable life insurance, then conversion will be to a substantially comparable paid up fixed benefit life insurance policy for an amount of insurance not exceeding the death benefit of the variable life insurance policy on the date of conversion.

If conversion is made pursuant to paragraphs a.(1) or b. above, then (1) if the cash value of the variable life insurance policy exceeds the cash value of the fixed benefit life insurance policy, the difference shall be paid to the policyholder; (2) if the cash value of the fixed benefit life insurance policy exceeds the cash value of the variable life

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~~insurance-policy,-the-difference-shall-be-paid-by-the policyholder;-and-(3)-any-indebtedness-under-the-variable-life insurance-policy-shall-become-indebtedness-under-the-fixed benefit-policy,-provided-that-any-excess-of-such-indebtedness over-the-cash-value-of-the-fixed-benefit-policy-on-the-date-the conversion-shall-be-deducted-from-any-amount-otherwise-payable to-the-policyholder.~~

G. Charges against a variable life insurance separate account.

~~1.~~ The insurer ~~may-deduct-only-the-following-from-the separate-account~~ must disclose in writing, prior to or contemporaneously with delivery of the policy, all charges that may be made against the separate account, including, but not limited to the following:

~~a.~~ 1. taxes or reserves for taxes attributable to investment gains and income of the separate account~~.~~;

~~b.~~ 2. actual cost of reasonable brokerage fees and similar direct acquisition and sales costs incurred in the purchase or sale of separate account assets~~.~~;

~~c.~~ 3. actuarially determined costs of insurance (tabular costs) and the release of reserves and benefit base consistent with the release of separate account liabilities~~.~~;

~~d.~~ 4. charges for administrative expenses and investment management expenses, including internal costs attributable to the investment management of assets of the separate account~~,-not exceeding-the-following-percentages,-on-an-annual-basis,-of-the average-net-value-of-the-separate-account-as-of-the-dates-of valuation-under-4-MCAR-Section-1.9406-A.3.:~~

~~(1)-.75%-of-that-portion-of-separate-account-assets valued-at-or-under-$75,000,000;-and~~

~~(2)-.50%-of-that-portion-of-separate-account-assets valued-in-excess-of-$75,000,000-but-less-than-$150,000,000;-and~~

~~(3)-.40%-of-that-portion-of-separate-account-assets valued-in-excess-of-$150,000,000-but-less-than-$400,000,000;-and~~

~~(4)-.35%-of-that-portion-of-separate-account-assets valued-in-excess-of-$400,000,000-but-less-than-$800,000,000;-and~~

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~~(5) .30% of that portion of separate account assets valued in excess of $800,000,000.~~;

e. 5. a charge, at a rate specified in the policy, ~~not to exceed .50% per year of the average net asset value of the separate account as of the dates of valuation under 4 MCAR Section 1.9406 A.3.~~ for mortality and expense guarantees.;

f. 6. any amounts in excess of those required to be held in the separate account;

7. charges for incidental insurance benefits.

~~2. Any charges against the separate account made by either an affiliate of the insurer or an unaffiliated fund shall be considered part of the charges limited by 4 MCAR Section 1.9406 G.1.d. and e. Any charge against the separate account, excluding taxes, shall not vary in accordance with the difference between the investment performance of the separate account and any index of securities prices or other measure of investment performance.~~

4 MCAR S 1.9407. Information furnished to applicants.

The requirements of 4 MCAR S 1.9407 shall be deemed to have been satisfied to the extent that a disclosure containing information required by 4 MCAR S 1.9407 is delivered, either in the form of (1) a prospectus included in a registration statement relating to the policies which satisfies the requirements of the Securities Act of 1933 and which was declared effective by the Securities and Exchange Commission; or (2) all information and reports required by the Employee Retirement Income Security Act of 1974 if the policies are exempted from the registration requirements of the Securities Act of 1933 pursuant to Section 3(a)(2) thereof. An insurer delivering or issuing for delivery in this state any variable life insurance policies shall deliver to the applicant for the policy, and obtain a written acknowledgement of receipt from ~~such~~ the applicant coincident with or prior to the execution of the application, the following information:

A. a summary explanation, in non-technical terms, of the principal features of the policy, including a description of the manner in which the variable benefits will reflect the

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investment experience of the separate account and the factors which affect ~~such~~ the variation. ~~Such~~ The explanation must include notices of the provision required by 4 MCAR S 1.9404 C.1.e. and Minnesota Statutes, section 61A.03, clause (3).

B. a statement of the investment policy of the separate account, including:

1. a description of the investment objective ~~and orientation~~ intended for the separate account and the principal types of investments intended to be made; and

2. any restriction or limitations on the manner in which the operations of the separate account are intended to be conducted.

C. a statement of the net investment return of the separate account for each of the last ten years ~~for which~~ or a lesser period the separate account was in existence;

~~D. a statement describing, as an approximate percentage of an annual gross premium for each year and for the life of the policy all commission or equivalent payments to be paid to all agents or other persons as a result of the proposed sale for each year of the policy for which such payments are to be made. As used in this Section, "commissions" means all monies and other valuable consideration, including but not limited to prizes, bonuses paid directly or indirectly to, for, or on behalf of the selling agent as compensation for services in the sale of variable life insurance;~~

~~E.~~ a statement of the ~~annual taxes, brokerage fees, and similar costs, and the~~ charges, ~~expressed as an annual~~ percentage, levied against the separate account during the previous year;

~~F.~~ E. a summary of the method to be used in valuing assets held by the separate account;

~~G.~~ F. a summary of the federal income tax ~~liabilities~~ aspects of the policy applicable to the insured, the ~~policy owner~~ policyholder, and the beneficiary;

~~H. if the applicant is furnished~~ G. illustrations of benefits payable under ~~any~~ the variable life insurance contract.

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such. The illustrations ~~shall~~ must be prepared by the insurer and ~~shall~~ must not include projections of past investment experience into the future or attempted predictions of future investment experience, provided that nothing contained herein prohibits use of hypothetical assumed rates of return to illustrate possible levels of benefits if it is made clear that such the assumed rates are hypothetical only~~;~~

~~1.-a-prominent-statement-either-in-contrasting-color-or-in boldface-type-at-least-four-points-larger-than-the-type-size-of the-largest-type-used-in-the-text-of-any-provision-on-the-page, providing-in-substance-the-following-information:~~

~~1.-The-purpose-of-this-variable-life-insurance-policy-is to-provide-insurance-protection-for-the-beneficiary-named therein.~~

~~2.-No-claim-is-made-that-this-variable-life-insurance policy-is-in-any-way-similar-or-comparable-to-a-systematic investment-plan-of-a-mutual-fund.~~

4 MCAR S 1.9409~~,~~ Reports to policyholders.

Any insurer delivering or issuing for delivery in this state any variable life insurance policies shall mail to each variable life insurance policyholder at his or her last known address the following reports:

A. Within ~~thirty~~ 30 days after each anniversary of the policy, a statement or statements of the cash surrender value, death benefit, any partial withdrawal or policy loan, any interest charge, and any optional payments allowed pursuant to 4 MCAR S 1.9404 C. under the policy computed as of the policy anniversary date. Provided, however, that such statement may be furnished within ~~thirty~~ 30 days after a specified date in each policy year so long as the information contained therein is computed as of a date not more than ~~forty-five~~ 60 days prior to the mailing of such the notice. This statement shall state ~~in contrasting-color-or-distinctive-type~~ that, in accordance with the investment experience of the separate account, the cash values and the variable death benefit may increase or decrease, and shall prominently identify any value described therein which

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may be recomputed prior to the next statement required by 4 MCAR S 1.9409. If the policy guarantees that the variable death benefit on the next policy anniversary date will not be less than the variable death benefit specified in ~~such~~ the statement, the statement shall be modified to so indicate. For flexible premium policies, the report must contain a reconciliation of the change since the previous report in cash value and cash surrender value, if different, because of payments made, less deductions for expense charges, withdrawals, investment experience, insurance charges, and any other charges made against the cash value. In addition, the report must show the projected cash value and cash surrender value, if different, as of one year from the end of the period covered by the report assuming that: planned periodic premiums, if any, are paid as scheduled; guaranteed costs of insurance are deducted; and the net investment return is equal to the guaranteed rate or, in the absence of a guaranteed rate, is not greater than zero. If the projected value is less than zero, a warning message must be included that states that the policy may be in danger of terminating without value in the next 12 months unless additional premium is paid.

B. Annually, a statement or statements including:

1. a summary of the financial statement of the separate account based on the annual statement last filed with the commissioner;

2. the net investment return of the separate account for the last year and, for each year after the first, a comparison of the investment rate of the separate account during the last year with the investment rate during prior years, up to a total of not less than five years when available;

3. a list of investments held by the separate account as of a date not earlier than the end of the last year for which an annual statement was filed with the commissioner;

4. any charges~~,-taxes,-and-brokerage-fees-determined-on an-accrual-basis-payable-by-the-separate-account-during-the previous-year,-each-expressed-as-a-dollar-amount-and-a~~

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~~percentage-and-the-total-expressed-as-a-dollar-amount-and-as-a percentage-of-the-assets-of-the-separate-account~~ levied against the separate account during the previous year;

5. a statement of any change, since the last report, in the investment objective and orientation of the separate account, in any investment restriction or material quantitative or qualitative investment requirement applicable to the separate account or in the investment adviser of the separate account;

~~6.-the-names-and-principal-occupations-of-each-principal executive-officer-and-each-director-of-the-insurer;-and~~

~~7.-the-names-of-all-parents-of-the-insurer-and-the-basis of-control-of-the-insurer,-and-the-name-of-any-person-who-is known-to-own,-of-record-or-beneficially,-10%-or-more-of-the outstanding-voting-securities-of-the-company.~~

C. For flexible premium policies, a report must be sent to the policyholder if the amounts available under the policy on any policy processing day to pay the charges authorized by the policy are less than the amount necessary to keep the policy in force until the next following policy processing day. The report must indicate the minimum payment required under the terms of the policy to keep it in force and the length of the grace period for payment of the amount.

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OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD418

Agency: Department of Commerce

Division:

Agency Contact: Deb Lindlief

Rule Numbers: 4 MCAR SS 1.9401-1.9409

Title: Proposed Rules Governing Variable Life Insurance Policies

Type of Rules: Permanent

Incorporations by Reference: None

Duplication of Statutory Language: None

The attached rules are approved as to form.

Steven C. Cross
Revisor of Statutes

Paul M. Marinac
Assistant Deputy Revisor
Phone: 296-0948
Date: November 19, 1983

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of
Rules Relating to Variable Life Insurance

ORDER ADOPTING
RULES

Notice of the Commissioner's intent to adopt the above-entitled rules without a public hearing was published in the State Register on December 12, 1983 and was sent by the United States mail to all persons on the list maintained by the Department of Commerce pursuant to Minn. Stat. § 14.14, subd. 1, on December 9, 1983.

After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than seven written requests for a public hearing within the 30-day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as 4MCAR §§ 1.9401 - 1.9409 are adopted this 16th day of January, 1984 pursuant to authority vested in me by Minn. Stat. § 61A.20.

Michael A. Hatch
Commissioner of Commerce

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Administration Building Codes and Standards Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Amendments to the State Building Code

Notice is hereby given that the State Building Codes and Standards Division is seeking information or opinions from sources outside the agency in preparing to promulgate new rules governing the *State Building Code*. The promulgation of these rules is authorized by Minnesota Statutes sections 16.85 and 16.86, which permits the agency to amend the *State Building Code*.

The State Building Codes and Standards Division requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment in writing. Written statements should be addressed to:

Peggi Opalinski
Building Codes & Standards Division
408 Metro Square Building
7th & Robert Streets
St. Paul, MN 55101

All statements of information and comments shall be accepted until April 8, 1983 at 4:30 p.m. Any written material received by the State Building Codes and Standards Division shall become part of the record in the event the rules are promulgated.

Norman R. Osterby, Director
Building Codes and Standards

Department of Commerce Insurance Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed Amendments to Rules Governing the Issuance and Sale of Variable Life Insurance (4 MCAR §§ 1.9401-1.9411)

Notice is hereby given that the Insurance Division is seeking information or opinions from persons outside the agency in preparing to promulgate amendments to the rules governing the issuance and sale of variable life insurance. Promulgation of these rules is authorized by Minnesota Statutes, section 61A.20.

The Insurance Division requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing to: Dale McDonnell, Insurance Division, 500 Metro Square Building, St. Paul, MN 55101, (612) 297-3301.

Any written material received by the Insurance Division shall become part of the record in the event that the rules are promulgated.

Reynaud L. Harp
Commissioner of Insurance

Department of Commerce

Insurance Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed Amendments to Rules Governing the Issuance and Sale of Variable Life Insurance, 4MCAR § 1.9401 to § 1.9411.

Notice is hereby given that the Insurance Division is seeking information or opinions from persons outside the agency in preparing to promulgate amendments to the rules governing the issuance and sale of variable life insurance. Promulgation of these rules is authorized by Minnesota Statutes, section 61A.20.

