

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

MJC

RULE REVIEW CHECKLIST

File No. 1658 — Docket No. 05-0009, 0110

DATE RECEIVED 1-5-90 — ADOPTED W/O HEARING X

REVIEW DATE ~~1-14-90~~ 1-16-90 — EMERGENCY RULE _____

DUE DATE 1-19-90 — TO REVISOR ON 1-11-90

REVISOR APPROVED ~~1-17-90~~

APPROVED 1-19-90 mjc — REVISOR DISAPPROVED _____

DISAPPROVED _____ — FILED W/SEC. OF STATE _____

WITHDRAWN _____ — RETURNED TO AGENCY _____

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable) did not submit it
_____ Date published in State Register
_____ Comments

_____ ~~Petition for Adoption of a Rule~~ (if applicable)

_____ ~~Board's Authorizing Resolution~~
_____ Date adopted

✓ Proposed Rule
✓ Revisor's Certificate

_____ Notice of Intent to Adopt Rule (2- both in
45.023 Statutory Authority 61A.20
yes Small Business Statement - in Statement of need and reasonableness
NA Expenditure of public money statement
no Date Signature

✓ Statement of Need and Reasonableness (if applicable) (2)
✓ Small Business Statement no additional burdens
NA Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule July 6, 1989
Nov 21, 1989 Date 30/25 days before adoption
_____ Notice attached indicates proposed modifications are attached
_____ Copy of rule or summary attached

✓ Publication in State Register
July 10, 1989 Date 30/25 days before adoption Oct 9, 1989 - don't have amendments
Oct 9, 1989
_____ 180-day deadline from:
NA Effective date of law requiring rule (14.12) (both rules) not mandatory
✓ end of comment period (§ 14.26) (rules without hearing) Aug 7 - Jan 5
_____ effective date of statutory authority (§ 14.29) (emergency rules)

_____ Resolution Adopting
_____ Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
Dec 26, 1989 Date

_____ Written requests, submissions or comments

_____ Declaration of attorney
Norene Jacobsen Name of SAAG representing agency

_____ Notice of Submission to Atty. Gen. (if applicable)

_____ Aff. of Mailing Notice to Atty. Gen. (if applicable)

Department of Commerce

Adopted Permanent Rules Relating to Modified Guaranteed Annuities

Rules as Adopted

2751.0100 PURPOSE.

This chapter regulates modified guaranteed annuities, a new form of variable annuity, the assets of which are placed in a separate account.

2751.0200 AUTHORITY.

This chapter is adopted pursuant to the authority granted to the commissioner of the Department of Commerce in Minnesota Statutes, section 61A.20.

2751.0300 APPLICABILITY AND SCOPE.

This chapter applies to:

A. the qualifications of agents to be authorized to sell modified guaranteed annuity contracts in this state;

B. the qualification of insurers to be authorized to issue these contracts;

C. the required contract form and provisions for issuance of this coverage in this state; and

D. the manner in which separate account assets, supporting these contracts, are to be maintained and reported.

2751.0400 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of this chapter, the terms defined in this part have the meanings given them.

Subp. 2. **Commissioner.** "Commissioner" means the commissioner of the Department of Commerce of the state of Minnesota.

Subp. 3. **Interest credits.** "Interest credits" means all interest that is credited to the contract.

Subp. 4. **Modified guaranteed annuity.** "Modified guaranteed annuity" is a deferred annuity contract, the

FILE COPY

DEPARTMENT: Office of the Attorney General

STATE OF MINNESOTA

OFFICE MEMORANDUM

DATE: January 19, 1990

TO: PATRICIA L. PETERSON
Director of Registration
Department of Commerce

FROM: MARTHA J. CASSERLY
Special Assistant Attorney General
525 Park Street, Suite 500 (55103) MJC

PHONE: 296-6839

SUBJECT: In the Matter of the Adopted Permanent Rule Relating to Modified Guaranteed Annuities

The above-referenced Permanent rule has been approved as to its legality by the Attorney General on January 19, 1990.

Enclosed is your copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

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

MJC:bbl
Enclosures
cc: William Brown, Chief Judge (memo only)
MaryAnn Hruby " "
Missy Norine Olson-Elm " "

underlying assets of which are held in a separate account, and the values of which are guaranteed if held for specified periods. The annuity contains nonforfeiture values based upon a market-value adjustment formula if held for shorter periods. This formula may, or may not, reflect the value of assets held in a separate account during the period, or periods, when the contract holder can surrender the contract.

Subp. 5. **NAIC.** "NAIC" means the National Association of Insurance Commissioners.

Subp. 6. **Separate account.** "Separate account" means a separate account established pursuant to Minnesota Statutes, sections 61A.13 to 61A.21 or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.

2751.0500 AUTHORITY OF INSURERS.

Subpart 1. **Application.** The following requirements in this part apply to all insurers seeking authority to issue modified guaranteed annuities in this state.

Subp. 2. **Licensing and approval to do business.** No company shall deliver or issue for delivery modified guaranteed annuities within this state unless it is licensed or organized to do a life insurance or annuity business in their state pursuant to Minnesota Statutes, section 60A.07, and the commissioner is satisfied that its condition or method of operation in connection with the issuance of these contracts will not render its operation hazardous to the public or its policyholders in this state. In this connection, the commissioner shall consider among other things the history and financial condition of the company; the character, responsibility, and fitness of the officers and directors of the company; and the law and regulation under which the company is authorized in the state of domicile to issue these annuities.

If the company is a subsidiary of an admitted life insurance company, or affiliated with the company by common management or ownership, it may be considered by the

commissioner to have satisfied the requirements of this subpart, if either it or the admitted life company satisfies the requirements of this subpart. Companies licensed and having a satisfactory record of doing business in this state for a period of at least three years may be considered by the commissioner to have satisfied the requirements of this subpart.

Before any company delivers or issues for delivery modified guaranteed annuities within this state, it shall submit to the commissioner a general description of the kinds of these annuities it intends to issue; if requested by the commissioner, a copy of the statutes and regulations of its state of domicile under which it is authorized to issue these annuities; and if requested by the commissioner, biographical data with respect to officers and directors of the company on the NAIC uniform biographical data form.

Subp. 3. **Use of sales materials.** An insurer authorized to transact modified guaranteed annuity business in this state shall not use any sales material, advertising material, or descriptive literature or other materials of any kind in connection with its modified guaranteed annuity business in this state that is false, misleading, deceptive, or inaccurate.

Illustrations of benefits payable under any modified guaranteed annuity shall not include projections of past investment experience into the future or attempted predictions of future investment experience. Hypothetical assumed interest credits may be used to illustrate possible levels of benefits.

Before any insurer delivers or issues for delivery any modified guaranteed annuity contract in this state, the commissioner may require the filing of a copy of any prospectus or other sales material to be used in connection with the marketing of that insurer's modified guaranty annuity contract. The sales material must clearly illustrate that there can be both upward and downward adjustments due to the application of the market value adjustment formula in determining nonforfeiture benefits.

Subp. 4. **Reports.** An insurer authorized to transact the

business of modified guaranteed annuities in this state shall submit to the commissioner:

A. a separate account annual statement that includes the business of its modified guaranteed annuities; and

B. additional information concerning its modified guaranteed annuity operations or separate accounts the commissioner considers necessary.

Subp. 5. **Authority of commissioner to disapprove.** Any material required to be filed with and approved by the commissioner shall be disapproved by the commissioner if the commissioner finds that it does not comply with the standards established by this chapter.

2751.0600 FILING OF CONTRACTS.

The filing requirements applicable to modified guaranteed annuities are those filing requirements otherwise applicable under existing statutes and rules of this state with respect to individual and group life insurance and annuity contract form filings, to the extent appropriate. Filings shall include a demonstration in a form satisfactory to the commissioner that the nonforfeiture provisions of the contract comply with part 2751.0700, subpart 1.

2751.0700 CONTRACT REQUIREMENTS.

Subpart 1. **Mandatory contract benefit and design requirements.** The following benefit and design requirements apply to a modified guaranteed annuity contract delivered or issued for delivery in this state:

A. The contract must contain a statement of the essential features of the procedures to be followed by the insurance company in determining the dollar amount of nonforfeiture benefits.

B. If the contract calls for the payment of periodic stipulated payments, it must contain in substance the following provisions:

(1) a provision that there shall be a period of grace of 30 days or of one month, within which any stipulated

payment to the insurer falling due after the first may be made, during which period of grace the contract shall continue in force. The contract may include a statement of the basis for determining the date as of which any payment received during the period of grace shall be applied to produce the values under the contract arising therefrom; and

(2) a provision that, at any time within one year from the date of default, in making periodic stipulated payments to the insurer during the life of the annuitant and unless the cash surrender value has been paid, the contract may be reinstated upon payment to the insurer of such overdue payments as required by contract, and of all indebtedness to the insurer on the contract, including interest. The contract may include a statement of the basis for determining the date as of which the amount to cover these overdue payments and indebtedness shall be applied to produce the values under the contract arising therefrom.

C. The market-value adjustment formula, used in determining nonforfeiture benefits, must be stated in the contract, and must be applicable for both upward and downward adjustments. When a contract is filed, it must be accompanied by an actuarial statement indicating the basis for the market-value adjustment formula and that the formula provides reasonable equity to both the contract holder and the insurance company.

D. If and to the extent so provided under the applicable contracts, that portion of the assets of any separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the company may conduct.

E. The application for a modified guaranteed annuity shall prominently set forth immediately preceding the signature line, language denoting that amounts payable under the contract are subject to a market value adjustment prior to a date or dates specified in the contract.

Subp. 2. **Nonforfeiture benefits.** The following nonforfeiture benefit requirements apply to a modified guaranteed annuity contract delivered or issued for delivery in this state:

A. This subpart does not apply to any:

(1) reinsurance;

(2) group annuity contract purchased in connection with one or more retirement plans or plans of deferred compensation established or maintained by or for one or more employers, including partnerships or sole proprietorships, employee organizations, or any combination thereof, other than plans providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code of 1986, as amended through December 31, 1988;

(3) premium deposit fund;

(4) deferred annuity contract after annuity payments have commenced;

(5) reversionary annuity; or

(6) contract which is to be delivered outside this state through an agent or other representative of the company issuing this contract.

B. The contract must contain in substance the provisions of subitems (1) and (2).

(1) Upon cessation of payment of considerations under a contract, the insurer will grant a paid-up annuity benefit on a plan described in the contract that complies with item E. The description will include a statement of the mortality table, if any, and guaranteed or assumed interest rates used in calculating annuity payments.

(2) If a contract provides for a lump sum settlement at maturity, or at any other time, upon surrender of the contract at or prior to the commencement of any annuity payments, the insurer will pay in lieu of any paid-up annuity benefit a cash surrender benefit as described in the contract that complies with item F. The contract may provide that the insurer may defer payment of the cash surrender benefit for a

period of six months after demand.

C. The minimum values as specified in this part of any paid-up annuity, cash surrender, or death benefits available under a modified guaranteed annuity contract must be based upon nonforfeiture amounts meeting the requirements of this item.