The Insurance Division requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing to: Dale McDonnell, Insurance Division, 500 Metro Square Building, St. Paul, MN 55101, (612) 297-3301.

Any written material received by the Insurance Division shall become part of the record in the event that the rules are promulgated.

Reynaud L. Harp

Reynaud L. Harp

Commissioner of Insurance

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of
Rules Relating to Variable Life Insurance

ORDER FOR NOTICE
OF INTENT TO ADOPT
RULES WITHOUT
PUBLIC HEARING

IT IS ORDERED this 9th day of December, 1983 that Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Department of Commerce for that purpose and be published in the State Register.

Michael A. Hatch
Commissioner of Commerce

State of Minnesota
Department of Commerce

In the Matter of the Proposed Adoption of
Rules Relating to Variable Life Insurance

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Department of Commerce proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Commerce has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, section 14.21.

Persons interested in these rules shall have 30 days to submit comments. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change.

No public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, section 14.14, subd. 1.

Persons who wish to submit comments or a written request for a public hearing should submit them to Sam Crecelius, Deputy Commissioner, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101.

Authority for the adoption of these rules is contained in Minnesota Statutes, section 61A.20. Additionally, a Statement of Need and Reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Debbi Lindlief, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101.

A copy of the proposed rules is attached to this Notice.

Copies of this Notice and the proposed rules are available and may be obtained by contacting Debbi Lindlief at the above address.

Michael A. Hatch
Commissioner of Commerce

In the Matter of the Proposed Adoption of
Rules Relating to Variable Life Insurance

AFFIDAVIT OF
MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Debbi J. Lindlief, being first duly sworn, deposes and says:

That on the 9th day of December, 1983, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Rules Without Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Department of Commerce for the purpose of receiving notice of the proposed adoption of rules.

A copy of the proposed rules is attached.

Debbi J. Lindlief

Subscribed and sworn to before me this
12th day of December, 1983.

Elizabeth D Moran

ELIZABETH D. MORAN
NOTARY PUBLIC - MINNESOTA
HENNEPIN COUNTY
My Commission Expires Mar. 23, 1988

STATE OF MINNESOTA E

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption of
Rules Relating to Variable Life Insurance

I certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minnesota Statutes, section 14.14, subd. 1, that their names be placed on file with and maintained by the Department of Commerce for the purpose of receiving notice of the proposed adoption of rules is accurate and complete as of 12:00 P.M., this 8th day of December, 1983.

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PROPOSED RULES

Pursuant to Minn. Stat. of 1980, §§ 14.21, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.13-14.20 which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 14.29, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Commerce

Proposed Adoption of Rules Relating to Variable Life Insurance

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Department of Commerce proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Commerce has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, section 14.21.

Persons interested in these rules shall have 30 days to submit comments. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change.

No public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, section 14.14, subd. 1.

Persons who wish to submit comments or a written request for a public hearing should submit them to Sam Crecelius, Deputy Commissioner, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101.

Authority for the adoption of these rules is contained in Minnesota Statutes, section 61A.20. Additionally, a Statement of Need and Reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Debbi Lindlief, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101.

A copy of the proposed rules is attached to this Notice.

Copies of this Notice and the proposed rules are available and may be obtained by contacting Debbi Lindlief at the above address.

Michael A. Hatch
Commissioner of Commerce

Rules as Proposed

4 MCAR § 1.9401~~.~~ Authority and scope.

The following ~~regulations are applicable~~ rules apply to all variable life insurance policies issued in this state, and are ~~promulgated~~ adopted under the authority of Minnesota Statutes, section 61A.20.

4 MCAR § 1.9402. Definitions.

~~As used in this regulation:~~

A. Terms. For the purposes of 4 MCAR §§ 1.9401-1.9411, the terms defined in this rule have the meanings given them.

B. Affiliate. "Affiliate" of an insurer means any person, directly or indirectly, controlling, controlled by, or under common control with the insurer; any person who regularly furnishes investment advice to the insurer with respect to its separate accounts for which a specific fee or commission is charged; or any director, officer, partner, or employee of an insurer, controlling or controlled person, or person providing investment advice or any member of the immediate family of this person.

~~A.~~ C. Assumed investment rate. "Assumed investment rate" means the rate of imvestment return which would be required to be credited to a variable life insurance policy, after deduction of charges for taxes, investment expenses, and mortality and expense guarantees to maintain the variable death benefit equal at all times to the amount of death benefit, other than incidental insurance benefits, which would be payable under the plan of insurance if the death benefit did not vary according to the investment experience of the separate account.

~~B.~~ D. Benefit base. "Benefit base" means the amount~~, not less than the amount specified under 4 MCAR Section 1.9406 B.2. specified by the terms of the variable life insurance policy~~ to which ~~the difference between~~ the net investment return ~~and the assumed investment rate~~ is applied ~~in determining the variable benefits of the policy.~~

E. Control. "Control," including the terms "controlling," "controlled by," and "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing more than ten percent of the voting securities of any other person. This presumption may be rebutted by a showing made to the satisfaction of the commissioner that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

F. Flexible premium policy. "Flexible premium policy" means any variable life insurance policy other than a scheduled premium policy as specified in L.

~~C.~~ G. General account. "General account" means all assets of the insurer other than assets in separate accounts established pursuant to Minnesota Statutes, section 61A.14, or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer, whether or not for variable life insurance.

~~D.~~ H. Incidental insurance benefit. "Incidental insurance benefit" means all insurance benefits in a variable life insurance policy, other than the variable death benefit and the minimum death benefit, including accidental death and dismemberment benefits, disability ~~income~~ benefits; guaranteed insurability options, family income, or ~~fixed benefit~~ term riders.

~~E.~~ I. Minimum death benefit. "Minimum death benefit" means the amount of the guaranteed death benefit, other than incidental insurance benefits, payable under a variable life insurance policy regardless of the investment performance of the separate account.

~~F.~~ J. Net investment return. "Net investment return" means the rate of investment return in a separate account to be applied to the benefit base ~~after deduction of charges for taxes, investment expenses and mortality and expense guarantees in accordance with the terms of the policy.~~

K. Policy processing day. "Policy processing day" means the day on which charges authorized in the policy are deducted from the policy's cash value.

L. Scheduled premium policy. "Scheduled premium policy" means any variable life insurance policy under which both the amount and timing of premium payments are fixed by the insurer.

~~G.~~ M. Separate account. "Separate account" means a separate account established for variable life insurance pursuant to

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Minnesota Statutes, section 61A.14, or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.

~~H.~~ N. Variable death benefit. "Variable death benefit" means the amount of the death benefit, other than incidental insurance benefits, payable under a variable life insurance policy dependent on the investment performance of the separate account, which the insurer would have to pay in the absence of ~~the~~ any minimum death benefit.

~~I.~~ O. Variable life insurance policy. "Variable life insurance policy" means any individual policy which provides for life insurance the amount or duration of which varies according to the investment experience of any separate account or accounts established and maintained by the insurer as to ~~such~~ this policy, pursuant to Minnesota Statutes, section 61A.14, or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.

~~J.~~ P. Securities Act of 1933. "Securities Act of 1933" means the Federal Securities Act of 1933, 15 U.S.C., Section 77a et. seq.

~~K.~~ Q. Securities Exchange Act of 1934. "Securities Exchange Act of 1934" means the Federal Securities Exchange Act of 1934, 15 U.S.C., Section 78a et. seq.

~~L.~~ R. Investment Company Act of 1940. "Investment Company Act of 1940" means the Federal Investment Company Act of 1940, 15 U.S.C., Section 80a-1 et. seq.

~~M.~~ S. Employee Retirement Income Security Act of 1974. "Employee Retirement Income Security Act of 1974" means the Federal Employee Retirement Income Security Act of 1974, 29 U.S.C., Section 1001 et. seq.

4 MCAR § 1.9403~~:~~ Qualification of insurer to issue variable life insurance.

A. Compliance with laws and grant of authority. An insurer shall not deliver or issue for delivery in this state any variable life insurance policy unless it has complied with Minnesota Statutes, sections 61A.13 to 61A.21 and 4 MCAR §§ 1.9401-1.9411, and the commissioner has granted the insurer the authority to issue variable life insurance policies in the state of Minnesota pursuant to Minnesota Statutes, section 61A.20.

B. Required filing. Before any insurer ~~shall deliver~~ delivers or ~~issue~~ issues for delivery any variable life insurance policy in this state, it must file with the commissioner the ~~following~~ information contained in 1.-4. for the consideration of the commissioner in making the determination required by Minnesota Statutes, section 61A.19.

1. Copies of and a general description of the variable life insurance policies it intends to issue~~:~~.

2. A general description of the methods of operation of the variable life insurance business of the insurer~~:~~, including methods of distribution of policies and the names of those persons or firms proposed to supply consulting, investment, administrative, custodial, or distribution services to the insurer.

3. With respect to any separate account maintained by an insurer for any variable life insurance policy, a statement of the investment policy the insurer intends to follow for the investment of the assets held in such separate account, and a statement of the procedures for changing such investment policy. The statement of investment policy shall include a description of the investment objective ~~and orientation~~ intended for the separate account.

4. A statement of the insurer's actuary describing the mortality and expense risks which the insurer will bear under the policy.

C. Applicability. The requirements of this rule apply to all insurers either seeking authority to issue variable life insurance in this state or having authority to issue variable life insurance in this state.

4 MCAR § 1.9404~~:~~ Insurance policy requirements.

A. Generally. The commissioner shall not accept the filing of any variable life insurance policy form unless it conforms to the requirements of 4 MCAR § 1.9404 and Minnesota Statutes, chapter 61A.

B. Mandatory policy benefit and design requirements. Variable life insurance policies delivered or issued for delivery in this state shall comply with the ~~following~~ minimum requirements~~:~~ contained in 1.-7.

1. ~~Coverage shall be provided for the lifetime of the insured with the~~ Mortality and expense risk shall be borne by the insurer. The mortality and expense charges shall be subject to the maximums stated in the contract.

2. ~~Gross premiums for death benefits shall be a level amount for the duration of the premium payment period, but this subdivision shall not be construed to prohibit temporary or permanent additional premiums for incidental insurance benefits or substandard risks. This subdivision shall not be deemed to prohibit the use of fixed benefit preliminary term insurance for a period not to exceed 120 days from the date of the application for a variable life insurance policy. The premium rate for such preliminary term insurance shall be stated separately in the application or receipt.~~

~~3.~~ For scheduled premium policies, a minimum death benefit shall be provided in an amount at least equal to the initial face amount of the policy so long as premiums are duly paid ~~f~~. subject to the provisions of 4 MCAR § 1.9404 ~~C~~D.2.~~.~~

~~4.~~ 3. The policy shall ~~provide that the variable death benefit shall~~ reflect the investment experience of ~~the variable life insurance~~ one or more separate ~~account~~ accounts established and maintained by the insurer ~~and that the excess, positive or negative, of the net investment return over the assumed investment rate, as applied to the benefit base of each variable life insurance policy, shall be used to provide either:~~

~~a. fully paid up variable life insurance providing coverage for the same period as the basic insurance under the policy or fully paid up term insurance amounts for a term of annual periods of not less than one year nor more than five years, positive or negative, as the case may be, or a combination thereof; or~~

~~b. variable life insurance amounts, positive or negative, as the case may be, so that the reserve maintains the same percentage relationships to the variable death benefit as it would have on a corresponding fixed benefit policy.~~ The insurer must demonstrate that the reflection of investment experience in the variable life insurance policy is actuarially sound.

~~5.~~ 4. Each variable life insurance policy shall be credited with the full amount of the net investment return applied to the benefit base.

~~6.~~ 5. Any changes in variable death benefits of each variable life insurance policy shall be determined at least annually.

~~7.~~ 6. The cash value of each variable life insurance policy shall be determined at least monthly. The method of computation of cash values and other non-forfeiture benefits, as described either in the policy or in a statement filed with the commissioner or person fulfilling the equivalent function of the state in which the policy is delivered, or issued for delivery, shall be in accordance with actuarial procedures that recognize the variable nature of the policy. The method of computation must be such that, if the net investment return credited to the policy at all times from the date of issue should be equal to the assumed investment rate with premiums and benefits determined accordingly under the terms of the policy, then the resulting cash values and other non-forfeiture benefits must be at least equal to the minimum values required by Minnesota Statutes, section 61A.24 ~~f~~, the Standard Non-Forfeiture Law~~,~~ for a ~~fixed benefit~~ general account policy with ~~such~~ these premiums and benefits. The assumed investment rate shall not exceed the maximum interest rate permitted under ~~the Standard Non-Forfeiture Law of this state~~ Minnesota Statutes, section 61A.24. If the policy does not contain an assumed investment rate, this demonstration must be based on the maximum interest rate permitted under Minnesota Statutes, section 61A.24. The method of computation may disregard incidental minimum guarantees as to the dollar amounts payable. Incidental minimum guarantees include, for example, but are not to be limited to, a guarantee that the amount payable at death or maturity shall be at least equal to the amount that otherwise would have been payable if the net investment return credited to the policy at all times from the date of issue had been equal to the assumed investment rate.

~~8.~~ 7. The computation of values required for each variable life insurance policy may be based upon reasonable and necessary approximations.

~~9. In determing the net investment return to be applied to the benefit base the insurer may deduct only the charges described in 4 MCAR Section 1.9406 G.1.a., b., d., and e.~~

C. Mandatory policy provisions. Every variable life insurance policy filed for approval in this state shall contain at least the following:

1. the cover page or pages corresponding to the cover page of each ~~such~~ policy shall contain:

a. a prominent statement in either contrasting color or in boldface type ~~at least four points larger than the type size of the largest type used in the text of any provision on that page,~~ that the amount or duration of death benefit may be variable or fixed under specified conditions;

b. a prominent statement in either contrasting color or in boldface type ~~at least four points larger than the type size of the largest type used in the text of any provision on that page~~ that cash values may increase or decrease in accordance with the experience of the separate account subject to any specified minimum guarantees;

c. a statement ~~that the~~ describing any minimum death benefit ~~will be at least equal~~ required pursuant to ~~the initial~~

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~~face amount at the date of issue if premiums are duly paid and if there are no outstanding policy loans, partial withdrawals, or partial surrenders~~ 4 MCAR § 1.9404 B.3.:

d. the ~~rule~~ method, or a reference to the policy provision, which describes the method for determining the ~~variable~~ amount of insurance payable at death;

e. a captioned provision ~~or endorsement to the policy which~~ provides that the policyholder may ~~cancel~~ return the variable life insurance policy ~~by delivering or mailing a written notice or sending a telegram to the insurer and by returning~~ within ten days of receipt of the policy ~~before midnight of the tenth day after the date the policyholder receives the policy, or before midnight of the forty-fifth day after the date of the execution of the application, whichever is later. Notice given by mail and return of the policy are effective on being postmarked properly addressed and postage prepaid. The insurer must return all payments made for the policy within ten days after it receives notice of cancellation and the returned policy~~ by the policyholder, and receive a refund as required by state law.

f. such other items as are currently required by Minnesota Statutes, chapter 61A.;

2. a. For scheduled premium policies, a provision for a grace period of not less than ~~thirty-one~~ 31 days from the premium due date which shall provide that where the premium is paid within the grace period, policy values will be the same, except for the deduction of any overdue premium, as if the premium were paid on or before the due date;

b. For flexible premium policies, a provision for a grace period beginning on the policy processing day when the total charges authorized by the policy that are necessary to keep the policy in force until the next policy processing day exceed the amounts available under the policy to pay these charges in accordance with the terms of the policy. The grace period shall end on a date not less than 61 days after the mailing date of the Report to Policyholders required by 4 MCAR § 1.9409 C.

The death benefit payable during the grace period will equal the death benefit in effect immediately prior to the period less any overdue charges. If the policy processing days occur monthly, the insurer may require the payment of not more than three times the charges which were due on the policy processing day on which the amounts available under the policy that are necessary to keep the policy in force until the next policy processing day;

3. For scheduled premium policies, a provision that the policy will be reinstated at any time within three years from the date of default upon the written application of the insured and evidence of insurability, including good health, satisfactory to the insurer, unless the cash surrender value has been paid or the period of extended insurance has expired, upon the payment of any outstanding indebtedness arising subsequent to the end of the grace period following the date of default together with accrued interest thereon to the date of reinstatement and payment of an amount not exceeding the greater of:

a. all overdue premiums with interest at a rate not exceeding eight ~~(8%)~~ percent per annum compounded annually and any indebtedness in effect at the end of the grace period following the date of default with interest at a rate not exceeding eight ~~(8%)~~ percent per annum compounded annually; or

b. 110% percent of the increase in cash ~~surrender~~ value resulting from reinstatement plus all overdue premiums for incidental insurance benefits with interest at a rate not exceeding eight ~~(8%)~~ percent per annum compounded annually;

4. a full description of the benefit base and of the method of calculation and application of any factors used to adjust variable benefits under the policy;

5. a provision designating the separate account to be used and stating that:

a. ~~such separate account shall be used to fund only variable life insurance benefits;~~

~~b.~~ the assets of ~~such~~ the separate account shall be available to cover the liabilities of the general account of the insurer only to the extent that the assets of the separate account exceed the liabilities of the separate account arising under the variable life insurance policies supported by the separate account; and

~~c.~~ b. the assets of ~~such~~ the separate account shall be valued at least as often as any policy benefits vary but at least monthly.

6. a provision stating that the approval process for a change in the investment policy of the separate account is on file with the commissioner;

7. a provision that the policy shall be incontestable by the insurer after it has been in force for two years during the lifetime of the insured, provided, however, that any increase in the amount of the policy's death benefit subsequent to the policy issue date, which increase occurred upon a new application or request of the owner and was subject to satisfactory proof of the insured's insurability, shall be incontestable after an increase has been in force, during the lifetime of the insured, for two years from the date of issue of the increase;

8. a provision that payment of variable death benefits in excess of ~~the~~ any minimum death benefits, cash values, policy loans, or partial withdrawals (except when used to pay premiums) or partial surrenders may be deferred:

a. for up to six months from the date of request, if such payments are based on policy values which do not depend on the investment performance of the separate account~~.~~; or

b. otherwise, for any period during which the New York Stock Exchange is closed for trading (except for normal holiday closing) or when the Securities and Exchange Commission has determined that a state of emergency exists which may make such payment impractical~~.~~;

~~8.~~ 9. if settlement options ~~which~~ are provided, at least one option shall be provided on a fixed basis only;

~~9.~~ 10. a description of the basis for computing the cash value and the surrender value under the policy shall be included~~.~~ ~~Such surrender value may be expressed as either:~~

~~a. a schedule of cash value amounts per one thousand dollars of variable face amount at each attained age or policy year for at least 20 years form issue, or for the premium paying period, if less than 20 years; or~~

~~b. one cash value schedule as described in paragraph 1. for the death benefit, or for each one thousand dollars of death benefit, which would be in effect if the net investment return is always equal to the assumed investment rate and a second schedule applicable to any adjustments to the death benefit (disregarding the minimum death benefit guarantee and term insurance amounts) if the net investment return does not equal the assumed investment rate at each age for at least 20 years from issue, or for the premium paying period if it is less than 20 years.~~;

~~10.~~ 11. premiums or changes for incidental insurance benefits shall be stated separately~~.~~;

~~D. Non forfeiture. partial withdrawal. policy loan, and partial surrender provisions. Every variable life insurance policy delivered or issued for delivery in this state shall contain provisions which are not less favorable to the policyholder than the following:~~

~~1.~~ 12. a provision for non-feiture insurance benefits ~~so that at least one such benefit is offered on a fixed basis from the due date of the premium in default.~~

~~a. Variable extended term insurance may not be offered.~~

~~b. A given non-forfeiture option need not be offered on both a fixed and a variable basis.~~

~~c.~~ The insurer may establish a reasonable minimum cash ~~surrender~~ value below which ~~any such~~ non-forfeiture insurance options will not be available.

~~2. A provision for policy loans after three full years~~ ~~premiums have been paid (which may at the option of the insurer be entitled and referred to as a partial withdrawal provision)~~ D. Policy loan provisions. Every variable life insurance policy, other than term insurance policies and pure endowment policies, delivered or issued for delivery in this state must contain provisions for policy loans after the policy has been in force for three full years which are not less favorable to the policyholder than the following:

~~a. Up to~~ 1. at least ~~75%~~ ~~but if the loan is made from the general account not more than 90%~~ percent of the policy's cash surrender value may be borrowed;

~~b. The amount borrowed, or any repayment thereof, shall not affect the amount of the premium payable under the policy;~~

~~c.~~ 2. the amount borrowed shall bear interest at a rate not to exceed ~~8%~~ ~~per year compounded annually~~ that permitted by Minnesota Statutes, section 61A.03;

~~d.~~ 3. any indebtedness shall be deducted from the proceeds payable on death;

~~e.~~ 4. any indebtedness shall be deducted from the cash surrender value upon surrender or in determining any non-forfeiture benefit;

~~f.~~ 5. for scheduled premium policies, whenever the indebtedness exceeds the cash surrender value, the insurer shall give notice of any intent to cancel the policy if the excess indebtedness is not repaid within ~~thirty-one~~ 31 days after the date of mailing of ~~such~~ the notice. For flexible premium policies, whenver the total charges authorized by the policy that are necessary

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to keep the policy in force until the next following policy processing day exceed the amounts available under the policy to pay these charges, a report must be sent to the policyholder containing the information specified by 4 MCAR § 1.9409 C.;

~~g.~~ 6. the policy may provide that if, at any time, so long as premiums are duly paid, the variable death benefit is less than it would have been if no loan or withdrawal had ever been made, the policyholder may increase such variable death benefit up to what it would have been if there had been no loan or withdrawal by paying an amount not exceeding 110% percent of the corresponding increase in cash value and by furnishing such evidence of insurability as the insurer may request;

~~h. In addition to the foregoing, the policy may contain a partial surrender provision; however, any such provision shall provide that the policyholder may request part of the cash value and both the variable and minimum death benefits will be reduced in proportion to the percentage of the cash value received by the policyholder and the premium for the remaining amount of insurance will also be reduced to the appropriate rates for the reduced amount of insurance. The policy may provide that a partial surrender provision shall not require the insurer to reduce the amount of the minimum death benefit to less than the lowest amount of minimum death benefit which would have been issued to the insured under the insurance plans of the insurer at the time the policy was issued. The policy must clearly provide that the policyholder has the option of electing to exercise the cash value privileges of the policy loan or partial withdrawal provision rather than the partial surrender provision;~~

~~i.~~ ~~All~~ 7. the policy loan~~, partial withdrawal, or partial surrender~~ provisions shall be constructed so that variable life insurance policyholders who have not exercised ~~such~~ this provision are not disadvantaged by the exercise ~~thereof~~ of it;

~~j. Monies~~ 8. amounts paid to the policyholders upon the exercise of any policy loan~~, partial withdrawal, or partial surrender~~ provision shall be withdrawn from the separate account and shall be returned to the separate account upon repayment except that a stock insurer may provide the ~~monies~~ amounts for policy loans from the general account.

E. Other policy provisions.

1. Incidental insurance benefits, if offered, ~~shall~~ may be offered on a fixed or variable basis ~~only~~.

2. Policies issued on a participating basis shall offer to pay dividend amounts in cash. In addition, ~~such~~ the policies may offer the following dividend options:

a. the amount of the dividend may be credited against premium payments;

b. the amount of the dividend may be applied to provide ~~paid up~~ amounts of additional fixed or variable benefit ~~whole~~ life insurance;

~~c. the amount of the dividend may be applied to provide paid up amounts of additional variable life insurance;~~

~~d.~~ c. the amount of the dividend may be deposited in the general account at a specified minimum rate of interest;

~~e.~~ d. the amount of the dividend may be applied to provide paid-up amounts of fixed benefit one-year term insurance~~;~~;

e. the amount of the dividend may be deposited as a variable deposit in a separate account.

3. A provision allowing the policyholder to elect in writing in the application for the policy or thereafter an automatic premium loan on a basis not less favorable than that required of policy loans ~~or partial withdrawals~~ under 4 MCAR § 1.9404 D., except that a restriction that no more than two consecutive premiums can be paid under this provision may be imposed.

4. An exclusion for suicide within two years of the issue date of the policy. However, to the extent of the increased death benefits only, the policy may provide an exclusion for suicide within two years of any increase in death benefits which results from an application of the owner subsequent to the policy issue date.

5. A provision allowing the policyholder to make partial withdrawals.

6. Any other policy provision not inconsistent with 4 MCAR §§ 1.9401-1.9411 or Minnesota law.

4 MCAR § 1.9405~~:~~ Reserve liabilities for variable life insurance.

A. Establishment. Reserve liabilities for variable life insurance policies shall be established under the Standard Valuation Law, Minnesota Statutes, section 61A.25, in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

B. Scheduled premium policies. For scheduled premium policies, reserve liabilities for the guaranteed minimum death benefit shall be the reserve needed to provide for the contingency of death occurring when the guaranteed minimum death benefit exceeds the death benefit that would be paid in the absence of the guarantee, and shall be maintained in the general account of the insurer and shall be not less than the greater of the following minimum reserves:

1. The aggregate total of the term costs, if any, covering a period of one full year from the valuation date, of the guarantee on each variable life insurance contract, assuming an immediate one-third depreciation in the current value of the assets of the separate account followed by a net investment return equal to the assumed investment rate; or

2. The aggregate total of the "attained age level" reserves on each variable life insurance contract. The "attained age level" reserve on each variable life insurance contract shall not be less than zero and shall equal the "residue," as described in paragraph a. below, of the prior year's "attained age level" reserve on the contract, with any such "residue," increased or decreased by a payment computed on an attained age basis as described in paragraph b. below.

a. the "residue" of the prior year's "attained age level" reserve on each variable life insurance contract shall not be less than zero and shall be determined by adding interest at the valuation interest rate to such prior year's reserve, deducting the tabular claims based on the "excess," if any, of the guaranteed minimum death benefit over the death benefit that would be payable in the absence of such guarantee, and dividing the net result by the tabular probability of survival. The "excess" referred to in the preceding sentence shall be based on the actual level of death benefits that would have been in effect during the preceding year in the absence of the guarantee, taking appropriate account of the reserve assumptions regarding the distribution of death claim payments over the year.

b. the payment referred to in 4 MCAR § 1.9405 B.2. shall be computed so that the present value of a level payment of that amount each year over the future premium paying period of the contract is equal to (A) minus (B) minus (C), where (A) is the present value of the future guaranteed minimum death benefits, (B) is the present value of the future death benefits that would be payable in the absence of such guarantee, and (C) is any "residue," as described in paragraph a. above, of the prior year's "attained age level" reserve on such variable life insurance contract. If the contract is paid-up, the payment shall equal (A) minus (B) minus (C). The amounts of future death benefits referred to in (B) shall be computed assuming a net investment return of the separate account which may differ from the assumed investment rate and/or the valuation interest rate but in no event may exceed the maximum interest rate permitted for the valuation of life contracts.