The unadjusted minimum nonforfeiture amount on any data prior to the annuity commencement date must be an amount equal to the percentages of net considerations, as specified in item D, increased by the interest credits allocated to the percentage of net considerations, which shall be reduced to reflect the effect of the following:

(1) any partial withdrawals from or partial surrender of the contract;

(2) the amount of any indebtedness on the contract, including interest due and accrued;

(3) an annual contract charge not less than zero and equal to (a) the lesser of $30 and two percent of the end of year contract value less (b) the amount of any annual contract charge deducted from any gross considerations credited to the contract during the contract year; and

(4) a transaction charge of $10 for each transfer to another investment division within the same contract.

The minimum nonforfeiture amount shall be the unadjusted minimum nonforfeiture amount adjusted by the market-value adjustment formula contained in the contract.

The annual contract charge of $30 and the transaction charge of $10 referenced will be adjusted to reflect changes in the consumer price index for all urban consumers (CPI-U) in accordance with item D. The CPI-U is published by the Bureau of Labor Statistics, United States Department of Labor, and is incorporated by reference. It is subject to frequent change and is available from the Minitex interlibrary loan system.

Guaranteed interest credits in each year of any period of time for which interest credits are guaranteed shall be reasonably related to the average guaranteed interest credits over that period of time.

D. The percentages of net considerations used to define the minimum nonforfeiture amount in item C must meet the requirements of this item.

(1) With respect to contracts providing for periodic considerations, the net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of $30 and less a collection charge of $1.25 per consideration credited to the contract during that contract year and less any charges for premium taxes. The percentages of net considerations shall be 65 percent for the first contract year and 87.5 percent for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be 65 percent of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was 65 percent.

(2) With respect to contracts providing for a single consideration, the net consideration used to define the minimum nonforfeiture amount shall be the gross consideration less a contract charge of $75 and less any charge for premium taxes. The percentage of the net consideration shall be 90 percent.

The annual contract charge of $30, the collection charge of $1.25 per collection, and the single consideration contract charge of $75 referred to in this subitem, will be adjusted to reflect changes in the CPI-U in accordance with item 3.

(3) The above contract charges shall be multiplied by the ratio of (a) the CPI-U for June of the calendar year preceding the date of filing, to (b) the CPI-U for June 1979.

E. Any paid-up annuity benefit available under a modified guaranteed annuity contract shall be that its present value on the annuity commencement date is at least equal to the

minimum nonforfeiture amount on that date. The present value shall be computed using the mortality table, if any, and the guaranteed or assumed interest rates used in calculating the annuity payments.

F. For modified guaranteed annuity contracts that provide cash surrender benefits, the cash surrender benefit at any time prior to the annuity commencement date shall not be less than the minimum nonforfeiture amount next computed after the request for surrender is received by the insurer. The death benefit under the contracts shall be at least equal to the cash surrender benefit.

G. Any modified guaranteed annuity contract that does not provide cash surrender benefits, or does not provide death benefits at least equal to the minimum nonforfeiture amount, prior to the annuity commencement date shall include a statement in a prominent place in the contract that these benefits are not provided.

H. Notwithstanding the requirements of this part, a modified guaranteed annuity contract may provide under the situations specified below that the insurer, at its option, may cancel the annuity and pay the contract holder the larger of the unadjusted minimum nonforfeiture amount and the minimum nonforfeiture amount, and by this payment be released of any further obligation under the contract:

(1) if at the time the annuity becomes payable, the larger of the unadjusted minimum nonforfeiture amount and the minimum nonforfeiture amount is less than $2,000, or would provide an income the initial amount of which is less than $20 per month; or

(2) if before the time the annuity becomes payable under a periodic payment contract no considerations have been received under the contract for a period of two full years and both (a) the total considerations paid before the period, reduced to reflect any partial withdrawals from or partial surrenders of the contract, and (b) the larger of the unadjusted minimum nonforfeiture amount and the minimum nonforfeiture

amount is less than $2,000.

I. For any modified guaranteed annuity contract that provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of item B, additional benefits payable:

(a) in the event of total and permanent disability;

(b) as reversionary annuity or deferred reversionary annuity benefits; or

(c) as other policy benefits additional to life insurance, endowment, and annuity benefits, and considerations for all additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits that may be required by this part. The inclusion of additional benefits is not required in any paid-up benefits, unless additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits.

2751.0800 RESERVE LIABILITIES.

Reserve liabilities for modified guaranteed annuities shall be established in accordance with actuarial procedures that recognize:

A. that assets of the separate account are based on market values;

B. the variable nature of benefits provided; and

C. any mortality guarantees.

As a minimum, the separate account liability will equal the surrender value based upon the market-value adjustment formula

contained in the contract. If that liability is greater than the market value of the assets, a transfer of assets will be made into the separate account so that the market value of the assets at least equals that of the liabilities. Also, any additional reserve that is needed to cover future guaranteed benefits will also be set up by the valuation actuary.

The market-value adjustment formula, the interest guarantee, and the degree to which projected cash flow of assets and liabilities are matched must also be considered. Each year, the valuation actuary must provide an opinion on whether the assets in the separate account are adequate to provide all future benefits that are guaranteed.

2751.0900 SEPARATE ACCOUNTS.

Subpart 1. **Establishment and administration.** Any domestic insurer issuing modified guaranteed annuities shall establish one or more separate accounts pursuant to Minnesota Statutes, section 61A.14.

Subp. 2. **Amounts.** The insurer shall maintain in each separate account assets with a market or other value meeting the standards set out in Minnesota Statutes, section 61A.14, at least equal to the valuation reserves and other contract liabilities respecting such account.

Subp. 3. **Valuation of assets.** 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, or pursuant to standards contained in Minnesota Statutes, section 61A.14.

Subp. 4. **Applicability of other laws.** Unless otherwise approved by the commissioner, separate accounts relating to modified guaranteed annuities will be subject to investment laws applicable to the insurer's general asset account.

2751.1000 REPORTS TO POLICYHOLDERS.

Companies shall annually provide their contract holders with a report showing both the account value and the cash surrender value. The report must clearly indicate that the

account value is prior to the application of any surrender charges or market value adjustment formula. It must also specify the surrender charge and market value adjustment used to determine the cash surrender value.

2751.1100 FOREIGN COMPANIES.

If the law or regulation in the place of domicile of a foreign company provides a degree of protection to the policyholders and the public which is substantially similar to that provided by this chapter, the commissioner to the extent the commissioner considers appropriate may consider compliance with that law or regulation as compliance with this chapter.

2751.1200 AUTHORIZATION OF AGENTS.

No person, corporation, partnership, or other legal entity may sell or offer for sale in this state any modified guaranteed annuity contract unless licensed to sell variable annuities under the insurance laws of this state.

2751.1300 RESTRICTION ON ISSUANCE.

Notwithstanding parts 2751.0100 to part 2751.1200, no modified guaranteed annuity shall be issued to any Minnesota resident. The commissioner may by order authorize the sale of modified guaranteed annuities to Minnesota residents if the commissioner determines that the order is in the public interest.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JAN 12 1990
Secretary of State

APPROVED AS TO FORM AND LEGALITY

January 19 19 90

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY MJ Cassidy
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

JAN 19 1990

Joan Anderson Growe
Secretary of State

11:25 am

SF-00006-05 (4/86)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : of COMMERCE

DATE : January 11, 1990

TO : Patricia Nolte

FROM : Patricia L. Peterson
Director of Registration

PHONE : 6-2284

SUBJECT : Modified Guaranteed Annuities Rules

Paul Marinac has advised me that he did not receive stripped copies of the amendment to the rules.

Although I thought I included copies of this document, I am sending additional ones so that there is no question about this submission.

SF-00006-05 (4/86)

DEPARTMENT : of COMMERCE

STATE OF MINNESOTA

Office Memorandum

DATE : December 26, 1989

TO : AL GILBERT

DEC 3 1 89

FROM : PATRICIA L. PETERSON
Director of Registration

PHONE : 6-2284

SUBJECT : Modified Guaranteed Annuities

Enclosed are copies of the following materials regarding the above-captioned rules:

1. Notice of Intent to Solicit Outside Opinion as published in State Register (2010.0300 A)

2. Copy of the Proposed Rules with Revisor's Certificate (2010.0300 D)

3. Notice of Intent to Adopt Rule Without Public Hearing (2010.0300 E)

4. Statement of Need and Reasonableness (2010.0300 F)

5. Affidavit of Mailing Notice of Intent to Adopt Rule Without Public Hearing (2010.0300 G)

6. Copy of Notice of Intent to Adopt Rule Without Public Hearing and Rules as published in the State Register (2010.0300 H)

7. Four copies of Rule as adopted (2010.0300 I)

8. Findings of Fact, Conclusion & Order Adopting Rule (2010.0300 K)

9. Written Comments, Submission & Requests on Rule (2010.0300 L)

Also included in regard to the amendment to the proposed rules are a copy of the Proposed Amendment with Revisor's Certificate; Notice of Intent to Adopt; Statement of Need and Reasonableness; Affidavit of Mailing; Copy of Notice of Intent to Adopt Rule as published in State register; and four copies of Rule as adopted.

RECEIVED

DEC 2 7 89

ATTORNEY GENERAL'S OFFICE
1100
7TH PLACE
ST. PAUL, MN 55101

Subp. 2. **Renewal deadline.** The provider must submit to the board the renewal application and the annual renew in part 9000.0200. The renewal application must be submitted or postmarked on or before the date the filing ends a 9000.0150 [Emergency]. The renewal application must include an affirmation by the provider that the statements true and correct to the best knowledge and belief of the provider.

Subp. 3. **Late fees.** A provider seeking renewal must pay the renewal fee and the late fee if the application submitted or postmarked after the time period specified in subpart 2.

The late fee must accompany applications of practicing mental health service providers not made within 90 days date of this part.

Subp. ~~3.~~ 4. **Expiration of filing.** A filing expires if it is not renewed with the board within the deadline specifie A filing may be reissued following expiration only if the provider submits a new application and pays the regular an fees required in part 9000.0200.

9000.0190 [Emergency] VARIANCES.

Subpart 1. **Grounds for variance; variance application.** A filer or applicant may petition the board for a time li from provisions in parts 9000.0100 to 9000.0190 [Emergency] and 9000.0200, except for a provision that incorpora requirement. The petition must be in writing. The board shall grant a variance if the filer or applicant specifies altern or measures equivalent to or superior to those in the rule in question and provides evidence that:

A. the rationale for the rule in question can be met or exceeded by the specified alternative practices or meas

B. adherence to the rule would impose an undue burden on the filer or applicant; and

C. the granting of the variance will not adversely affect the public welfare.

Subp. 2. to 6. [Unchanged.]

9000.0200 FEES.

Fees for filing as a mental health provider are as follows:

A. the fee for an application is $50;

B. the fee for renewal of filing is $50; and

C. the fee for late filing is $25.

REPEALER. The permanent amendments to emergency rules contained in these rules are repealed on the date th rules they amend are no longer in effect.