3. The valuation interest rate and mortality table used in computing the two minimum reserves described in paragraphs 1. and 2. above shall conform to permissible standards for the valuation of life insurance contracts. In determining such minimum reserve, the company may employ suitable approximations and estimates, including but not limited to groupings and averages.

C. Flexible premium policies. For flexible premium policies, reserve liabilities for any guaranteed minimum death benefit shall be maintained in the general account of the insurer and shall be not less than the aggregate total of the term costs, if any, covering the period provided for in the guarantee not otherwise provided for by the reserves held in the separate account assuming an immediate one-third depreciation in the current value of the assets of the separate account followed by a net investment return equal to the valuation interest rate.

The valuation interest rate and mortality table used in computing this additional reserve, if any, shall conform to permissible standards for the valuation of life insurance contracts. In determining the minimum reserve, the company may employ suitable approximations and estimates, including but not limited to groupings and averages.

D. Reserve liabilities for all fixed incidental insurance benefits and any guarantees associated with variable incidental insurance benefits shall be maintained in the general account and reserve liabilities for all variable aspects of the variable incidental insurance benefits must be maintained in a separate account in amounts determined in accordance with the actuarial procedures appropriate to such benefit.

4 MCAR § 1.9406. Separate accounts.

The following requirements apply to the establishment and administration of variable life insurance separate accounts by any domestic insurer:

A. Establishment and administration of separate accounts. ~~An~~ Any domestic insurer issuing variable life insurance ~~in this state~~ shall establish and administer one or more separate accounts pursuant to Minnesota Statutes, section 61A.14.

1. All persons with access to the cash, securities, or other assets of the separate account shall be under bond in an amount not less than $3,000,000.

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2. ~~If an insurer establishes more than one separate account for variable life insurance. justification for the establishment of each additional separate account shall also be filed with the commissioner. The creation of additional separate accounts to avoid lower maximum charges against the separate account is prohibited.~~

~~3.~~ The assets of ~~such~~ these separate accounts ~~established for variable life insurance policies~~ shall be valued at least as often as variable benefits are determined but in any event at least monthly.

~~4. A separate account exempt pursuant to Section 3(c)(11) of the Investment Company Act of 1940 because of the tax qualified status of the policies funded thereby shall not be used to fund other variable life insurance policies.~~

~~5. Except for separate accounts exempt pursuant to Section 3(c)(11) of the Investment Company Act of 1940, variable life insurance separate accounts shall not be used for variable annuities or for the investment of funds corresponding to dividend accumulations or other policyholder liabilities not involving life contingencies.~~

B. Amounts in the separate account.

~~1.~~ The insurer shall maintain in each ~~variable life insurance~~ separate account assets with a ~~fair market~~ value at least equal to the greater of the valuation reserves for the variable portion of the variable life insurance policies or the benefit base for such policies.

~~2. The benefit base of any variable life insurance policy as of the beginning of any valuation period shall not be less than the sum of the following factors after deducting amounts of any indebtedness pursuant to 4 MCAR Section 1.9401 D.2.:~~

~~a. the valuation net premium for such period. for the variable portion of the policy. minus the discounted cost of term insurance for such period. based on the tabular mortality and interest rates used in determining valuation reserves: and~~

~~b. the valuation terminal reserve. for the variable portion of the policy. at the end of the immediately preceding valuation period adjusted for the net investment return of such preceding period.~~

~~3. In lieu of the minimum benefit base requirement specified above. an insurer may otherwise qualify under 4 MCAR Section 1.9406 B. if the policy benefits obtained over a 20 year period from the date of issue by the use of the insurer's benefit base are at least substantially equivalent in value to the benefits obtained by the use of the minimum benefit base specified above.~~

~~4. Notwithstanding the actual reserve basis used for policies that do not meet standard underwriting requirements. the benefit base for such policies may be the same as for corresponding policies which do meet standard underwriting requirements.~~

C. Investments by the separate account. The separate account shall have sufficient net investment income and readily marketable assets to meet anticipated withdrawals under policies funded by the account and be registered under the Investment Company Act of 1940.

~~1. Assets allocated to a variable life insurance separate account shall be held in cash or investments having a reasonably ascertainable market price. For purposes of this subdivision. only the following shall be considered "investments having a reasonably ascertainable market price:"~~

~~a. liens in favor of the insurer against separate account policy reserves resulting from use by policyholders of cash values:~~

~~b. securities listed and traded on the New York Stock Exchange. the American Stock Exchange. or regional stock exchanges or successors to such exchanges having the same or similar qualifications:~~

~~c. securities listed on the National Association of Securities Dealers Automated Quotations System (hereinafter referred to as the "NASDAQ System"):~~

~~d. shares of an investment company registered pursuant to the Investment Company Act of 1940. Where such an investment company issues book shares in lieu of share certificates. such book shares shall be deemed to be adequate evidence of ownership:~~

~~e. obligations of or guaranteed by the United States Government. the Canadian Government. any state. or municipality or governmental subdivision of a state:~~

~~f. commercial paper issued by business corporations when the total of such paper issued by the corporation does not exceed in value a guaranteed short line of credit by a bank:~~

~~g. certificates of deposit issued by financial institutions. the deposits of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation: and~~

~~h. new bond or debt issues which may reasonably be expected to be listed on an exchange regulated by the Securities Exchange Act of 1934.~~

~~2. Assets allocated to a variable life insurance separate account shall not be invested in:~~

~~a. commodities or commodity contracts:~~

~~b. put and call options or combinations of such options:~~

~~c. short sales:~~

~~d. purchases on margins:~~

~~e. letter or restricted stock:~~

~~f. units or other evidences of ownership of a separate account of another insurer, except those registered under the Investment Company Act of 1940; or~~

~~g. real estate other than shares of a real estate investment trust listed as described in 4 MCAR Section 1.9406 C.1.b.~~

D. Limitations on ownership.

1. A ~~variable life insurance~~ separate account shall not purchase or otherwise acquire the securities of any issuer, other than securities issued or guaranteed as to principal and interest by the United States, if immediately after ~~such~~ the purchase or acquisition the value of ~~such~~ the investment, together with prior investments of ~~such~~ the account in ~~such~~ the security valued as required by this ~~regulation~~ rule, would exceed ~~10%~~ ten percent of the value of the assets of the separate account. The commissioner shall waive this limitation in writing if he believes ~~such~~ the waiver will not render the operation of the separate account hazardous to the public or the policyholders in this state.

2. No separate account shall purchase or otherwise acquire the voting securities of any issuer if as a result of ~~such~~ the acquisition the insurer and its separate accounts, in the aggregate, will own more than ~~10%~~ ten percent of the total issued and outstanding voting securities of ~~such~~ the issuer. The commissioner shall waive this limitation in writing if he believes ~~such~~ the waiver will not render the operation of the separate account hazardous to the public or the policyholders in this state or jeopardize the independent operation of the issuer of ~~such~~ the securities.

3. The percentage limitation specified in ~~4 MCAR Section 1.9406~~ D.1. shall not be construed to preclude the investment of the assets of separate accounts in shares of investment companies registered pursuant to the Investment Company Act of 1940 or other pools of investment assets if the investments and investment policies of ~~such~~ the investment companies or asset pools comply substantially with the provisions of ~~4 MCAR Section 1.9406~~ C. and other applicable portions of this ~~regulation~~ rule.

E. Valuation of ~~assets of a variable life insurance~~ separate account.

~~1.~~ Investments of the separate account shall be valued at their market value on the date of valuation, or at amortized cost if it approximates market value.

~~a. Market value for investments traded on the recognized exchanges means the last reported sale price on the date of valuation. If there has been no sale on that date, the market value means the last reported bid quotation on the date of valuation.~~

~~b. Market value for investments listed on the NASDAQ System means the last representative bid quotation on the valuation date. If an investment ceases to be listed but continues to be traded over the counter, it shall be valued at the lowest bid quotation as it appears on the National Quotation Bureau sheets.~~

~~c. If the valuation date referred to in paragraphs a. and b. above is a day when the exchange or the NASDAQ System is not open for business, the valuation date shall be the last date when the exchange or the NASDAQ System was open for business.~~

~~2. If an investment ceases to be traded, it shall be valued at fair value as determined in good faith by or at the direction of the Board of Directors of the insurer but not in excess of the last reported bid quotation.~~

~~3. Notification of cessation of trading of any investment shall be reported by the insurer to the Commissioner within thirty days thereof.~~

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F. Separate account investment policy. The investment policy of a separate account operated by a domestic insurer filed under 4 MCAR § 1.9403 B.3. shall not be changed without first filing the change with the commissioner.

~~1. The commissioner shall have sixty days after the date the change is filed with him to notify the insurer of his determination that the proposed change is a material change in the insurer's investment policy.~~

~~2. If the change is deemed material by the commissioner he shall hold a public hearing to determine whether the change is detrimental to the interests of the policyholders of the insurer.~~

~~3. At least thirty days prior to any public hearing under paragraph 2. above. the insurer shall mail a notice to each policyholder and to the Insurance Commissioner of each state in which the affected variable life insurance policies are being sold. Such notice shall describe the proposed change in investment policy. list the reasons therefor. designate the date and place of the public hearing. inform the policyholder of the procedures to be followed in commenting on the change. and describe the conduct of the meeting.~~

~~4. Within sixty days after such public hearing. the Commissioner shall notify the insurer of his determination. and if it is that the change is detrimental to the interests of the policyholders of the insurer. the insurer shall not be allowed to make such change.~~

~~5. Should any policyholder object to the proposed change and the change is allowed by the Commissioner the objecting policyholder shall be given the option within sixty days of notification to the policyholder of the allowance by the Commissioner of such change. or converting. without evidence of insurability. under one of the following options. to a fixed benefit life insurance policy issued by the insurer or an affiliate:~~

~~a. If the policy is in force on a premium paying basis. either:~~

~~(1) conversion as of the original issue age to a substantially comparable permanent form of fixed benefit life insurance. based on the insurer's premium rates for fixed benefit life insurance at the original issue age. for an amount of insurance not exceeding the death benefit of the variable life insurance policy on the date of conversion.~~

~~(2) conversion as of the attained age to a substantially comparable permanent form of fixed benefit life insurance for an amount of insurance not exceeding the excess of the death benefit of the variable life insurance policy on the date of conversion over:~~

~~(a) its cash value on the date of conversion if the policyholder elects to surrender the variable life policy for its cash value. or~~

~~(b) the death benefit payable under any paid up insurance option if the policyholder elects such nonforfeiture option under the variable life policy.~~

~~b. If the policy is in force as paid up variable life insurance. then conversion will be to a substantially comparable paid up fixed benefit life insurance policy for an amount of insurance not exceeding the death benefit of the variable life insurance policy on the date of conversion.~~

~~If conversion is made pursuant to paragraphs a.(1) or b. above. then (1) if the cash value of the variable life insurance policy exceeds the cash value of the fixed benefit life insurance policy. the difference shall be paid to the policyholder; (2) if the cash value of the fixed benefit life insurance policy exceeds the cash value of the variable life insurance policy. the difference shall be paid by the policyholder; and (3) any indebtedness under the variable life insurance policy shall become indebtedness under the fixed benefit policy. provided that any excess of such indebtedness over the cash value of the fixed benefit policy on the date the conversion shall be deducted from any amount otherwise payable to the policyholder.~~

G. Charges against a variable life insurance separate account.

~~1.~~ The insurer ~~may deduct only the following from the separate account~~ must disclose in writing, prior to or contemporaneously with delivery of the policy, all charges that may be made against the separate account, including, but not limited to the following:

~~a.~~ 1. taxes or reserves for taxes attributable to investment gains and income of the separate account~~s~~;

~~b.~~ 2. actual cost of reasonable brokerage fees and similar direct acquisition and sales costs incurred in the purchase or sale of separate account assets~~.~~;

~~c.~~ 3. actuarially determined costs of insurance (tabular costs) and the release of reserves and benefit base consistent with the release of separate account liabilities~~.~~;

~~d.~~ 4. charges for administrative expenses and investment management expenses, including internal costs attributable to the investment management of assets of the separate account~~s not exceeding the following percentages. on an annual basis. of the average net value of the separate account as of the dates of valuation under 4 MCAR Section 1.9406 A.1.~~

~~(1) .75% of that portion of separate account assets valued at or under $75,000,000; and~~

~~(2) .50% of that portion of separate account assets valued in excess of $75,000,000 but less than $150,000,000; and~~

~~(3) .40% of that portion of separate account assets valued in excess of $150,000,000 but less than $400,000,000; and~~

~~(4) .35% of that portion of separate account assets valued in excess of $400,000,000 but less than $800,000,000; and~~

~~(5) .30% of that portion of separate account assets valued in excess of $800,000,000.~~;

~~e.~~ 5. a charge, at a rate specified in the policy~~, not to exceed .50% per year of the average net asset value of the separate account as of the dates of valuation under 4 MCAR Section 1.9406 A.3.~~ for mortality and expense guarantees~~.~~;

~~f.~~ 6. any amounts in excess of those required to be held in the separate account;

7. charges for incidental insurance benefits.

~~2. Any charges against the separate account made by either an affiliate of the insurer or an unaffiliated fund shall be considered part of the charges limited by 4 MCAR Section 1.9406 G.1.d. and e. Any charge against the separate account, excluding taxes, shall not vary in accordance with the difference between the investment performance of the separate account and any index of securities prices or other measure of investment performance.~~

4 MCAR § 1.9407. Information furnished to applicants.

The requirements of 4 MCAR § 1.9407 shall be deemed to have been satisfied to the extent that a disclosure containing information required by 4 MCAR § 1.9407 is delivered, either in the form of (1) a prospectus included in a registration statement relating to the policies which satisfies the requirements of the Securities Act of 1933 and which was declared effective by the Securities and Exchange Commission; or (2) all information and reports required by the Employee Retirement Income Security Act of 1974 if the policies are exempted from the registration requirements of the Securities Act of 1933 pursuant to Section 3(a)(2) thereof. An insurer delivering or issuing for delivery in this state any variable life insurance policies shall deliver to the applicant for the policy, and obtain a written acknowledgement of receipt from ~~such~~ the applicant coincident with or prior to the execution of the application, the following information:

A. a summary explanation, in non-technical terms, of the principal features of the policy, including a description of the manner in which the variable benefits will reflect the investment experience of the separate account and the factors which affect ~~such~~ the variation. ~~Such~~ The explanation must include notices of the provision required by 4 MCAR § 1.9404 C.1.e. and Minnesota Statutes, section 61A.03, clause (3).

B. a statement of the investment policy of the separate account, including:

1. a description of the investment objective ~~and orientation~~ intended for the separate account and the principal types of investments intended to be made; and

2. any restriction or limitations on the manner in which the operations of the separate account are intended to be conducted.

C. a statement of the net investment return of the separate account for each of the last ten years ~~for which~~ or a lesser period the separate account was in existence;

D. ~~a statement describing, as an approximate percentage of an annual gross premium for each year and for the life of the policy all commission or equivalent payments to be paid to all agents or other persons as a result of the proposed sale for each year of the policy for which such payments are to be made. As used in this Section, "commissions" means all monies and other valuable consideration, including but not limited to prizes, bonuses paid directly or indirectly to, for, or on behalf of the selling agent as compensation for services in the sale of variable life insurance;~~

~~E.~~ a statement of the ~~annual taxes, brokerage fees, and similar costs, and the~~ charges~~, expressed as an annual percentage,~~ levied against the separate account during the previous year;

~~F.~~ E. a summary of the method to be used in valuing assets held by the separate account;

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~~G.~~ F. a summary of the federal income tax ~~liabilities~~ aspects of the policy applicable to the insured, the ~~policy owner~~ policyholder, and the beneficiary;

~~H. if the applicant is furnished~~ G. illustrations of benefits payable under ~~any~~ the variable life insurance contract~~; such~~. The illustrations ~~shall~~ must be prepared by the insurer and ~~shall~~ must not include projections of past investment experience into the future or attempted predictions of future investment experience, ~~provided~~ that nothing contained herein prohibits use of hypothetical assumed rates of return to illustrate possible levels of benefits if it is made clear that ~~such~~ the assumed rates are hypothetical only;

~~I. a prominent statement either in contrasting color or in boldface type at least four points larger than the type size of the largest type used in the text of any provision on the page, providing in substance the following information:~~

~~1. The purpose of this variable life insurance policy is to provide insurance protection for the beneficiary named therein.~~

~~2. No claim is made that this variable life insurance policy is in any way similar or comparable to a systematic investment plan of a mutual fund.~~

4 MCAR § 1.9409~~:~~ Reports to policyholders.

Any insurer delivering or issuing for delivery in this state any variable life insurance policies shall mail to each variable life insurance policyholder at his or her last known address the following reports:

A. Within ~~thirty~~ 30 days after each anniversary of the policy, a statement or statements of the cash surrender value, death benefit, any partial withdrawal or policy loan, any interest charge, and any optional payments allowed pursuant to 4 MCAR § 1.9404 C. under the policy computed as of the policy anniversary date. Provided, however, that such statement may be furnished within ~~thirty~~ 30 days after a specified date in each policy year so long as the information contained therein is computed as of a date not more than ~~forty-five~~ 60 days prior to the mailing of ~~such~~ the notice. This statement shall state ~~in contrasting color or distinctive type~~ that, in accordance with the investment experience of the separate account, the cash values and the variable death benefit may increase or decrease, and shall prominently identify any value described therein which may be recomputed prior to the next statement required by 4 MCAR § 1.9409. If the policy guarantees that the variable death benefit on the next policy anniversary date will not be less than the variable death benefit specified in ~~such~~ the statement, the statement shall be modified to so indicate. For flexible premium policies, the report must contain a reconciliation of the change since the previous report in cash value and cash surrender value, if different, because of payments made, less deductions for expense charges, withdrawals, investment experience, insurance charges, and any other charges made against the cash value. In addition, the report must show the projected cash value and cash surrender value, if different, as of one year from the end of the period covered by the report assuming that: planned periodic premiums, if any, are paid as scheduled; guaranteed costs of insurance are deducted; and the net investment return is equal to the guaranteed rate or, in the absence of a guaranteed rate, is not greater than zero. If the projected value is less than zero, a warning message must be included that states that the policy may be in danger of terminating without value in the next 12 months unless additional premium is paid.

B. Annually, a statement or statements including:

1. a summary of the financial statement of the separate account based on the annual statement last filed with the commissioner;

2. the net investment return of the separate account for the last year and, for each year after the first, a comparison of the investment rate of the separate account during the last year with the investment rate during prior years, up to a total of not less than five years when available;

3. a list of investments held by the separate account as of a date not earlier than the end of the last year for which an annual statement was filed with the commissioner;

4. any charges~~; taxes, and brokerage fees determined on an accrual basis payable by the separate account during the previous year, each expressed as a dollar amount and a percentage and the total expressed as a dollar amount and as a percentage of the assets of the separate account~~ levied against the separate account during the previous year;

5. a statement of any change, since the last report, in the investment objective and orientation of the separate account, in any investment restriction or material quantitative or qualitative investment requirement applicable to the separate account or in the investment adviser of the separate account;

~~6. the names and principal occupations of each principal executive officer and each director of the insurer; and~~

~~7. the names of all parents of the insurer and the basis of control of the insurer, and the name of any person who is known to own, of record or beneficially, 10% or more of the outstanding voting securities of the company.~~

C. For flexible premium policies, a report must be sent to the policyholder if the amounts available under the policy on any policy processing day to pay the charges authorized by the policy are less than the amount necessary to keep the policy in force until the next following policy processing day. The report must indicate the minimum payment required under the terms of the policy to keep it in force and the length of the grace period for payment of the amount.

Department of Commerce

Proposed Temporary Rules Governing Joint Self-Insurance Employee Health Plans

Notice is hereby given that the Deparxment of Commerce proposed to adopt the above-entitled temporary rules. These temporary rules are promulgated pursuant to Minnesota Statutes, section 62H.06.

All interested persons may submit comments on the proposed temporary rules for 20 days immediately following publication of this material in the *State Register* by writing to John Klein, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101. The temporary rules may be revised on the basis of comments received. Any written material received shall become part of the record in the final adoption of the temporary rules. Pursuant to Minnesota Statutes, section 14.35 these temporary rules shall be in effect for a period of 180 days following adoption and approval by the Attorney General.

A copy of the proposed temporary rules is attached to this Notice.

Michael A. Hatch
Commissioner of Commerce

Temporary Rules as Proposed (all new material)

4 MCAR § 1.850 [Temporary] Statutory authority.

Rules 4 MCAR §§ 1.850-1.866 [Temporary] are adopted under the authority of Laws of Minnesota 1983, chapter 241, section 6.

4 MCAR § 1.851 [Temporary] Purpose.

Rules 4 MCAR §§ 1.850-1.866 [Temporary] govern the formation, operation, and dissolution of groups of employers which jointly self-insure employee health, dental, or short-term disability benefits. These rules are intended to ensure that a group's financial integrity is maintained, and that groups are administered competently and equitably.

4 MCAR § 1.852 [Temporary] Scope.

The following are subject to the requirements of 4 MCAR §§ 1.850-1.866 [Temporary]:

A. employers authorized to transact business in Minnesota that seek to jointly self-insure employee health, dental, or short-term disability benefits;

B. self-insurance plan administration companies licensed under Minnesota Statutes, section 60A.23, subdivision 8, clause (3), that provide services to a plan; and

C. insurance companies licensed under Minnesota Statutes, section 60A.07, subdivision 4, that provide required stop-loss coverage to a plan.

4 MCAR § 1.853 [Temporary] Definitions.

For the purposes of 4 MCAR §§ 1.850-1.866 [Temporary], the terms in A.-W. have the meanings given them unless the context clearly indicates a different meaning.

A. Annual premium. "Annual premium" means the total premium paid or to be paid by all members during a single fiscal year of a plan.

B. Board. "Board" means a plan's board of trustees.

C. Bylaws. "Bylaws" means the adopted statement which prescribes the scope, government, and administration of a plan, as required by 4 MCAR § 1.854 [Temporary].

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of Proposed Amendments to the Rules Relating to the Issuance of Variable Life Insurance Policies Pursuant to Minn. Stat. §§ 61A.13 - 61A.21

STATEMENT OF NEED AND REASONABLENESS OF PROPOSED RULES

STATEMENT OF NEED AND AUTHORITY

Variable life insurance is authorized in Minnesota pursuant to Minn. Stat. §§ 61A.13 through 61A.21, enacted by the Laws of 1969 c. 752, authorizing contracts on a variable basis, as subsequently amended by the Laws of 1973, c. 480. The above-captioned amendments to existing rules are proposed by the Commissioner of Commerce (thereinafter "Commissioner") for adoption as permanent rules pursuant to the authority vested in the Commissioner by Minn. Stat. § 61A.20 as appropriate to carry out the purposes and provisions of Minn. Stat. §§ 61A.13 through 61A.21.

In 1981, the Insurance Division of the Department of Commerce adopted Rules 4 MCAR §§ 1.9401 to 1.9415 to govern policies of variable life insurance and the insurers which issue them. The Rules adopted at that time followed the basic format of a model variable life regulation promulgated by the National Association of Insurance Commissioners (NAIC) in 1977. In 1982, the NAIC promulgated an Amended Model Variable Life Regulation.

The amendments broadened the scope of the existing Rule so as to accommodate innovative products. More specifically, the changes permit life insurance companies to offer a product often referred to as flexible premium life insurance. This product is a hybrid of two rather recent innovations -- universal life insurance and existing variable life insurance -- and possesses characteristics of both. In broad overview, the product is conceived of as a flexible premium, separate account product, with the death benefit and cash value varying with investment experience. The flexible premium feature of this new product distinguishes it from current forms of variable life insurance which contemplate a scheduled stream of premium payments. The proposed amendments are designed to permit the Rule to accommodate emerging innovative product designs, such as flexible premium variable life, without compromising the adequacy and comprehensiveness of the basic framework of state regulation of variable life insurance.

As will be more fully shown herein, these proposed rules are intended to more precisely delineate the terms, conditions, and requirements of insurance companies desiring to sell scheduled premium and flexible premium variable life insurance policies in the State of Minnesota. The proposed rules are also intended to implement and make effective the provisions of Minn. Stat. §§ 61A.13 through 61A.21.