Official Notices

Pursuant to the provisions of Minnesota Statutes § 14.10, an agency, in preparing proposed rules, may seek information or sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all inter 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 Commerce

Notice to Solicit Outside Opinion Regarding Proposed Rules Governing the Issu Modified Guaranteed Annuities and the Conditions Under Which They May B Issued in the State of Minnesota Including the Impact of the Rules on Small Business.

NOTICE IS HEREBY GIVEN that the Department of Commerce is seeking information or opinions from persons agency in preparing to promulgate new rules 2751.0100 to 2751.1300. Promulgation of these rules is authorized by *Statutes*, 45.023 and 61A.20.

Outside opinion is also being solicited as to how these rules will affect small businesses as defined by *Minnesota Statut* subdivision 1.

of Commerce requests information and comments concerning the subject matter of these rules. Interested or groups may submit statements of information or comment orally or in writing to:

Commerce
Building
55101

will be received during regular business hours over the telephone at 296-2284.

information and comment shall be accepted until May 31, 1989. Any written material received by the Department become part of the record in the event that the rules are promulgated.

Michael A. Hatch
Commissioner of Commerce

ment of Human Services

rm Care

Solicitation of Outside Information or Opinions Regarding Proposed Rules ing Special Needs Rates Exception For Very Dependent Persons With Special *Minnesota Rules*, parts 9510.1020 to 9510.1140

HEREBY GIVEN that the State Department of Human Services is seeking information or opinions from sources cy in preparing to propose amendments of the rule governing special needs rate exception for very dependent persons ds. The adoption of the rule is authorized by *Minnesota Statutes*, section 256B.501, subdivisions 8 and 10, and subdivision 13, which permit the agency to promulgate rules to establish procedures to be followed by counties to tion of medical assistance reimbursement for very dependent persons with special needs.

amendments eliminate the need for certain documentation that the providers and counties are currently required to the special needs rate exception application. Documents which will no longer be needed include: explanation of the tives; facility profile; description of client's condition; client's individual program plan; client's behavioral assess- nt's screening document. The proposed amendments also clarify that the Department will require documentation lient's current individual service plan; county plan to monitor the implementation of the proposed intervention plan; t; and written financial statements.

also proposes to amend the emergency procedures in the rule. Amendments include: county approval of expenses onsultation and staff training; notification of expenses to the commissioner; extension of the emergency period from ty days; and clarification of per diem limitations on all amounts authorized by the commissioner.

rtment of Human Services requests information and opinions concerning the subject matter of the rule. Interested ps may submit data or views on the subject matter of concern in writing or orally. Written statements should be

Department of Human Services
Road
MN 55155-3816.

will be received during regular business hours over the telephone at (612) 297-4997 by Anu Seam and in person

of information and opinions shall be accepted until further notice is published in the *State Register* or the Notice ice of Intent to Adopt Rules Without a Hearing is published in the *State Register*. Any written material received rtment of Human Services shall become part of the rulemaking record to be submitted to the attorney general or judge in the event that the rule is adopted.

1989

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
ST. PAUL 55101

OFFICE OF THE COMMISSIONER

500 METRO SQUARE BUILDING
ST. PAUL, MN 55101

January 5, 1990

Patricia Nolte
525 Park
Suite 500
St. Paul, MN 55103

RE: Modified Guaranteed Annuities Rulemaking

Dear Ms. Nolte:

Please find enclosed the necessary documents for your review in the above rulemaking.

Very truly yours,

MICHAEL A. HATCH
Commissioner of Commerce

By: Patricia L. Peterson

PATRICIA L. PETERSON
Director of Registration

Registration Division
(612) 296-2284
MAH:PLP:da
Enclosure

DEPARTMENT OF COMMERCE

Notice to Solicit Outside Opinion Regarding Proposed Rules Governing The Issuance of Modified Guaranteed Annuities and the Conditions Under Which They May Be Issued in the State of Minnesota Including the Impact of the Rules on Small Business.

Notice is hereby given that the Department of Commerce is seeking information or opinions from persons outside the agency in preparing to promulgate new rules 2751.0100 to 2751.1300. Promulgation of these rules is authorized by Minnesota Statutes, 45.023 and 61A.20.

Outside opinion is also being solicited as to how these r will affect small businesses as defined by Minnesota Statutes §14.115, subdivision 1.

The Department of Commerce 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:

Department of Commerce
500 Metro Square Building
St. Paul, MN 55101
(612) 296-2284

Oral statements will be received during regular business hours over the telephone at 296-2284.

All statements of information and comment shall be accepted until May 31, 1989. Any written material received by the Department of Commerce shall become part of the record in the event that the rules are promulgated.

MICHAEL A. HATCH
Commissioner of Commerce

SF-00006-05 (4/86)

DEPARTMENT : of COMMERCE

STATE OF MINNESOTA

Office Memorandum

DATE : January 12, 1990

TO : Patricia Nolte

FROM : Patricia L. Peterson
Director of Registration

PHONE : 6-2284

SUBJECT : Modified Guaranteed Annuities Rules

Enclosed please find the documents and correspondence which you requested.

recd
1-12-90
4:00pm
mjc

In the Matter of the Proposed Rules
Relating to Modified Guaranteed
Annuities

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

AFFIDAVIT OF
MAILING

Dolores Anitzberger being first duly sworn, and says:

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minnesota Statutes, section 14.14, subdivision 1a, 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 6th day of July 1989.

That on the 6th day of July 1989, at the City of St. Paul, County of Ramsey, State of Minnesota, the attached Notice of Intent to Adopt Rules Without a Public Hearing was served by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy properly prepared with first-class postage prepaid, on all persons and associations who have requested that their names be placed on file with the Minnesota Department of Commerce for the purpose of receiving notice of the proposed adoption of rules by the Department.

Dolores Anitzberger

Subscribed and sworn to before me
this 6th day of July 1989.

Donna M. Watz

DONNA M WATZ
NOTARY PUBLIC MINNESOTA
HENNEPIN COUNTY
My Commission Expires Mar 17 1991

In the Matter of the Proposed Rules
Relating to Modified Guaranteed Annuities

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

AFFIDAVIT OF
MAILING

Dolores Anitzberger being first duly sworn, and says:

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minnesota Statutes, section 14.14, subdivision 1a, 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 21st day of November 1989.

That on the 21st day of November 1989, at the City of St. Paul, County of Ramsey, State of Minnesota, the attached Notice of Intent to Adopt Rules Without a Public Hearing was served by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy properly prepared with first-class postage prepaid, on all persons and associations who have requested that their names be placed on file with the Minnesota Department of Commerce for the purpose of receiving notice of the proposed adoption of rules by the Department.

Dolores Anitzberger

Subscribed and sworn to before me
this 21st day of November 1989.

Cynthia L. Claason

CYNTHIA L. CLAASON
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES FEBRUARY 3, 1992

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of Rules Governing the Issuance of Modified Guaranteed Annuities and the Conditions under which They May Be Issued In The State of Minnesota.

Notice of Intent to adopt Rules without a Public Hearing.

Notice is hereby given that the Department of Commerce intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedures Act for adopted rules without a public hearing in Minnesota Statutes, section 14.22-14.28. Authority for the adoption of these rules is contained in Minnesota Statutes, Section 45.023 and 61A.20.

All persons have 30 days to submit comments in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Department and do not result in a substantial change.

Any person may make a written request for a public hearing within the 30 days comment period. If 25 or more persons submit a written request for a public hearing within the 30 day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the Department will proceed pursuant to Minnesota Statutes, sections 14.13 to 14.20.

Persons who wish to submit comments or a written request for a public hearing should submit them to:

Patricia L. Peterson
Staff Attorney
Department of Commerce
500 Metro Square Building
St. Paul, MN 55101
(612) 296-2284

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from Patricia Peterson.

(14) Pursuant to Minnesota Statutes Section 14.115, subdivision 2, the impact on small business has been considered in the promulgation of the rules. Anyone wishing to present evidence or argument as to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness.

(9) If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or (11) who wish to receive a copy of the adopted rule, must submit the written request to Patricia Peterson.

Michael A. Hatch
Commissioner of Commerce

2nd

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Amendments to Proposed Permanent Rules Governing the Issuance of Modified Guaranteed Annuities and the Conditions under which They May Be Issued In The State of Minnesota.

Notice of Intent to adopt Rules without a Public Hearing.

(1) Notice is hereby given that the Department of Commerce intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedures Act for adopted Rules without a public hearing in Minnesota Statutes, section 14.22-14.28. Authority for the adoption of these rules is contained in Minnesota Statutes, Section 45.023 and 61A.20.

(2) All persons have 30 days to submit comments in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. (3) Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. (8) The proposed rules may be modified if the modifications are supported by the data and views submitted to the Department and do not result in a substantial change.

(4) Any person may make a written request for a public hearing within the 30 days comment period. (4) If 25 or more persons submit a written request for a public hearing within the 30 day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. (6) (5) Any person requesting a hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. (7) If a public hearing is required, the Department will proceed pursuant to Minnesota Statutes, sections 14.13 to 14.20.

(6) Persons who wish to submit comments or a written request for a public hearing should submit them to:

Patricia L. Peterson
Director of Registration
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101
(612) 296-2284

(12) A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from Patricia Peterson.

STATE OF MINNESOTA

DEPARTMENT OF COMMERCE
500 METRO SQUARE BUILDING
ST. PAUL, MN 55101

ATTENTION:

RULE RELATED MATERIAL

FIRST CLASS MAIL

(14) Pursuant to Minnesota Statutes Section 14.115, subdivision 2, the impact on small business has been considered in the promulgation of the rules. Anyone wishing to present evidence or argument as to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness.

(9) If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rule, must submit the written request to Patricia Peterson.

A prior notice of intent to adopt these rules was published in the Minnesota State Register on July 10, 1989 (Cite 14 S.R. 45). That notice included the full text of the proposed rules. The proposed rules published on July 10, 1989, have been modified and the modifications are a substantial change in the proposed language. (11) A copy of the proposed modifications to the proposed rules is attached to this notice.

MICHAEL A. HATCH
Commissioner of Commerce

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

IN THE MATTER OF THE PROPOSED) STATEMENT OF NEED
RULE GOVERNING ~~THE~~ ISSUANCE)
MODIFIED GUARANTEED ANNUITIES) AND REASONABLENESS

STATEMENT OF AUTHORITY

Minnesota Statutes, Section 61A.20 provides that:

> Notwithstanding any other provision of law, the Commissioner shall have sole and exclusive authority to regulate the issuance and sale of contracts on a variable basis and to provide for licensing of persons selling such contracts, and to issue such reasonable rules as may be appropriate to carry out the purposes and provisions of sections 61A.13 to 61A.21.

Additional rulemaking authority provided in Minnesota Statutes Section 45.023 authorizes the Commissioner to "adopt, amend, suspend, or repeal rules... whenever necessary or proper in discharging the Commissioner's official responsibilities."