In addition, the proposed amendments take cognizance of the regulatory atmosphere prevailing at the time the original NAIC model regulation was adopted. The model regulation was adopted in large part in response to the concerns about dual federal-state regulation of variable life insurance. In 1973, the Securities and Exchange Commission (SEC) adopted Rule 3c-4 under the Investment Company Act of 1940 ("1940 Act"). This rule exempted certain separate accounts funding variable life policies which met certain restrictive design requirements. The original NAIC model and 4 MCAR §§ 1.9401 through 1.9411 were drafted so as to limit their scope to accommodate only those policies which were described in Rule 3c-4. At the same time the SEC determined that variable life insurance policies themselves were subject to the registration and prospective requirements of the Securities Act of 1933 and the antifraud and broker/dealer requirements of the Securities Exchange Act of 1934.

In 1975, the SEC rescinded Rule 3c-4. The NAIC model and 4 MCAR §§ 1.9401 through 1.9411 were never changed to reflect this action by the SEC so that these rules contain many provisions which overlap unnecessarily with the federal securities laws.

The proposed amendments remove those provisions of the existing rules that overlap or duplicate provisions of the 1940 Act. These overlaps were not intended in the original rules adopted in 1981 and serve only to confuse and complicate the regulatory scheme applicable to variable life insurance.

As more fully indicated below, the proposed rules reasonably address the above-stated needs.

The Commissioner has determined that Minn. Stat. § 14.115 is not applicable to the proposed rules.

HISTORY

On March 7, 1983, the Commissioner of Insurance published Notice of Intent to Solicit Outside Information at 7 S.R. 1277 for his consideration in the promulgation of amendments to existing regulations promulgated under Minn. Stat. § 61A.20. In response to the Solicitation, IDS Life Insurance Company submitted a draft of proposed amendments to the regulation governing variable life insurance. This proposal was based on the current Model Variable Life Regulation, as amended by the NAIC in 1982. After review and revision of the proposal, the Commissioner proposed amendments to the rules governing variable life insurance on November 29, 1983 and published the proposed amendments in the State Register on December 12, 1983.

The Commissioner has determined that Minn. Stat. § 14.115 is not applicable to the proposed rules.

FACTS ESTABLISHING REASONABLENESS

As more specifically set forth herein, the proposed amendments to existing rules reasonably address the requirements of Minn. Stat. § 61A.13 through § 61A.21, and constitute a reasonable attempt to further delineate and give effect to the terms, conditions, and requirements for the marketing and sale of variable life insurance in this state.

4 MCAR § 1.9402

4 MCAR § 1.9402 defines certain terms used in the proposed rules. Subdivisions A, D, G, I and J of the proposed amended rule define certain terms necessary to clarify the meaning of the requirements of these rules. Where the definitions are material to a full understanding of the proposed amendments, they will be more fully discussed in the context of the substantive provisions of the amended rule in which they occur.

Subdivision C of the proposed amended rule changes the definition of benefit base to recognize that the benefit base of a flexible premium variable life insurance policy is the policy's cash value and that the concept of "assumed investment rate" is not meaningful in the context of these products. The proposed amended rule changes the definition of "benefit base" so that it is meaningful and applicable to both flexible premium and scheduled premium policies.

Subdivisions E and K of the proposed amended rule distinguish between "flexible premium variable life policies" and "scheduled premium variable life policies". The basic approach has been to define a "schedule premium policy" to include "traditional" variable life insurance policy designs. Accordingly, a "scheduled premium policy" is defined as "any variable life insurance policy under which the amount and timing of premium payments are specified under the terms of the policy". Having established the boundaries of conventional variable life policies, the proposed amended rule defines "flexible premium" policies expansively to encompass all other variable life insurance policy other than a scheduled premium policy as specified in paragraph K of this 4 MCAR § 1.9402". The breadth of this definition is intended to include flexible premium variable life products.

Subdivision L of the proposed amended rule clarifies that the same separate accounts may be utilized to fund a variety of products such as variable annuities. The proposed amended rule is intended to provide insurers with the flexibility needed to manage and market these products.

Subdivision M of the proposed amended rule changes the definition of "variable death benefit" to refer to "any minimum death benefit" instead of "the minimum death benefit". The change reflects the divergent approach to the minimum death benefit that an insurer must afford under scheduled premium and flexible premium variable life insurance policies. The proposed amended rules afford the insurer considerable flexibility in formulating death benefit guarantees for flexible premium products, and a reference to "the minimum death benefit" is inconsistent with other proposed amendments to these rules.

Subdivision N of the proposed amended rule amends the definition of a "variable life insurance policy" to allow for the flexibility inherent in universal life type products. Since insurance coverage under a variable universal policy continues as long as the policy's cash value is sufficient to support charges for the cost of insurance, it may be the duration, rather than the amount, of the variable universal death benefit which varies with the investment experience of the separate account. Accordingly, the amended rule proposes that the definition of "variable life insurance policy" be expanded to include "any individual policy which provides for life insurance the amount or duration of which varies" in accordance with investment experience.

4 MCAR § 1.9403

The existing rule requires that an insurer must, before delivering or issuing for delivery any variable life insurance policy in the state, file with the Insurance Division various documents and items of information not unlike those required to be filed in connection with the sale of a conventional whole life insurance policy.

Paragraph 2 of Subdivision B of the existing rule currently requires a description of the methods of operation of the insurer. The proposed amendment to this paragraph recommends adding to this description the methods of distribution of the variable life insurance policies of the insurer. This suggestion reflects the recognition that the methods of selling flexible premium variable life insurance products may differ from the methods of selling more traditional life insurance products.

Paragraph 4 of Subdivision B of the proposed amended rule is an addition which reflects that, with the flexibility afforded insurers in policy design by the proposed rule, it will be necessary for the insurer to provide a statement by its actuary regarding the mortality and expense risks of the particular policy.

4 MCAR § 1.9404

The proposed amended rule recommends revisions in 4 MCAR § 1.9404 to provide companies with sufficient flexibility to offer flexible premium variable life insurance as well as other variations on more traditional forms of variable life insurance. Many of the proposed amendments to this section consist of deletions from the mandatory Policy Benefit and Design Requirements of Subdivision B.

Paragraph 1 of Subdivision B is being proposed to be amended to delete the requirement that coverage be provided for the lifetime of the insured. This provision is considered to be an unnecessary impediment to the development of innovative flexible product designs. Language has also been added to this paragraph to clarify that the insurer bears the mortality and expense risks under a variable life insurance policy and that the charges for those risks cannot exceed the maximum which the insurer establishes in the policy.

Paragraph 2 of Subdivision B of the existing rule is being deleted to accommodate the flexibility in amount and timing of premium payments which is the cornerstone of the flexible premium variable life product. This deletion will permit flexible premium products while still permitting "traditional" forms of variable life insurance to continue to be written.

Paragraph 2 of Subdivision B of the proposed amended rule was originally adopted to require a minimum death benefit as the initial stated amount of death benefit. This minimum death benefit guarantee could not be required under a product design characterized by non-level premiums which are paid on an irregular basis. The minimum death benefit guarantee was premised on the assumption that the insurer would establish level periodic premiums which would have to be paid by the insured at the times specified by the insurer. Further, the existing rule requires the minimum death benefit only so long as premiums are duly paid. In a flexible premium variable life policy this requirement may not be appropriate where the insured, not the insurer, controls the timing and the amount of each premium payment. Accordingly, the minimum death benefit requirement in the proposed rule would be limited to scheduled premium policies. The minimum death benefit for flexible premium policies would be addressed in the context of a new provision governing grace periods for flexible premium policies (4 MCAR § 1.9404, C. 2. b). This new provision provides that during the grace period the insurer must pay a death benefit equal to the death benefit that was in effect immediately prior to the grace period, less any overdue charges. Thus, this provision in effect prescribes the minimum death benefit payable under a flexible premium policy.

Paragraph 3 of Subdivision B of the proposed amended rule was changed to modify some of the rigidity of the existing requirement. The amendment deletes the requirement that investment experience be reflected in "the variable death benefit" so that investment experience could, for example, be used to increase cash value or the duration of coverage. In addition, the portion of this paragraph which prescribed the manner in which excess investment performance was to be applied is proposed to be deleted in favor of a provision requiring the insurer to demonstrate that the reflection of investment experience is actuarially sound. It is intended that the demonstration will pay particular attention to the manner in which the policy operates under both favorable and unfavorable investment conditions, and to the matching of current liabilities under the policy to the market value of assets.

Paragraph 6 of Subdivision B of the proposed amended rule requires that the method of computation of cash values and other non-forfeiture benefits rests in all cases on the assumption that at all times during the life of the policy the full net investment return exactly equals the assumed interest rate. The proposed amendment embodies the recognition that flexible premium variable life insurance products might not contain an assumed rate. In that event, the calculation is to be based upon the maximum interest rate permitted under the Standard Nonforfeiture Law (Minn. Stat. § 61A.24).

Paragraph 9 of Subdvision B of the existing rule limited the deductions that could be made in determining net investment return to four of the categories of charges enumerated in 4 MCAR § 1.9406, Subdivision G. The proposed amended rules modify Subdivision G of § 1.9406 so that the specifically enumerated categories no longer limit permissible charges, but merely illustrate charges which must be disclosed in writing prior to or contemporaneously with delivery of the variable life insurance policy. This change makes Paragraph 9 of Subdivision B of § 1.9404 obsolete and it is, therefore, proposed to be deleted.

Subdivision C, Paragraph 1 is proposed to be amended in subparagraphs a. and c. to conform those paragraphs to the amended definition of "variable life insurance" and to the bifurcated approach to the minimum death benefit guarantee for schedule and flexible premium policies. Also subparagraph e. is proposed to be amended to reflect the change in the federal 45 day requirement for securities and to place the rule in compliance with Minnesota law, specifically Minn. Stat. §§ 72A.51 and 72A.52. Further, subparagraphs a. and b. are proposed to be amended by deleting the requirement that these statements be set forth in type at least four points larger than the type size used in the text of any provision on the page. The statements required by these subparagraphs will be adequately distinguishable from the surrounding text since they must, in any event, be set forth either in contrasting color or bold-face type.

Paragraph 2 of Subdivision C is proposed to be amended so as to require different grace periods for scheduled premium and flexible premium policies. Subparagraph a. is to be amended so as to apply only to scheduled premium policies since the concept of "premium due date" is inappropriate to flexible premium policies, and a thirty-one day "standard life insurance policy" grace period is consistent with the longer grace period which is typically required for current general account flexible premium policies. Subparagraph b. is proposed to be added so as to permit a 61 day grace period for flexible premium policies which is now typically required for universal life policies. Further, this new subparagraph requires that the minimum death benefit be provided during the grace period equal to the benefit in effect immediately prior to the grace period.

Paragraph 3 of Subdivision C is proposed to be amended so as to only apply to scheduled premium policies. This is being done since the concept of reinstatement is inappropriate to flexible premium policies since there is nothing to reinstate under a flexible premium policy once the policy's cash value has been depleted by deductions for the cost of insurance and other charges.

Paragraph 5 of Subdivision C is proposed to be amended by deleting subparagraph a. This deletion is intended to provide insurers the flexibility to utilize the same separate account to fund several products, such as variable annuities, in addition to variable life.

To take account of the flexible features of the proposed new product, Subdivision C, Paragraph 7 and Subdivision E, Paragraph 1 of the proposed amended rule provide that the incontestable and suicide provisions of the policy shall apply to new insurance coverages under the policy which have been added at the owner's request, for a two-year period following the date of issue of the increased coverage. This provision would not extend the suicide and incontestable provision for any coverage which had been in effect for longer than two years.

Paragraph 9 of Subdivision C of the proposed amended rule provides that at least one settlement option must be provided on a fixed basis, but permit the insurer to provide variable settlement options. The prior restriction was enacted to avoid SEC regulation. The federal role in the regulation of variable life insurance has eliminated the justification for this limitation.

This prior restriction imposed unnecessary costs on consumers since a person desiring a variable settlement option was required to surrender the variable life insurance policy and purchase a separate variable product and incur the costs associated with the surrender and replacement.

Subdivision C, Paragraph 10 of the proposed amended rule, formerly required that a variable life insurance policy contain a description of "the basis for computing the cash surrender value under the policy" and display such value in the format of a "schedule" of cash values. The function of these schedules was to set out the cash values under the policy at specified durations by $1,000 of variable death benefits then in force, regardless of investment performance. The schedules did not involve assumptions as to what the amount of variable death benefit or cash values would in fact be at the specified future durations. The alternative cash value schedules that were set forth in subparagraphs a. and b. of former paragraph 9 were deleted on the grounds that they might be, at best, meaningless, and, at worst, misleading in the context of flexible premium variable life policies characterized by nonguaranteed cash values which fluctuate in accordance with investment experience. The proposed amended rule will require the insurer to describe the basis for computing the policy's "cash value" in addition to its "cash surrender value". This requirement was added to provide the policyholder with useful information which juxtaposes the two amounts and thereby focuses the policyholder's attention on the costs associated with surrendering the policy.

Paragraph 11 of Subdivision C of the proposed amended rule clarifies that while premiums for incidental death benefits could be paid directly by the policyholder, the cost of such benefits could be paid directly by the policyholder. The cost of such benefits might also be deducted as "charges" from the separate account.