The Commissioner finds the rules to be reasonable and necessary and consistent with the purposes fairly intended

by the provisions of Chapter 45 and sections 61A.13 to 61A.21 of Chapter 61A.

FACTS ESTABLISHING NEED AND REASONABLENESS

BACKGROUND

In June, 1985, The National Association of Insurance Commissioners (NAIC) adopted a model regulation governing the issuance of modified guaranteed annuities and the insurers which issue them. Several states have either adopted the NAIC regulation or are about to adopt it.

As with traditional variable annuities, the assets of a modified guaranteed annuity are placed in a separate account. This enables the insurer to offer long term competitive rates and allows for an accurate matching of assets and liabilities. However, the product's design also incorporates a market value adjustment formula to determine nonforfeiture values. Through the use of the formula, the insurer can meet its withdrawal guarantees, without relying on reserves, even during periods of spiking interest rates. This characteristic ensures a fair withdrawal value at any time for the policyholder. However, as in the case of the fixed deferred annuity, the investor is guaranteed a fixed rate if the product is held to maturity.

Modified guaranteed annuities are currently being sold in Minnesota by foreign insurers. However, domestic companies cannot compete in this market because they must obtain home state approval to issue these contracts. Minnesota Statutes 61A.14, Subd. 7 provides that "unless otherwise approved by the Commissioner, assets allocated to a separate account shall be valued at their market value..." Minnesota Statutes 61A.21 provides that Minn. Stat. 61A.245 (The Standard Nonforfeiture Law for Individual Deferred Annuities) does not apply to contracts on a variable basis. It further provides that the contract must contain provisions for nonforfeiture "appropriate to such a contract". In order to determine and govern the appropriateness of the nonforfeiture values of a modified guaranteed annuity, it is necessary to promulgate a rule authorizing and governing the use of the market-value adjustment formula. The proposed rule will authorize the sale of modified guaranteed annuities by Minnesota companies and will strictly govern the terms under which the product is issued and marketed.

Rule Part 2751.0100

This part sets forth the purpose of the rule which is to regulate the issuance and the marketing of modified guaranteed annuities.

Rule Part 2751.0200

This part cites Minnesota Statutes 61A.20 as the statutory authority for the promulgation of these rules.

Minnesota Statutes 61A.20 gives the Commissioner sole and exclusive authority to regulate the issuance and sale of contracts on a variable basis and the licensing of persons selling such contracts. It also provides specific rulemaking authority.

Rule Part 2751.0300

This part deliniates the scope of the rule. The rule applies to the qualifications of agents authorized to sell the product, the qualifications of insurers issuing the contracts, the contract form and the system of separate account maintenance and reporting.

Rule Part 2751.0400

This part defines the technical terms used in the rule.

Subparts 1 through 3 and subpart 5 are self-explanatory. Subpart 4, which defines the modified guaranteed annuity, focuses on the two design characteristics of the product which differ from the design of traditional deferred annuities. First, the assets supporting the contract are held in a separate account. Secondly, the nonforfeiture value of the contract is computed by applying the predetermined market-value

adjustment formula to the balance of the policyholder's account.

The first feature, the separate account, allows for the segregation of the policyholder's investment from the insurer's general account and ensures a more accurate matching of assets and liabilities. The use of the market-value adjustment formula to determine nonforfeiture values enables the insurer to meet its withdrawal guarantees regardless of current interest rates. The market-value adjustment formula is relevant only when a surrender occurs since the contract value at maturity is guaranteed.

Subpart 6 defines a "separate account" as a separate account authorized by Minnesota Statutes 61A.13 to 61A.21 or pursuant to corresponding sections of the insurance laws of the state of domicile of a foreign or alien insurer. Minnesota Statute 61A.14 specifically authorizes domestic life insurance companies to operate separate accounts and issue contracts on a variable basis.

Rule Part 2751.0500

This part governs licensing, marketing and reporting issues which will apply to all insurers seeking approval of their modified guaranteed annuity contracts in Minnesota.

Paragraph 1 of Subpart 2 prohibits issuance of modified guaranteed annuities by companies not licensed or organized to do life insurance or annuity business in their state of domicile. In addition, the Commissioner may look at such factors as the history and financial condition of the company; and the laws under which a company is authorized by its state of domicile to issue these annuities in order to determine whether or not the insurer's method of operation is hazardous to the Minnesota public or policyholders. The language enables the Commissioner to deny approval of modified guaranteed annuity if the insurer's financial condition is so impaired that there would be a hazard to the Minnesota public or policyholders.

Paragraph 2 allows a company which is a subsidiary of an admitted life insurance company or affiliated with the company by common management or ownership to transact the business of issuing modified guaranteed annuities without meeting the requirements of Paragraph 1 if it or the principal company satisfies the requirements of Paragraph 1. This provision eases the Commissioner's regulatory burden and provides the same protection for the public as under the provisions of Paragraph 1. Likewise, a licensed company with a three year record of acceptable business operation in Minnesota will be deemed to have satisfied the qualification requirements.

Subpart 3 prohibits the use of any marketing materials which are false, misleading, deceptive or inaccurate. Illustrations may not use investment experience to show predictions of future experience. However, illustrations may use hypothetical interest credits. The Commissioner has the authority, under this subpart, to require the filing of any sales material or prospectuses. The sales material must disclose the possibility of upward and downward valuation of the contract upon a surrender. This subpart is consistent with the marketing requirements imposed on other investment products by the Department in the area of insurance and securities. The provision is necessary to protect investors from making uninformed decisions or decisions based on misleading information.

Subpart 4 addresses the reporting requirements for issuers issuing modified guaranteed annuities. Such issuers must submit annual statements regarding their separate accounts and any other information concerning their modified guaranted annuity business which the Commissioner considers necessary. These reports will assure that the separate accounts are properly maintained. The provision also gives the Commissioner discretionary authority to obtain additional information from the insurer.

Subpart 5 gives the Commissioner authority to disapprove any material filed under this Part if it does not comply with the requirement of Chapter 2751.

Rule Part 2751.0600

This part extends the current filing requirements for individual and group life insurance and annuities to modified guaranteed annuity filings. In addition, such filings must verfiy that the nonforfeiture benefits provided for in the contract comply with part 2751.0700, subpart 1.

The section is necessary to assure consistency in filing requirements for like products.

Rule Part 2751.0700

This part sets forth the contract requirements for all modified guaranteed annuities delivered or issued for delivery in Minnesota.

Item A of Subp. 1 requires that the insurer provide a description of the method used to compute nonforteiture benefits on pre-maturity withdrawal. This provision recognizes that the use of the market-value adjustment formula in determining nonforfeiture benefits is a unique concept. This disclosure will make the consumer aware of the formula's features and its potential to increase or decrease the amount of benefits received.

Item B contains the provisions for continuation of the contract for a 30 day or one month grace period after any payment other than the first is due, and for reinstatement of the contract within one year of default upon payment of all debts owed to the insurer, provided, however, that the annuitant is still alive and that the surrender value has not been paid. Such requirements provide the consumer with the necessary security against immediate cancellation of the contract upon the consumer's failure to make a payment.

Item C requires disclosure of the market-value adjustment formula in the contract and that such disclosure apply to both upward and downward adjustments. Further, it requires that an actuarial statement accompany the contract when filed and that the statement describe the basis for the formula and shows "reasonable equity" to both parties.

These requirements guard against the possibility of an uninformed investment commitment due to a misleading statement or omission regarding the formula. The filing of the actuarial statement serves to guarantee that the formula will not be inequitable to the consumer.

Item D insulates the policyholder's investment from claims of creditors in connection with unrelated business transacted by the insurer. The policyholder's assets are

subject only to liability arising out of business operations concerning his or her purchase of the modified guaranteed annuity contract.

The second to the last paragraph in Item C(4) allows the insurer to adjust the contract charges which are subtracted from the contract's value for the specified fixed costs according to changes in the Consumer Price Index. This provision transfers the assumption of increased costs due to inflation from the insurer to the consumer, and eliminates the risk of inability by the insurer to meet inflationary transaction costs.

Paragraph H of 2751.0700 provides the insurer with a fair and reasonable means of cancellation and settlement of the contract when the transactions costs involved in satisfying the contract are greater than the value of the contract itself. In such a case, it is unreasonable to require the insurer to absorb costs below a fair minimum benefit amount.

Item I deals with contracts containing both annuity and life insurance benefits and provides a mechanism for determining the combined paid-up annuity, cash surrender and death benefits as well as the minimum nonforfeiture amounts. However, the variable annuity regulations and the individual nonforfeiture laws may be applied if and

to the extent that the contract incorporates modified guaranteed annuity benefits and (1) variable annuity annuity benefits varying directly with the value of assets held in the separate account, and (2) traditional fixed annuity benefits, or (3) life insurance benefits.

Rule Part 2751.0800

Due to the hybrid nature of the modified guaranteed annuity contract, this section requires the establishment of reserve liabilities for this product according to actuarial procedures, and in consideration of the following factors: (1) the market-value basis of the separate account assets; (2) the variable character of benefits; (3) mortality guarantees; (4) interest guarantees; (5) the market-value adjustment formula; and (6) the degree of matching of projected cash flow of assets and liabilities.

Rule Part 2751.0800 also requires that the minimum level of separate account liabilities equals the surrender value of the contract, and that the market-value of the assets equals, at a minimum, that of the liabilities. In addition, the valuation actuary must annually submit an opinion as to whether the separate account assets will sufficiently cover all future guaranteed benefits. The insurer must show not only that it is capable of providing for all benefits due the customer, but also that the market-value level of assets is at least balanced with the market-value level of liabilities.

Rule Part 2751.0900

This section contains the separate accounts requirements associated with modified guaranteed annuity contracts. Paragraphs 1, 2, and 3 concerning the establishment and maintenance of separate accounts, level of separate account assets, and valuation of these assets, incorporate and implement the Minnesota separate account law for contracts on a variable basis codified at Minn. Stat. 61A.14. Paragraph 4 subjects separate accounts for the product to the applicable investment laws.

Rule Part 2751.1000

2751.1000 delineates the reports, and the information required to be included therein, which insurers must annually provide to their policyholders. The proposed rule minimizes the possibility of misleading reports by requiring full disclosure of all current values and future adjustments to be made to these.

Rule Part 2751.1100

This section allows the Commissioner discretionary power to deem that foreign companies which are governed

by and are in compliance with laws or regulations of other jurisdictions which afford protections to the public comparable to those afforded by the proposed rule are in compliance with the proposed rule. This provision serves to ease the Commissioner's supervisory workload and simplify national transactions of business regarding the sales and issuance of modified guaranteed annuity contracts.

Rule Part 2751.1200

Under this section, sales or offerings of this product may only be transacted by those licensed to sell variable annuities under Minnesota law.

SMALL BUSINESS CONSIDERATIONS

The small businesses affected by this rule are insurance agencies.

The rule does not impose any additional burdens on these agencies. Rather, the rule allows Minnesota agents to sell a product which they previously could not sell and creates a new source of revenue for these agents. Therefore, since the impact on such agencies will be a positive one, there is no need to consider the methods listed in Minn. Stat. 14.15, subd. 2, a-e

State of Minnesota

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Proposed Rules

Pursuant to Minn. Stat. §§ 14.22, 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 25 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 the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 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 §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Commerce

Proposed Permanent Rules Relating to Modified Guaranteed Annuities

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Department of Commerce intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedures Act for adopted rules without a public hearing in *Minnesota Statutes*, section 14.22-14.28. Authority for the adoption of these rules is contained in *Minnesota Statutes*, Section 45.023 and 61A.20.

All persons have 30 days to submit comments in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Department and do not result in a substantial change.

Any person may make a written request for a public hearing within the 30 days comment period. If 25 or more persons submit a written request for a public hearing within the 30 day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the Department will proceed pursuant to *Minnesota Statutes*, sections 14.13 to 14.20.

Persons who wish to submit comments or a written request for a public hearing should submit them to:

Patricia L. Peterson
Staff Attorney
Department of Commerce
500 Metro Square Building
St. Paul, MN 55101
(612) 296-2284

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from Patricia Peterson.

Pursuant to *Minnesota Statutes* Section 14.115, subdivision 2, the impact on small businesses has been considered in the promulgation of the rules. Anyone wishing to present evidence or argument as to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of

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.

the date of submission to the Attorney General. 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 adopted rule, must submit the written request to Patricia Peterson.

Michael A. Hatch
Commissioner of Commerce

Rules as Proposed (all new material)

2751.0100 PURPOSE.

This chapter regulates modified guaranteed annuities, a new form of variable annuity, the assets of which are placed in a separate account.

2751.0200 AUTHORITY.

This chapter is adopted pursuant to the authority granted to the commissioner of the Department of Commerce in *Minnesota Statutes,* section 61A.20.

2751.0300 APPLICABILITY AND SCOPE.

This chapter applies to:

A. the qualifications of agents to be authorized to sell modified guaranteed annuity contracts in this state;

B. the qualification of insurers to be authorized to issue these contracts;

C. the required contract form and provisions for issuance of this coverage in this state; and

D. the manner in which separate account assets, supporting these contracts, are to be maintained and reported.

2751.0400 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of this chapter, the terms defined in this part have the meanings given them.

Subp. 2. **Commissioner.** "Commissioner" means the commissioner of the Department of Commerce of the state of Minnesota.

Subp. 3. **Interest credits.** "Interest credits" means all interest that is credited to the contract.

Subp. 4. **Modified guaranteed annuity.** "Modified guaranteed annuity" is a deferred annuity contract, the underlying assets of which are held in a separate account, and the values of which are guaranteed if held for specified periods. The annuity contains nonforfeiture values based upon a market-value adjustment formula if held for shorter periods. This formula may, or may not, reflect the value of assets held in a separate account during the period, or periods, when the contract holder can surrender the contract.

Subp. 5. **NAIC.** "NAIC" means the National Association of Insurance Commissioners.

Subp. 6. **Separate account.** "Separate account" means a separate account established pursuant to *Minnesota Statutes,* sections 61A.13 to 61A.21 or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.

2751.0500 AUTHORITY OF INSURERS.

Subpart 1. **Application.** The following requirements in this part apply to all insurers seeking authority to issue modified guaranteed annuities in this state.

Subp. 2. **Licensing and approval to do business.** No company shall deliver or issue for delivery modified guaranteed annuities within this state unless it is licensed or organized to do a life insurance or annuity business in their state pursuant to *Minnesota Statutes,* section 60A.07, and the commissioner is satisfied that its condition or method of operation in connection with the issuance of these contracts will not render its operation hazardous to the public or its policyholders in this state. In this connection, the commissioner shall consider among other things the history and financial condition of the company; the character, responsibility, and fitness of the officers and directors of the company; and the law and regulation under which the company is authorized in the state of domicile to issue these annuities.

If the company is a subsidiary of an admitted life insurance company, or affiliated with the company by common management or ownership, it may be considered by the commissioner to have satisfied the requirements of this subpart, if either it or the admitted life company satisfies the requirements of this subpart. Companies licensed and having a satisfactory record of doing business in this state for a period of at least three years may be considered by the commissioner to have satisfied the requirements of this subpart.

Before any company delivers or issues for delivery modified guaranteed annuities within this state, it shall submit to the commissioner a general description of the kinds of these annuities it intends to issue; if requested by the commissioner, a copy of the statutes and regulations of its state of domicile under which it is authorized to issue these annuities; and if requested by the commissioner, biographical data with respect to officers and directors of the company on the NAIC uniform biographical data form.

Subp. 3. **Use of sales materials.** An insurer authorized to transact modified guaranteed annuity business in this state shall not

use any sales material, advertising material, or descriptive literature or other materials of any kind in connection with its modified guaranteed annuity business in this state that is false, misleading, deceptive, or inaccurate.

Illustrations of benefits payable under any modified guaranteed annuity shall not include projections of past investment experience into the future or attempted predictions of future investment experience. Hypothetical assumed interest credits may be used to illustrate possible levels of benefits.

Before any insurer delivers or issues for delivery any modified guaranteed annuity contract in this state, the commissioner may require the filing of a copy of any prospectus or other sales material to be used in connection with the marketing of that insurer's modified guaranty annuity contract. The sales material must clearly illustrate that there can be both upward and downward adjustments due to the application of the market value adjustment formula in determining nonforfeiture benefits.

Subp. 4. **Reports.** An insurer authorized to transact the business of modified guaranteed annuities in this state shall submit to the commissioner:

A. a separate account annual statement that includes the business of its modified guaranteed annuities; and

B. additional information concerning its modified guaranteed annuity operations or separate accounts the commissioner considers necessary.

Subp. 5. **Authority of commissioner to disapprove.** Any material required to be filed with and approved by the commissioner shall be disapproved by the commissioner if the commissioner finds that it does not comply with the standards established by this chapter.

2751.0600 FILING OF CONTRACTS.

The filing requirements applicable to modified guaranteed annuities are those filing requirements otherwise applicable under existing statutes and rules of this state with respect to individual and group life insurance and annuity contract form filings, to the extent appropriate. Filings shall include a demonstration in a form satisfactory to the commissioner that the nonforfeiture provisions of the contract comply with part 2751.0700, subpart 1.

2751.0700 CONTRACT REQUIREMENTS.

Subpart 1. **Mandatory contract benefit and design requirements.** The following benefit and design requirements apply to a modified guaranteed annuity contract delivered or issued for delivery in this state:

A. The contract must contain a statement of the essential features of the procedures to be followed by the insurance company in determining the dollar amount of nonforfeiture benefits.

B. If the contract calls for the payment of periodic stipulated payments, it must contain in substance the following provisions:

(1) a provision that there shall be a period of grace of 30 days or of one month, within which any stipulated payment to the insurer falling due after the first may be made, during which period of grace the contract shall continue in force. The contract may include a statement of the basis for determining the date as of which any payment received during the period of grace shall be applied to produce the values under the contract arising therefrom; and

(2) a provision that, at any time within one year from the date of default, in making periodic stipulated payments to the insurer during the life of the annuitant and unless the cash surrender value has been paid, the contract may be reinstated upon payment to the insurer of such overdue payments as required by contract, and of all indebtedness to the insurer on the contract, including interest. The contract may include a statement of the basis for determining the date as of which the amount to cover these overdue payments and indebtedness shall be applied to produce the values under the contract arising therefrom.

C. The market-value adjustment formula, used in determining nonforfeiture benefits, must be stated in the contract, and must be applicable for both upward and downward adjustments. When a contract is filed, it must be accompanied by an actuarial statement indicating the basis for the market-value adjustment formula and that the formula provides reasonable equity to both the contract holder and the insurance company.

D. If and to the extent so provided under the applicable contracts, that portion of the assets of any separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the company may conduct.

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.

E. The application for a modified guaranteed annuity shall prominently set forth immediately preceding the signature line, language denoting that amounts payable under the contract are subject to a market value adjustment prior to a date or dates specified in the contract.

Subp. 2. **Nonforfeiture benefits.** The following nonforfeiture benefit requirements apply to a modified guaranteed annuity contract delivered or issued for delivery in this state:

A. This subpart does not apply to any:

(1) reinsurance;

(2) group annuity contract purchased in connection with one or more retirement plans or plans of deferred compensation established or maintained by or for one or more employers, including partnerships or sole proprietorships, employee organizations, or any combination thereof, other than plans providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code of 1986, as amended through December 31, 1988;

(3) premium deposit fund;

(4) deferred annuity contract after annuity payments have commenced;

(5) reversionary annuity; or

(6) contract which is to be delivered outside this state through an agent or other representative of the company issuing this contract.

B. The contract must contain in substance the provisions of subitems (1) and (2).

(1) Upon cessation of payment of considerations under a contract, the insurer will grant a paid-up annuity benefit on a plan described in the contract that complies with item E. The description will include a statement of the mortality table, if any, and guaranteed or assumed interest rates used in calculating annuity payments.

(2) If a contract provides for a lump sum settlement at maturity, or at any other time, upon surrender of the contract at or prior to the commencement of any annuity payments, the insurer will pay in lieu of any paid-up annuity benefit a cash surrender benefit as described in the contract that complies with item F. The contract may provide that the insurer may defer payment of the cash surrender benefit for a period of six months after demand.

C. The minimum values as specified in this part of any paid-up annuity, cash surrender, or death benefits available under a modified guaranteed annuity contract must be based upon nonforfeiture amounts meeting the requirements of this item.

The unadjusted minimum nonforfeiture amount on any data prior to the annuity commencement date must be an amount equal to the percentages of net considerations, as specified in item D, increased by the interest credits allocated to the percentage of net considerations, which shall be reduced to reflect the effect of the following:

(1) any partial withdrawals from or partial surrender of the contract;

(2) the amount of any indebtedness on the contract, including interest due and accrued;

(3) an annual contract charge not less than zero and equal to (a) the lesser of $30 and two percent of the end of year contract value less (b) the amount of any annual contract charge deducted from any gross considerations credited to the contract during the contract year; and

(4) a transaction charge of $10 for each transfer to another investment division within the same contract.

The minimum nonforfeiture amount shall be the unadjusted minimum nonforfeiture amount adjusted by the market-value adjustment formula contained in the contract.

The annual contract charge of $30 and the transaction charge of $10 referenced will be adjusted to reflect changes in the consumer price index for all urban consumers (CPI-U) in accordance with item D. The CPI-U is published by the Bureau of Labor Statistics, United States Department of Labor, and is incorporated by reference. It is subject to frequent change and is available from the Minitex interlibrary loan system.

Guaranteed interest credits in each year of any period of time for which interest credits are guaranteed shall be reasonably related to the average guaranteed interest credits over that period of time.

D. The percentages of net considerations used to define the minimum nonforfeiture amount in item C must meet the requirements of this item.

(1) With respect to contracts providing for periodic considerations, the net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of $30 and less a collection charge of $1.25 per consideration credited to the contract during that contract year and less any charges for premium taxes. The percentages

of net considerations shall be 65 percent for the first contract year and 87.5 percent for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be 65 percent of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was 65 percent.