In the existing Rule, 4 MCAR § 1.9404, Subdivision D, Paragraph 1, (which has been renumbered in the proposed amended rule as 4 MCAR § 1.9404, Subdivision C, Paragraph 12) requires that a variable life insurance policy afford at least one non-forfeiture benefit "on a fixed basis from the due date of the premium in default," and prohibits an insurer from offering variable extended term insurance as a non-forfeiture benefit. The proposed amended rule responds to the clear incompatibility between these constraints and rudimentary design characteristics of flexible premium policies. The hallmark of flexible premium products is the latitude and discretion which the policyholder possesses over the amount and timing of premium payments. Thus, the concepts of a discrete, identifiable "premium due date" and of a "premium in default" -- which are readily defined and easily applied in the context of fixed life insurance and "traditional" variable life products --are inadaptable to flexible premium products. Nonpayment of premiums under a flexible premium product would not necessarily result in termination of insurance coverage; instead, coverage continues until the charges necessary to keep the policy in force exceed the amounts allocated to the separate accounts under the policy. In other words, if premium payments are discontinued, the duration of coverage would vary in accordance with investment performance. Thus, the product design which the insurance industry broadly envisions for flexible premium variable life in effect provides variable extended term insurance upon nonpayment of premium.

The existing rule's constraints upon the types of nonforfeiture insurance benefits which may be offered have been deleted because it was felt that they posed unnecessary obstacles to the evolving development of flexible premium products. Moreover, it was felt that sound state regulation of these products did not require that these restrictions be retained. The concluding language of the proposed provision, 4 MCAR § 1.9404, Subdivision C, Paragraph 12 allows an insurer to limit certain nonforfeiture benefits to a reasonable minimum amount. In other words, the regulation recognizes that costs associated in offering certain benefits in minute amounts may be unrelated to the size of the benefit. Therefore, it was thought unreasonable to require an insurer to absorb costs below a reasonable minimum benefit amount.

In the existing rule, 4 MCAR § 1.9404, Subdivision D, Paragraph 2 encompassed partial surrenders and partial withdrawals in addition to policy loans. In the proposed amended rule, Subdivision D, was restructured so that it addresses only policy loans. This was accomplished by deleting references to partial withdrawals and partial surrenders from Subdivision D and inserting instead, in Subdivision E, Paragraph 5 a permissive provision that a variable life insurance policy may contain "a provision allowing the policyholder to make partial withdrawals".

The original rule formulated the loan value by reference to the "cash value" of the policy. The proposed amended rule correlates the loan value to the "cash surrender" value of the policy to accomplish two principal objectives.

First, defining the loan value in terms of the "cash surrender" value conforms the rule to Minn. Stat. 61A.03, Subdivision 7. This provision defines the loan value as the cash surrender value and provides that when total indebtedness equals or exceeds such loan value, the policy may be terminated provided that at least thirty days' prior notice has been given to the policyholder.

Second, relating the loan value to the cash surrender value avoids disparate treatment of a policyholder who takes out a policy loan vis-a-vis a policyholder who surrenders the policy. Specifically, it was felt that if the original language were retained and a policyholder were permitted to borrow the full "cash value" of the policy, he could thereby circumvent imposition of a surrender charge and would be more favorably treated than a surrendering policyholder.

The proposed amended rule also adds an exclusion for term insurance policies and pure endowment policies to the introductory language to Subdivision D to make it clear that a policy loan provision is mandatory only for whole life policy designs. Obviously, it would not make sense to require policy loans provisions in contracts which have no cash values available to be loaned. In addition, because of the unscheduled nature of premium payments characterisitc of flexible premium products, it was felt that the previous introductory language which tied the availability of policy loans to payment of a specified number of "full years' premiums" was inapposite. Accordingly, this language was amended to provide that policy loans would be available after the "policy has been in force" for a specified period of time.

4 MCAR § 1.9404, Subdivision D, Paragraph 1 of the proposed amended rule clarifies the original intent of this provision. There existed some confusion as to whether this provision limited the maximum amount of a policy loan to 75% of the policy's cash surrender value, or whether the insurer was required to make available at least 75% of the cash surrender for a loan. The amendment reflects the original intent of this language which was to require that at least 75% of the cash surrender value be available as a loan.

4 MCAR § 1.9404, Subdivision D, Paragraph 2, Subparagraph b of the existing rule has been deleted, based upon the fact that no premium is required to be paid under a flexible premium policy. This deletion would not affect scheduled premium policies, either, since, by definition, the timing and amount of those payments are fixed at the time of issue. 4 MCAR § 1.9404, Subdivision D, Paragraph 2 of the proposed amended rule amends former subparagraph c to replace the reference to a maximum permissible interest rate with language which would permit insurers to charge a variable interest rate on policy loans where permitted by state law.

Subdivision D, Paragraph 5 of the proposed rule amends former subparagraph f to apply it only to scheduled premium policies because notices under flexible premium policies will now be governed by 4 MCAR § 1.9409, Subdivision C, which is mirrored in a new sentence which was added at the end of 4 MCAR § 1.9404, Subdivision D, Paragraph 5. Based upon the reasons expressed previously, the thirty-one day notice of intention to cancel is triggered when the indebtedness exceeds the "cash surrender value" of the policy, rather than the policy's "cash value".

Subdivision E of rule 4 MCAR § 1.9404 pertains to optional policy provisions. These provisions need not be included in any variable life policy, but if they are, the provisions must meet the minimum standards set forth in this Subdivision. Paragraph 1 of this Subdivision provides the same treatment for increases in insurance coverage, in the event of a suicide, that was earlier provided for incontestability situations, by 1.9404, Subdivision C, Paragraph 7. Paragraph 2 of this Subdivision now provides that if incidental benefits are offered they may be offered on either a fixed or variable basis. Although variable incidental benefits were originally felt to be impractical, the recent development of the necessary computer hardware and software to handle such benefits, the consumers' increasing interest in multiple-person coverage under one policy, and the increased consumer interest in variable life insurance contracts all make such benefits more attractive.

Subparagraphs 3 b. and c. of this Subdivision have been amended, combined and renumbered to eliminate a requirement that certain forms of life insurance which are purchased under dividend options be "paid up". In addition, the amendment permits forms of fixed benefit life insurance besides "whole life". New Subparagraph 3 e. was added to allow the dividend to be deposited as a variable deposit in a separate account. These changes were made to add needed flexibility to permissible dividend options.

Paragraph 5 was added to provide for optional partial withdrawal rights. This addition was necessitated by the deletion of the partial withdrawal provisions from § 1.9404, Subdivision D.

Paragraph 6 was added to clarify that any other policy provision may be included in a variable life policy so long as it is not inconsistent with these rules or Minnesota law.

4 MCAR § 1.9405

This section in the current rule delineates the requirements for determining reserve liabilities for variable life insurance. The proposed amended rule amends the current minimum death benefit guarantee reserve requirement to limit it to scheduled premium policies. It then adds new Subdivision C which is designed to deal with reserves for any minimum death benefit guarantee under a flexible premium policy. The minimum reserve proposed is a term reserve equivalent to that defined in 4 MCAR § 1.9405, Subdivision B, Paragraph 1 for scheduled premium policies. Because the timing of future premium payments is uncertain, an "attained age level" reserve cannot be calculated for a flexible premium policy.

Some changes are made to the existing Section 4 MCAR § 1.9405, Subdivision C (which is renumbered 4 MCAR § 1.9405, Subdivision D in the proposed amended rule). This subdivision in the current rule requires that reserve liabilities for all fixed incidental insurance benefits must be maintained in the separate account in amounts determined in accordance with the actuarial procedures appropriate to such benefits. The proposed amended rule simply adds to the current requirements the requirement that reserve liabilities for all variable incidental insurance benefits may be maintained in a separate account.

4 MCAR § 1.9406

Existing rule 4 MCAR § 1.9406 delineates the requirements for the establishment and administration of the variable life insurance separate accounts. The introductory language to Subdivision A has been modified to make clear that the domiciliary state has exclusive jurisdiction over the establishment of separate accounts and to clarify that a Commissioner may not require foreign insurers to establish separate accounts in his state. Corresponding changes are made to Subdivision A in order to be consistent with this concept.

This change makes the provision consistent with Minn. Stat. § 61A.14 (which provides that "any domestic life insurance company may . . . establish and operate one or more separate accounts") and Minn. Stat. § 61A.19. The authority given to the Commissioner by Minn. Stat. § 61A.19, subsection C, and sections 1.9403, Subdivision B, and section 1.9410 of these rules, assure that the Commissioner could refuse to approve, or subsequently could disapprove, any policy funded by an improperly established or maintained separate account, regardless of whether that separate account was established in Minnesota or elsewhere.

Subdivision A, Paragraph 2 of the existing rule requires that an insurer desiring to establish more than one separate account for variable life insurance must file with the Commissioner a justification and must obtain the Commissioner's approval for the establihsment of each additional separate account. The paragraph also prohibits the creation of additional separate account for the purpose of avoiding lower maximum charges against the separate account. This paragraph has been deleted because flexible

premium variable life products would be registered with the SEC under the 1940 Act, which regulates permissible charges against a separate account. By deleting this section, unnecessary dual regulation at the state and federal levels would be eliminated. Also, the schedule of maximum charges contained in 1.9406, Subdivision G which had been a part of the previous Rule has been deleted, and thus the basis for this limitation no longer exists.

In the existing Rule, 4 MCAR § 1.9406, Subdivision A, Paragraph 4 provides that a separate account, exempt from regulation under the 1940 Investment Company Act pursuant to Section 3(c)(11) of that Act because of the tax qualified status of the policies funded thereby, shall not be used to fund other variable life insurance policies. This paragraph was included in the existing rule in order to prohibit companies from jeopardizing the exempt status under the 1940 Act of Section 3(c)(11) separate accounts by placing in those accounts assets from non-exempt policies. This paragraph was made a part of the original rule because the NAIC intended to prevent dual SEC-State jurisdiction over these accounts by this prohibition. The proposed amended rule deletes this provision on the grounds that the management of the insurer would be best able to decide whether there are economies or benefits to be gained from pooling 3(c)(11) assets with non-exempt assets in one separate account that offset any costs or inconvenience incurred in complying with the 1940 Act for that account. Also, Section 3(c)(11) of the 1940 Act is a permissible exemption from the definition of an "investment company". The 1940 Act does not require that a company use that exemption if it decides to subject the account to the Act's provisions.

Similarly, Subdivision A, Paragraph 5 of the existing rule states that except for separate accounts exempt pursuant to Section 3(c)(11) of the Investment Company Act, variable life insurance separate accounts shall not be used for variable annuities or the investment of funds corresponding to dividend accumulations or other policyholder liabilities not involving life contingencies. This provision was included in the existing rule to assure that insurers not jeopardize the partially exempt 1940 Act status of variable life insurance separate accounts by pooling them with assets funding variable annuities when variable annuity separate accounts were subject to full 1940 Act regulation. Again, the proposed amended rule deletes this provision on the grounds that the management of the insurer will be best able to decide whether it is more advantageous to its policyholders to maintain, on the one hand, two separate accounts, one a 1940 Act regulated variable annuity separate account, and the other a variable life insurance separate account that is partially exempt from certain 1940 Act provisions, or, on the other hand, to pool the assets into one 1940 Act regulated account.

In 4 MCAR § 1.9404, Subdivision B, Paragraphs 3, 4 and 6 of the proposed amended rule it is required that the policy design reflect investment experience in an actuarially sound manner, the full net investment return be credited to the benefit base, and the method of computation of nonforfeiture benefits be consistent with the Standard Nonforfeiture Law. 4 MCAR § 1.9405, Subdivision A of the proposed amended rule requires reserves to be established under the Standard Valuation Law. These provisions ensure that the benefit base will be soundly defined and the benefits generated will be adequately reserved for. Accordingly, the existing provisions in 4 MCAR § 1.9406, Subdivision B, Paragraphs 2, 3 and 4 of the current Rule, which define the minimum benefit base, are unnecessary and have been deleted.

Subdivision C, Paragraph 1 of the existing Rule requires that assets allocated to variable life insurance separate accounts be held in cash or investments having a "reasonably ascertainable market value", and sets forth restricted categories of investments fulfilling this standard. The suggested revisions to this paragraph set forth a standard which will provide adequate safety and liquidity for separate accounts while also providing greater investment flexibility than is provided under the current provision. The proposal would delete the requirement that the entire portfolio of the separate account be composed of the specified types of assets designated by the rule as having a "reasonably ascertainable market value", and would substitute a requirement that the account maintain in its portfolio readily marketable assets and assets producing investment income such that the total of such assets and income are sufficient to meet anticipated withdrawals under policies funded by such account. In other words, to determine liquidity of the account, the net income from investment plus the aggregate amount of publicly traded securities, cash items and other readily marketable assets will be compared with anticipated withdrawals to meet obligations under the policies. In this way, the proposed standard for liquidity would focus upon the entire separate account rather than individual assets in the separate account. Paragraph 1 also has been amended to include a requirement that the separate account be registered under the Investment Company Act of 1940. This requirement is consistent with the other amendments of the Rule which provide relief from insurance regulation in certain areas because the product is regulated under the federal securities laws.