(2) With respect to contracts providing for a single consideration, the net consideration used to define the minimum nonforfeiture amount shall be the gross consideration less a contract charge of $75 and less any charge for premium taxes. The percentage of the net consideration shall be 90 percent.

The annual contract charge of $30, the collection charge of $1.25 per collection, and the single consideration contract charge of $75 referred to in this subitem, will be adjusted to reflect changes in the CPI-U in accordance with item 3.

(3) The above contract charges shall be multiplied by the ratio of (a) the CPI-U for June of the calendar year preceding the date of filing, to (b) the CPI-U for June 1979.

E. Any paid-up annuity benefit available under a modified guaranteed annuity contract shall be that its present value on the annuity commencement date is at least equal to the minimum nonforfeiture amount on that date. The present value shall be computed using the mortality table, if any, and the guaranteed or assumed interest rates used in calculating the annuity payments.

F. For modified guaranteed annuity contracts that provide cash surrender benefits, the cash surrender benefit at any time prior to the annuity commencement date shall not be less than the minimum nonforfeiture amount next computed after the request for surrender is received by the insurer. The death benefit under the contracts shall be at least equal to the cash surrender benefit.

G. Any modified guaranteed annuity contract that does not provide cash surrender benefits, or does not provide death benefits at least equal to the minimum nonforfeiture amount, prior to the annuity commencement date shall include a statement in a prominent place in the contract that these benefits are not provided.

H. Notwithstanding the requirements of this part, a modified guaranteed annuity contract may provide under the situations specified below that the insurer, at its option, may cancel the annuity and pay the contract holder the larger of the unadjusted minimum nonforfeiture amount and the minimum nonforfeiture amount, and by this payment be released of any further obligation under the contract:

(1) if at the time the annuity becomes payable, the larger of the unadjusted minimum nonforfeiture amount and the minimum nonforfeiture amount is less than $2,000, or would provide an income the initial amount of which is less than $20 per month; or

(2) if before the time the annuity becomes payable under a periodic payment contract no considerations have been received under the contract for a period of two full years and both (a) the total considerations paid before the period, reduced to reflect any partial withdrawals from or partial surrenders of the contract, and (b) the larger of the unadjusted minimum nonforfeiture amount and the minimum nonforfeiture amount is less than $2,000.

I. For any modified guaranteed annuity contract that provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of item B, additional benefits payable:

(a) in the event of total and permanent disability;

(b) as reversionary annuity or deferred reversionary annuity benefits; or

(c) as other policy benefits additional to life insurance, endowment, and annuity benefits, and considerations for all additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits that may be required by this part. The inclusion of additional benefits is not required in any paid-up benefits, unless additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits.

2751.0800 RESERVE LIABILITIES.

Reserve liabilities for modified guaranteed annuities shall be established in accordance with actuarial procedures that recognize:

A. that assets of the separate account are based on market values;

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B. the variable nature of benefits provided; and

C. any mortality guarantees.

As a minimum, the separate account liability will equal the surrender value based upon the market-value adjustment formula contained in the contract. If that liability is greater than the market value of the assets, a transfer of assets will be made into the separate account so that the market value of the assets at least equals that of the liabilities. Also, any additional reserve that is needed to cover future guaranteed benefits will also be set up by the valuation actuary.

The market-value adjustment formula, the interest guarantee, and the degree to which projected cash flow of assets and liabilities are matched must also be considered. Each year, the valuation actuary must provide an opinion on whether the assets in the separate account are adequate to provide all future benefits that are guaranteed.

2751.0900 SEPARATE ACCOUNTS.

Subpart 1. **Establishment and administration.** Any domestic insurer issuing modified guaranteed annuities shall establish one or more separate accounts pursuant to *Minnesota Statutes*, section 61A.14.

Subp. 2. **Amounts.** The insurer shall maintain in each separate account assets with a market or other value meeting the standards set out in *Minnesota Statutes*, section 61A.14, at least equal to the valuation reserves and other contract liabilities respecting such account.

Subp. 3. **Valuation of assets.** 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, or pursuant to standards contained in *Minnesota Statutes*, section 61A.14.

Subp. 4. **Applicability of other laws.** Unless otherwise approved by the commissioner, separate accounts relating to modified guaranteed annuities will be subject to investment laws applicable to the insurer's general asset account.

2751.1000 REPORTS TO POLICYHOLDERS.

Companies shall annually provide their contract holders with a report showing both the account value and the cash surrender value. The report must clearly indicate that the account value is prior to the application of any surrender charges or market value adjustment formula. It must also specify the surrender charge and market value adjustment used to determine the cash surrender value.

2751.1100 FOREIGN COMPANIES.

If the law or regulation in the place of domicile of a foreign company provides a degree of protection to the policyholders and the public which is substantially similar to that provided by this chapter, the commissioner to the extent the commissioner considers appropriate may consider compliance with that law or regulation as compliance with this chapter.

2751.1200 AUTHORIZATION OF AGENTS.

No person, corporation, partnership, or other legal entity may sell or offer for sale in this state any modified guaranteed annuity contract unless licensed to sell variable annuities under the insurance laws of this state.

Bureau of Mediation Services

Proposed Permanent Rules Relating to Arbitration Roster

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Bureau of Mediation Services intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedure Act for adopted rules without a public hearing, *Minnesota Statutes*, sections 14.22 to 14.29. The statutory authority to adopt the rule is *Minnesota Statutes*, section 179.02, subdivision 4.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reasons for the request and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, sections 14.13 to 14.20.

Proposed Rules

Pursuant to Minn. Stat. §§ 14.22, 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 25 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 the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 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 §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Commerce

Proposed Permanent Rules Relating to Modified Guaranteed Annuities

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Department of Commerce intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedures Act for adopted rules without a public hearing in *Minnesota Statutes*, section 14.22-14.28. Authority for the adoption of these rules is contained in *Minnesota Statutes*, Section 45.023 and 61A.20.

All persons have 30 days to submit comments in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Department and do not result in a substantial change.

Any person may make a written request for a public hearing within the 30 days comment period. If 25 or more persons submit a written request for a public hearing within the 30 day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the Department will proceed pursuant to *Minnesota Statutes*, sections 14.13 to 14.20.

Persons who wish to submit comments or a written request for a public hearing should submit them to:

Patricia L. Peterson
Director of Registration
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101
(612) 296-2284

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from Patricia Peterson.

Pursuant to *Minnesota Statutes* Section 14.115, subdivision 2, the impact on small business has been considered in the promulgation of the rules. Anyone wishing to present evidence or argument as to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rule, must submit the written request to Patricia Peterson.

A prior notice of intent to adopt these rules was published in the Minnesota *State Register* on July 10, 1989 (Cite 14 S.R. 45). That notice included the full text of the proposed rules. The proposed rules published on July 10, 1989, have been modified and the modifications are a substantial change in the proposed language. A copy of the proposed modifications to the proposed rules is attached to this notice.

Michael A. Hatch
Commissioner of Commerce

Rules as Proposed (all new material)

2751.0100 PURPOSE.

This chapter regulates modified guaranteed annuities, a new form of variable annuity, the assets of which are placed in a separate account.

2751.0200 AUTHORITY.

This chapter is adopted pursuant to the authority granted to the commissioner of the Department of Commerce in *Minnesota Statutes*, section 61A.20.

2751.0300 APPLICABILITY AND SCOPE.

This chapter applies to:

A. the qualifications of agents to be authorized to sell modified guaranteed annuity contracts in this state;

B. the qualification of insurers to be authorized to issue these contracts;

C. the required contract form and provisions for issuance of this coverage in this state; and

D. the manner in which separate account assets, supporting these contracts, are to be maintained and reported.

2751.0400 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of this chapter, the terms defined in this part have the meanings given them.

Subp. 2. **Commissioner.** "Commissioner" means the commissioner of the Department of Commerce of the state of Minnesota.

Subp. 3. **Interest credits.** "Interest credits" means all interest that is credited to the contract.

Subp. 4. **Modified guaranteed annuity.** "Modified guaranteed annuity" is a deferred annuity contract, the underlying assets of which are held in a separate account, and the values of which are guaranteed if held for specified periods. The annuity contains nonforfeiture values based upon a market-value adjustment formula if held for shorter periods. This formula may, or may not, reflect the value of assets held in a separate account during the period, or periods, when the contract holder can surrender the contract.

Subp. 5. **NAIC.** "NAIC" means the National Association of Insurance Commissioners.

Subp. 6. **Separate account.** "Separate account" means a separate account established pursuant to *Minnesota Statutes*, sections 61A.13 to 61A.21 or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.

2751.0500 AUTHORITY OF INSURERS.

Subpart 1. **Application.** The following requirements in this part apply to all insurers seeking authority to issue modified guaranteed annuities in this state.

Subp. 2. **Licensing and approval to do business.** No company shall deliver or issue for delivery modified guaranteed annuities within this state unless it is licensed or organized to do a life insurance or annuity business in their state pursuant to *Minnesota Statutes*, section 60A.07, and the commissioner is satisfied that its condition or method of operation in connection with the issuance of these contracts will not render its operation hazardous to the public or its policyholders in this state. In this connection, the commissioner shall consider among other things the history and financial condition of the company; the character, responsibility, and fitness of the officers and directors of the company; and the law and regulation under which the company is authorized in the state of domicile to issue these annuities.

If the company is a subsidiary of an admitted life insurance company, or affiliated with the company by common management or ownership, it may be considered by the commissioner to have satisfied the requirements of this subpart, if either it or the admitted life company satisfies the requirements of this subpart. Companies licensed and having a satisfactory record of doing business in this state for a period of at least three years may be considered by the commissioner to have satisfied the requirements of this subpart.

Before any company delivers or issues for delivery modified guaranteed annuities within this state, it shall submit to the commissioner a general description of the kinds of these annuities it intends to issue; if requested by the commissioner, a copy of the statutes and regulations of its state of domicile under which it is authorized to issue these annuities; and if requested by the commissioner, biographical data with respect to officers and directors of the company on the NAIC uniform biographical data form.

Subp. 3. **Use of sales materials.** An insurer authorized to transact modified guaranteed annuity business in this state shall not use

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any sales material, advertising material, or descriptive literature or other materials of any kind in connection with its modified guaranteed annuity business in this state that is false, misleading, deceptive, or inaccurate.

Illustrations of benefits payable under any modified guaranteed annuity shall not include projections of past investment experience into the future or attempted predictions of future investment experience. Hypothetical assumed interest credits may be used to illustrate possible levels of benefits.

Before any insurer delivers or issues for delivery any modified guaranteed annuity contract in this state, the commissioner may require the filing of a copy of any prospectus or other sales material to be used in connection with the marketing of that insurer's modified guaranty annuity contract. The sales material must clearly illustrate that there can be both upward and downward adjustments due to the application of the market value adjustment formula in determining nonforfeiture benefits.

Subp. 4. **Reports.** An insurer authorized to transact the business of modified guaranteed annuities in this state shall submit to the commissioner:

A. a separate account annual statement that includes the business of its modified guaranteed annuities; and

B. additional information concerning its modified guaranteed annuity operations or separate accounts the commissioner considers necessary.

Subp. 5. **Authority of commissioner to disapprove.** Any material required to be filed with and approved by the commissioner shall be disapproved by the commissioner if the commissioner finds that it does not comply with the standards established by this chapter.

2751.0600 FILING OF CONTRACTS.

The filing requirements applicable to modified guaranteed annuities are those filing requirements otherwise applicable under existing statutes and rules of this state with respect to individual and group life insurance and annuity contract form filings, to the extent appropriate. Filings shall include a demonstration in a form satisfactory to the commissioner that the nonforfeiture provisions of the contract comply with part 2751.0700, subpart 1.

2751.0700 CONTRACT REQUIREMENTS.

Subpart 1. **Mandatory contract benefit and design requirements.** The following benefit and design requirements apply to a modified guaranteed annuity contract delivered or issued for delivery in this state:

A. The contract must contain a statement of the essential features of the procedures to be followed by the insurance company in determining the dollar amount of nonforfeiture benefits.

B. If the contract calls for the payment of periodic stipulated payments, it must contain in substance the following provisions:

(1) a provision that there shall be a period of grace of 30 days or of one month, within which any stipulated payment to the insurer falling due after the first may be made, during which period of grace the contract shall continue in force. The contract may include a statement of the basis for determining the date as of which any payment received during the period of grace shall be applied to produce the values under the contract arising therefrom; and

(2) a provision that, at any time within one year from the date of default, in making periodic stipulated payments to the insurer during the life of the annuitant and unless the cash surrender value has been paid, the contract may be reinstated upon payment to the insurer of such overdue payments as required by contract, and of all indebtedness to the insurer on the contract, including interest. The contract may include a statement of the basis for determining the date as of which the amount to cover these overdue payments and indebtedness shall be applied to produce the values under the contract arising therefrom.

C. The market-value adjustment formula, used in determining nonforfeiture benefits, must be stated in the contract, and must be applicable for both upward and downward adjustments. When a contract is filed, it must be accompanied by an actuarial statement indicating the basis for the market-value adjustment formula and that the formula provides reasonable equity to both the contract holder and the insurance company.

D. If and to the extent so provided under the applicable contracts, that portion of the assets of any separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the company may conduct.

E. The application for a modified guaranteed annuity shall prominently set forth immediately preceding the signature line, language denoting that amounts payable under the contract are subject to a market value adjustment prior to a date or dates specified in the contract.

Subp. 2. **Nonforfeiture benefits.** The following nonforfeiture benefit requirements apply to a modified guaranteed annuity contract delivered or issued for delivery in this state:

A. This subpart does not apply to any:

(1) reinsurance;

(2) group annuity contract purchased in connection with one or more retirement plans or plans of deferred compensation established or maintained by or for one or more employers, including partnerships or sole proprietorships, employee organizations, or any combination thereof, other than plans providing individual retirement accounts or individual retirement annuities under Section 408 of the *Internal Revenue Code of 1986*, as amended through December 31, 1988;

(3) premium deposit fund;

(4) deferred annuity contract after annuity payments have commenced;

(5) reversionary annuity; or

(6) contract which is to be delivered outside this state through an agent or other representative of the company issuing this contract.

B. The contract must contain in substance the provisions of subitems (1) and (2).

(1) Upon cessation of payment of considerations under a contract, the insurer will grant a paid-up annuity benefit on a plan described in the contract that complies with item E. The description will include a statement of the mortality table, if any, and guaranteed or assumed interest rates used in calculating annuity payments.

(2) If a contract provides for a lump sum settlement at maturity, or at any other time, upon surrender of the contract at or prior to the commencement of any annuity payments, the insurer will pay in lieu of any paid-up annuity benefit a cash surrender benefit as described in the contract that complies with item F. The contract may provide that the insurer may defer payment of the cash surrender benefit for a period of six months after demand.

C. The minimum values as specified in this part of any paid-up annuity, cash surrender, or death benefits available under a modified guaranteed annuity contract must be based upon nonforfeiture amounts meeting the requirements of this item.

The unadjusted minimum nonforfeiture amount on any data prior to the annuity commencement date must be an amount equal to the percentages of net considerations, as specified in item D, increased by the interest credits allocated to the percentage of net considerations, which shall be reduced to reflect the effect of the following:

(1) any partial withdrawals from or partial surrender of the contract;

(2) the amount of any indebtedness on the contract, including interest due and accrued;

(3) an annual contract charge not less than zero and equal to (a) the lesser of $30 and two percent of the end of year contract value less (b) the amount of any annual contract charge deducted from any gross considerations credited to the contract during the contract year; and

(4) a transaction charge of $10 for each transfer to another investment division within the same contract.

The minimum nonforfeiture amount shall be the unadjusted minimum nonforfeiture amount adjusted by the market-value adjustment formula contained in the contract.

The annual contract charge of $30 and the transaction charge of $10 referenced will be adjusted to reflect changes in the consumer price index for all urban consumers (CPI-U) in accordance with item D. The CPI-U is published by the Bureau of Labor Statistics, United States Department of Labor, and is incorporated by reference. It is subject to frequent change and is available from the Minitex interlibrary loan system.

Guaranteed interest credits in each year of any period of time for which interest credits are guaranteed shall be reasonably related to the average guaranteed interest credits over that period of time.

D. The percentages of net considerations used to define the minimum nonforfeiture amount in item C must meet the requirements of this item.

(1) With respect to contracts providing for periodic considerations, the net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of $30 and less a collection charge of $1.25 per consideration credited to the contract during that contract year and less any charges for premium taxes. The percentages of net considerations shall be 65 percent for the first contract year and 87.5 percent for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be 65 percent of the portion of the total net consideration for any renewal

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contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was 65 percent.

(2) With respect to contracts providing for a single consideration, the net consideration used to define the minimum nonforfeiture amount shall be the gross consideration less a contract charge of $75 and less any charge for premium taxes. The percentage of the net consideration shall be 90 percent.

The annual contract charge of $30, the collection charge of $1.25 per collection, and the single consideration contract charge of $75 referred to in this subitem, will be adjusted to reflect changes in the CPI-U in accordance with item 3.

(3) The above contract charges shall be multiplied by the ratio of (a) the CPI-U for June of the calendar year preceding the date of filing, to (b) the CPI-U for June 1979.

E. Any paid-up annuity benefit available under a modified guaranteed annuity contract shall be that its present value on the annuity commencement date is at least equal to the minimum nonforfeiture amount on that date. The present value shall be computed using the mortality table, if any, and the guaranteed or assumed interest rates used in calculating the annuity payments.

F. For modified guaranteed annuity contracts that provide cash surrender benefits, the cash surrender benefit at any time prior to the annuity commencement date shall not be less than the minimum nonforfeiture amount next computed after the request for surrender is received by the insurer. The death benefit under the contracts shall be at least equal to the cash surrender benefit.

G. Any modified guaranteed annuity contract that does not provide cash surrender benefits, or does not provide death benefits at least equal to the minimum nonforfeiture amount, prior to the annuity commencement date shall include a statement in a prominent place in the contract that these benefits are not provided.

H. Notwithstanding the requirements of this part, a modified guaranteed annuity contract may provide under the situations specified below that the insurer, at its option, may cancel the annuity and pay the contract holder the larger of the unadjusted minimum nonforfeiture amount and the minimum nonforfeiture amount, and by this payment be released of any further obligation under the contract:

(1) if at the time the annuity becomes payable, the larger of the unadjusted minimum nonforfeiture amount and the minimum nonforfeiture amount is less than $2,000, or would provide an income the initial amount of which is less than $20 per month; or

(2) if before the time the annuity becomes payable under a periodic payment contract no considerations have been received under the contract for a period of two full years and both (a) the total considerations paid before the period, reduced to reflect any partial withdrawals from or partial surrenders of the contract, and (b) the larger of the unadjusted minimum nonforfeiture amount and the minimum nonforfeiture amount is less than $2,000.

I. For any modified guaranteed annuity contract that provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of item B, additional benefits payable:

(a) in the event of total and permanent disability;

(b) as reversionary annuity or deferred reversionary annuity benefits; or

(c) as other policy benefits additional to life insurance, endowment, and annuity benefits, and considerations for all additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits that may be required by this part. The inclusion of additional benefits is not required in any paid-up benefits, unless additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits.

2751.0800 RESERVE LIABILITIES.

Reserve liabilities for modified guaranteed annuities shall be established in accordance with actuarial procedures that recognize:

A. that assets of the separate account are based on market values;

B. the variable nature of benefits provided; and

C. any mortality guarantees.

As a minimum, the separate account liability will equal the surrender value based upon the market-value adjustment formula contained in the contract. If that liability is greater than the market value of the assets, a transfer of assets will be made into the separate account so that the market value of the assets at least equals that of the liabilities. Also, any additional reserve that is needed to cover future guaranteed benefits will also be set up by the valuation actuary.

The market-value adjustment formula, the interest guarantee, and the degree to which projected cash flow of assets and liabilities are matched must also be considered. Each year, the valuation actuary must provide an opinion on whether the assets in the separate account are adequate to provide all future benefits that are guaranteed.

2751.0900 SEPARATE ACCOUNTS.

Subpart 1. **Establishment and administration.** Any domestic insurer issuing modified guaranteed annuities shall establish one or more separate accounts pursuant to *Minnesota Statutes*, section 61A.14.

Subp. 2. **Amounts.** The insurer shall maintain in each separate account assets with a market or other value meeting the standards set out in *Minnesota Statutes*, section 61A.14, at least equal to the valuation reserves and other contract liabilities respecting such account.

Subp. 3. **Valuation of assets.** 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, or pursuant to standards contained in *Minnesota Statutes*, section 61A.14.

Subp. 4. **Applicability of other laws.** Unless otherwise approved by the commissioner, separate accounts relating to modified guaranteed annuities will be subject to investment laws applicable to the insurer's general asset account.

2751.1000 REPORTS TO POLICYHOLDERS.

Companies shall annually provide their contract holders with a report showing both the account value and the cash surrender value. The report must clearly indicate that the account value is prior to the application of any surrender charges or market value adjustment formula. It must also specify the surrender charge and market value adjustment used to determine the cash surrender value.

2751.1100 FOREIGN COMPANIES.

If the law or regulation in the place of domicile of a foreign company provides a degree of protection to the policyholders and the public which is substantially similar to that provided by this chapter, the commissioner to the extent the commissioner considers appropriate may consider compliance with that law or regulation as compliance with this chapter.

2751.1200 AUTHORIZATION OF AGENTS.

No person, corporation, partnership, or other legal entity may sell or offer for sale in this state any modified guaranteed annuity contract unless licensed to sell variable annuities under the insurance laws of this state.