Paragraph 2 of Subdivision C of the existing Rule precludes certain separate account investments because they were considered to be either incapable of uniform valuation or unreasonably speculative. The proposed Rule would delete this paragraph in order to permit separate accounts to hold a wider range of investments. Deletion of this subsection is consistent with the concept of the proposed revision of Paragraph 1 of Subdivision C which permits a determination of liquidity by reference to the aggregate account rather than requiring that every investment in the account meet conservative liquidity standards. With this deletion, separate accounts would be permitted to acquire certain currently attractive forms of investment (e.g., options for hedging and realestate) while maintaining safety and liquidity. Finally, these changes comport with the nearly unlimited flexibility allowed separate account investments by Minn. Stat. § 61A.14, Subd. 3.

Paragraph 3 of Subdivision D was expanded to make clear that Paragraph 1 was not intended to prevent separate accounts from acquiring interests in other pools of investment assets, such as interests in a pool of real estate assets, which may not be registered under the Investment Company Act. Any such investments would also have to substantially comply with the investment restrictions of § 1.9406, Subdivision C and other applicable provisions of the Rule.

Subdivision E of the current Rule requires that investments of the separate account shall be valued at market value on the date of valuation. The proposed Rule would also permit investments to be valued at their amortized cost if it approximates market value. This change permits valuation consistent with the current SEC position on the amortized cost method of valuation.

Subparagraphs 1a, 1b, and 1c, of this Subdivision currently define the term "market value" for purposes of this section. The proposed amended rule recommends deletion of these subsections because the valuation of portfolio assets is comprehensibly regulated by the SEC in the 1940 Act and the rules and regulations thereunder. Minn. Stat. § 61A.14, Subd. 7 also regulates separate account asset valuation. Since it is intended that variable life insurance products sold to the general public would be registered with the SEC, the separate account portfolio assets will be uniformly regulated by the SEC pursuant to specific and detailed regulations. Similarly, 4 MCAR § 1.9406, Subdivision E, Paragraphs 2 and 3 which delineate the valuation of investments which cease to be traded, and require a notice to the Commissioner, are recommended for deletion because the 1940 Act and the rules and regulations thereunder also cover the valuation of assets under those circumstances.

Subdivision F of the current Rule provides that separate account investment policy shall not be changed without the approval of the insurance commissioner, and sets forth administrative procedures for such approval. The proposed amended Rule proposes to modify this Subdivision to provide that a change in investment policy shall not occur until the insurer files the change with the Commissioner. The proposed Rule eliminates the requirement for a mandatory public hearing to consider any proposed material changes in investment policy. The public hearing requirement is deleted because the federal securities laws grant shareholders the right to vote upon changes in investment policy. Further, the SEC reviews the proxy material which is required for shareholder voting. The information provided to the policyholder for any public hearing would be identical to that which had been received in connection with the shareholder's vote. The modifications were intended to eliminate duplicative state administrative and regulatory procedures.

Consistent with the modifications recommended for 4 MCAR § 1.9406, Subdivision F, paragraph 2, the proposed amended Rule proposes that paragraphs 3 and 4 pertaining to hearing procedures be deleted.

Subdivision F, paragraph 5 of the existing Rule, which permits shareholders objecting to material changes in investment policy to convert to a general account life insurance policy, is deleted. At the time the original NAIC model regulation was drafted, it was hoped that variable life insurance could avoid SEC regulation, and the conversion right of objecting shareholders was viewed as a substitute for the voting procedures mandated under the securities laws. Under the federal securities laws, shareholders have the right to vote upon proposed changes in investment policy. This right, together with the SEC oversight review of changes in investment policy, provides adequate policyholder protection from undesirable changes in investment policy.

Subdivision G of existing 4 MCAR § 1.9406 limits charges against the separate account to specifically enumerated categories. The proposed amended Rule recommends modification of the Subdivision to provide that the insurer must disclose in the policy all charges that may be made against the separate account including, but not limited to, the charges currently enumerated in the Subdivision. Flexible premium variable life products issued to the general public will be registered under the 1940 Act which limits the charges which may be levied against separate accounts. As a result, the limitations

in the state law are unnecessary. Policyholders will be adequately protected by the SEC statutes and regulations. In addition, it does not appear reasonable to restrict separate account charges to specific categories and thereby limit future product design. The proposed modifications would expand the enumerated charges to permit administrative expenses and charges for incidental insurance benefits to be charged against the separate account of the flexible premium products.

The proposed Rule deletes the limits in Paragraph 1, subparagraph d. on investment management expenses as a percentage of average net asset value. The 1940 Act regulates the amount that can be charged for investment management expense.

The proposed Rule modifies Paragraph 1, subparagraph e. to remove the limits on charges for mortality and expense guarantees. This revision is proposed in the interest of regulatory consistency, because regulations under the Investment Company Act stipulate that mortality and expense risk charges must be disclosed in the prospectus and shall not be less than 50% of the maximum charge for risk assumption as disclosed in the prospectus and as provided for in the contract.

4 MCAR § 1.9406, Subdivision G, Paragraph 2 is also deleted in the proposed Rule. The prohibition against performance fees for investment advisers is regulated by the 1940 Act and the Investment Advisers Act, making these regulations superfluous.

4 MCAR § 1.9407

Existing rule 4 MCAR § 1.9407 specifies the information that must be furnished to applicants for variable life insurance.

Subdivision D of the existing rule requires that a statement be furnished to the applicant regarding the level of commissions or equivalent payments to be paid to agents as a result of the proposed sale. The proposed amended Rule deletes Subdivision D which requires a statement describing, as an approximate percentage of an annual gross premium for each year and for the life of the policy, all commissions or equivalent payments for each year of the policy for which such payments are to be made. Due to the flexibility inherent in the product's premium payments, no such calculation can be made for a flexible premium product. Also, no other life insurance product requires the disclosure of an agent's commission to a policyholder, thus, there is no overriding insurance regulatory concern which should require such a disclosure for this one product.

The proposed amended Rule also deletes Subdivision I of this Section which currently requires a prominent statement in contrasting color or in bold-faced type at least four point larger than the type size of the largest type used in the text of any provision on the page, providing:

> "The purpose of this variable life insurance policy is to provide insurance protection for the beneficiary named therein.
>
> No claim is made that this variable life insurance policy is in any way similar or comparable to a systematic investment plan of a mutual fund."

These required disclosures were included in the original Rule as part of the effort to assure that the variable life insurance product would be considered to be insurance not involving an investment company subject to SEC regulation. Because the insurance and securities aspects of future products will be considered on the merits of the product and not on the basis of self-serving statements furnished to applicants, it was felt that these paragraphs could be deleted. The first required statement appears to be superfluous and the second statement may not be true in that certain policy design provisions may be "similar to or comparable to a systematic investment plan of a mutual fund".

The proposed amended Rule also simplifies existing Subdivision E (which is renumbered Subdivision D in the proposed amended Rule) of this Section to require simply a statement of the charges levied against the separate account during the previous year. This disclosure requirement will provide for disclosure of the charges levied against separate accounts without specifying particular charges and thereby creating the possible negative inference that disclosure of others is not required.

4 MCAR § 1.9409

Existing rule 4 MCAR § 1.9409 requires annual reporting to existing variable life insurance policyholders. The new policies which will be authorized for sale by this new Rule will require a greater disclosure of information to the policyholder.

The flexibility in amount and timing of premium payment which is the hallmark of the universal life concept, and the fluctuation of cash value in accordance with investment experience which characterizes variable life insurance, converge in the flexible premium variable product. This highlights the policyholder's need to be provided with current, reliable information concerning the status of his insurance coverage.

The principal proposed amendments to 4 MCAR § 1.9409 attempt to satisfy this need. The expansion of the information that must be included in an annual report in the case of flexible premium policies in proposed Subdivision A, and the notice of impending expiration of coverage which is envisioned by new Subdivision C, are both designed to alert the policyholder to the possible insufficiency of the policy's cash value and the corresponding need to make additional premium payments to keep the flexible premium policy in force.

Thus, the proposed amendment to Subdivision A is designed to provide the policyholder of a flexible premium variable life insurance policy with a long-range warning that his policy may terminate without value if additional premium is not paid. In addition to setting forth information concerning changes in the policy's net cash value and cash surrender value during the preceding policy year, the proposed expanded annual report would also contain a projection, based upon specified assumptions, of net cash value and cash surrender value as of the next policy anniversary. If the projected value is less than zero, the annual report would include a warning message stating that the variable universal policy "may be in danger of terminating without value in the next twelve months unless additional premium is paid".

Although the long-range warning notice contemplated by Subdivision A provides the policyholder with important information concerning the possible insufficiency of the cash value to keep the policy in force, the proposed amendment recognizes the need for an additional, immediate notice if the cash value is in fact sufficient to keep the policy in effect without payment of additional premium. Accordingly, as already mentioned above in discussing the proposed amendments to 4 MCAR § 1.9402 and § 1.9404, proposed new Subdivision C of § 1.9409 requires an insurer to send a report to the policyholder in the event that the "cash value on any policy processing day is equal to or less than the amount necessary to keep the policy in force until the next following policy processing day". The mailing of this report triggers the sixty-one day grace period for flexible premium policies in 4 MCAR § 1.9404, Subdivision C, Paragraph 2, Subparagraph b.

4 MCAR § 1.9409, Subdivision C requires that the report indicate "the minimum payment required under the terms of the policy to keep it in force until the next following policy processing day". Thus, the policyholder is provided with prompt notice of the possible impending expiration of his coverage and of the correlative need to take immediate action to assure that the policy continues in effect.

The proposed rule also proposes several other amendments to 4 MCAR § 1.9409. In Subdivision A, the current requirement that the information contained in reports to policyholders be computed as of forty-five days prior to mailing would be changed to sixty to be consistent with the corresponding time period under current SEC regulations. The portion of Subdivision A which requires the use of "contrasting color or distinctive type" to highlight the variable nature of the cash value and death benefit would be deleted on the rationale that the principal function of a policyholder report, unlike a policy application, is to report, rather than highlight, information.

The proposed rule also proposes amendments to the required contents of the annual statement contemplated by Subdivision B. First, the proposed amendment to paragraph 2 of Subdivision B is intended to permit an insurer, as a matter of state law, to furnish comparisons of the investment rate of the separate account for more than a five-year period. In addition, the requirements embodied in paragraphs 6 and 7 of Subdivision B, that the statement include information concerning the insurer's principal executive officer, directors, parent companies and ten percent beneficial owners have been deleted. This information will be provided to the policyholder of registered products pursuant to the federal securities laws. Also, it is not directly relevant to the more material information contained in the report concerning the policyholder's status with regard to his policy. Finally, a conforming amendment is added in Subdivision B, Paragraph 4 to be consistent with the proposed deletion of the limitations on the types of charges that may be levied against the separate account.

RECEIVED
JAN 26 1984
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

In the Matter of the Proposed Adoption
of Rules Governing Variable Life Insurance

STATEMENT OF
COMPLIANCE WITH
RULEMAKING PROCEDURES

I, Peggy L. Bunch, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Peggy L. Bunch
Special Assistant Attorney General

Dated: January 26, 1984.

In the Matter of the Proposed Adoption of
Rules Relating to Variable Life Insurance

AFFIDAVIT OF
MAILING NOTICE OF
SUBMISSION TO THE
ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Debbi J. Lindlief, being first duly sworn, deposes and says:

That on the 26th day of January, 1984, in the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Submission to the Attorney General by depositing in the State of Minnesota Central Mail System for United States mailing at the City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, to all persons and associations who requested notice that the rules in the above-entitled matter have been submitted to the Attorney General.

Debbi J. Lindlief

Subscribed and sworn to before me this
26th day of January, 1984.

Nancy J. Heil

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of
Rules Relating to Variable Life Insurance

NOTICE OF
SUBMISSION TO THE
ATTORNEY GENERAL

Pursuant to your request and in accordance with Minn. Stat. § 14.16:

PLEASE TAKE NOTICE that the above-captioned rules have been submitted to the Office of the Attorney General on this date, January 26, 1984, for review as to form and legality. Pursuant to Minn. Stat. § 14.17, the Attorney General will not approve the rules for at least 20 calendar days after receipt to allow any person or association time to comment on the legality of the rules, after which that Office will complete its review. If you desire to comment on the legality of the above-captioned rules, you should direct your comments to the Office of the Attorney General, G-25 State Administration Building, 50 Sherburne Avenue, St. Paul, Minnesota 55155, (612) 296-7030. Please note that the above-cited rule of the Attorney General also provides that a copy of any written comments submitted to the Attorney General must be submitted simultaneously to this agency.

If you are interested in determining what changes, if any, were made in the proposed rules after publication in the State Register and before submission to the Attorney General, you may contact Debbi Lindlief, Department of Commerce, 500 Metro Square Building, St. Paul, Minnesota 55101.

Michael A. Hatch
Commissioner of Commerce