Department of Commerce

Proposed Amendments to Proposed Permanent Rules Relating to Modified Guaranteed Annuities

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Department of Commerce intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedures Act for adopted rules without a public hearing in *Minnesota Statutes*, section 14.22-14.28. Authority for the adoption of these rules is contained in *Minnesota Statutes*, Section 45.023 and 61A.20.

All persons have 30 days to submit comments in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Department and do not result in a substantial change.

Any person may make a written request for a public hearing within the 30 days comment period. If 25 or more persons submit a written request for a public hearing within the 30 day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the Department will proceed pursuant to *Minnesota Statutes*, sections 14.13 to 14.20.

Persons who wish to submit comments or a written request for a public hearing should submit them to:

Patricia L. Peterson
Director of Registration
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101
(612) 296-2284

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 the Proposed Rules Relating to Modified Guaranteed Annuities

FINDINGS OF FACT CONCLUSIONS & ORDER OF ADOPTION

(1) Notice of the Commissioner's proposed adoption of the above-entitled rules without a public hearing was published in the State Register on July 10, 1989. On July 6, 1989, the Department of Commerce sent copies of the Notice by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, Section 14.14, Subdivision 1, paragraph (a) and 14.22.

(4) All persons were given the opportunity to submit comments on the rule for thirty days after notice of proposed rulemaking. (5) No persons submitted requests for hearing within the thirty day comment period.

(1) Notice of the Commissioner's proposed amendments to the above-entitled rules without public hearing was published in the State Register on October 9, 1989. On November 21, 1989, the Department of Commerce sent copies of the Notice by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, Section 14.14, Subdivision 1, paragraph (a) and 14.22.

(4) All person were given the opportunity to submit comments on the amendments to the rule for 30 day periods after the above-referenced notices of proposed rulemaking. (3) No persons submitted requests for hearing within the thirty day comment periods.

(8) Based upon the comments and evidence on the record, I find that the above-captioned rules are needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rules identified as the Rules Relating to Modified Guaranteed Annuities, as amended, are adopted this 26th day of December 1989 pursuant to the authority vested in me by Minnesota Statutes, Section 155A.05.

(9)

MICHAEL A. HATCH
Commissioner of Commerce

Dated this 26th day
of December, 1989.

Stat. Auth

45.023

The commissioner of commerce may adopt amend, suspend or repeal rules

61A.20

Notwithstanding any other provision, commissioner shall have sole and exclusive authority ... and to issue such reasonable rules as may be appropriate to carry out the purposes and provisions of sections 61A.13 to 61A.21

Notice of Intent indicates the rules have been modified and the modifications are a substantial change in the proposed language. Indicates a copy of the proposed modifications to the proposed rules is attached. Why not the proposed rules attached?

Affadavit of Mailing indicates mailing was of Notice of Intent was mailed on Nov 21, 1989

Findings of Fact on July 6, 1989 Notice of Intent was mailed out

Findings of Fact indicates proposed amendments was published in State Reg on Oct 9, 1989

missing
also indicates mailing on July 6 - don't have affadavit for that

Findings of Fact
missing R (2) statement of need and reasonableness was prepared before the notice of intent

no statement about changes R (6)
no statement about submissions to A.G. R (7)

Findings of Fact indicates there are comments no comments

Dates

have sent 1-16-90
don't have sent 1-16-90
don't have
have

proposed rules published in State Reg. July 10 '89
affadavit of mailed July 6 '89
proposed amendments published in stat Oct 9, 1989
mailed Nov 21, 1989

no adopted amendments - in the adopted rules

no comments
1-11-90 Talked to Pat Peterson told her

con't Pat Peterson

sent — we needed affidavit of mailing - Jul 6
sent — Amendment in State Reg? Oct 9
1-16-90

Comments

Notice of Intent - 1st one
sent 1-16-90 — Statement of need and Reasonableness for Ammendment
submitted all requested documents

Rates

Notice of Intent for Proposed Rules (1st) not Ammendments indicates that you can recieve a copy of the adopted rule but does not give a summary unless you would consider the summary the heading of the rule. 2010.0200 E (11)

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

IN THE MATTER OF THE PROPOSED AMENDMENTS TO PROPOSED PERMANENT RULES GOVERNING THE ISSUANCE OF MODIFIED GUARANTEED ANNUITIES	STATEMENT OF NEED AND REASONABLENESS

STATEMENT OF AUTHORITY

Minnesota Statute, Section 61A.20 provides that:

> Notwithstanding any other provision of law, the Commissioner shall have sole and exclusive authority to regulate the issuance and sale of contracts on a variable basis and to provide for licensing of persons selling such contracts, and to issue such reasonable rules as may be appropriate to carry out the purposes of sections 61A.13 to 61A.21.

Additional rulemaking authority provided in Minnesota Statutes Section 45.023 authorizes the Commissioner to "adopt, amend, suspend, or repeal rules ... whenever necessary or proper in discharging the Commissioner's official responsibilities."

The Commissioner finds the amendments to be reasonable and necessary and consistent with the purposes fairly intended by the provisions of Chapter 45 and sections 61A.13 to 61A.21 of Chapter 61A.

BACKGROUND

On July 10, 1989 the Proposed Permanent Rules Governing the Issuance of Modified Guaranteed Annuities were published in the State Register. These rules are based on a National Association of Insurance Commissioners (NAIC) model regulation. The Commissioner questions whether the model regulation provides adequate protection for Minnesota consumers and believes that further review is warranted. Therefore, the Commissioner proposes this amendment in order to allow the Department to determine if the rule provides adequate standards in regard to the market value adjustment and the policy form requirements.

As stated in the first Statement of Need and Reasonableness, certain other states do approve modified guaranteed annuity contracts and do allow the sale of such contracts to their residents. However, 15 of these states require that the contracts must be approved in their home state before they can be sold in their states. This means that Minnesota insurers cannot sell their modified guaranteed annuity products in these states. The Commissioner finds that it is reasonable to allow Minnesota domiciled companies to sell their modified guaranteed annuity products in other states which currently approve such products for sale to their residents.

Rule Part 2751.1300

This part prohibits the sale of modified guaranteed annuity to Minnesota residents until an Order is issued by the Commissioner. This authority is consistent with Minnesota Statutes 61A.20 and provides the Commissioner with the time needed to more fully review the appropriateness of this investment product for Minnesota consumers. Minnesota Statutes 61A.20 gives the Commissioner "sole and exclusive authority to regulate the issuance and sale of contracts on a variable basis .... and to issue such reasonable rules as may be appropriate ..." It is clear from that language that the Commissioner's authority is not limited to promulgating rules but that he has broad discretionary authority in this area. Therefore, the Commissioner has been given the authority to determine by Order if and when modified guaranteed annuities may be sold to Minnesota residents.

The language of the proposed rule and amendment allows Minnesota to approve modified guaranteed annuity contracts as to form. With "home state approval", Minnesota domiciled companies will be able to obtain approval of their products in other states and complete in those markets.

SMALL BUSINESS CONSIDERATIONS

The small business consideration remain as stated in the first Statement of Need and Resonableness.

Although Minnesota agents will not be able to sell this product, the amendment allows the Commissioner to authorize the sale of the product to Minnesota residents by order. If and when such an order is issued, a new source of revenue will be created for Minnesota insurance agents and companies.

The amendment does not impose more stringent schedules, compliance or other requirements on small business and therefore, it is not necessary to consider the methods set forth in Minnesota Statutes 14.115, subdivision 2 for reducing the impact of the rule on small businesses.

In the Matter of the Proposed
Adoption of the Rule Governing
Modified Guaranteed Annuities

AFFIDAVIT

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

Patricia L. Peterson, being sworn says:

No one has requested notification of the date of submission of the Rule to the Attorney General and therefore, the Affidavit of Mailing Notice of Submission of the Rule to Attorney General pursuant to Minn. Rule Part 2010.0300 is inapplicable.

Patricia L. Peterson

PATRICIA L. PETERSON
Director of Registration

Subscribed and sworn to before me
this 5th day of January, 1989.

Cynthia L. Claason

NOTARY PUBLIC

CYNTHIA L. CLAASON
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES FEBRUARY 11, 1992

STATE OF MINNESOTA
COMMISSIONER OF COMMERCE

In The Matter Of The Adoption
Of The Rule Of The State
Department Of Commerce Governing
The Issuing Of Modified Guaranteed
Annuities

DECLARATION OF
COUNSEL

I, Norine Olson-Elm, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules chapter 2010 have been followed. For Attorney General billing purposes, the four-digit docket code is: .0110.

Dated: January 4, 1990.

HUBERT H. HUMPHREY, III
Attorney General
State of Minnesota



MISSY NORINE OLSON-ELM
Special Assistant
Attorney General

1100 Bremer Tower
Seventh Place and Minnesota Street
Saint Paul, Minnesota 55101

Attorney Registration No. 160763
Telephone: (612) 296-1409

ATTORNEYS FOR COMMERCE DEPARTMENT

.ai4

STATE OF MINNESOTA
COMMISSIONER OF COMMERCE

In The Matter Of The Adoption
Of The Rule Of The State
Department Of Commerce Governing
The Issuing Of Modified Guaranteed
Annuities

DECLARATION OF
COUNSEL

I, Norine Olson-Elm, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules chapter 2010 have been followed. For Attorney General billing purposes, the four-digit docket code is: .0110.

Dated: January 4, 1990.

HUBERT H. HUMPHREY, III
Attorney General
State of Minnesota

MISSY NORINE OLSON-ELM
Special Assistant
Attorney General

1100 Bremer Tower
Seventh Place and Minnesota Street
Saint Paul, Minnesota 55101

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ATTORNEYS FOR COMMERCE DEPARTMENT

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Department of Commerce

Proposed Amendments to Proposed Permanent Rules Relating to Modified Guaranteed Annuities

Rules as Amended

2751.0100 to 2751.1200 [See State Register, Volume 14, Number 2, pages 45 to 50.)

2751.1300 RESTRICTION ON ISSUANCE.

Notwithstanding parts 2751.0100 to part 2751.1200, no modified guaranteed annuity shall be issued to any Minnesota resident. The commissioner may by order authorize the sale of modified guaranteed annuities to Minnesota residents if the commissioner determines that the order is in the public interest.

Approved by Revisor

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Amendments to Proposed Permanent Rules Relating to Modified Guaranteed Annuities

AGENCY: Department of Commerce

MINNESOTA RULES: Chapter 2751

The attached rules are approved for publication in the State Register

Paul M. Marinac
Assistant Deputy Revisor

Department of Commerce

Proposed Permanent Rules Relating to Modified Guaranteed Annuities

Rules as Proposed (all new material)

2751.0100 PURPOSE.

This chapter regulates modified guaranteed annuities, a new form of variable annuity, the assets of which are placed in a separate account.

2751.0200 AUTHORITY.

This chapter is adopted pursuant to the authority granted to the commissioner of the Department of Commerce in Minnesota Statutes, section 61A.20.

2751.0300 APPLICABILITY AND SCOPE.

This chapter applies to:

A. the qualifications of agents to be authorized to sell modified guaranteed annuity contracts in this state;

B. the qualification of insurers to be authorized to issue these contracts;

C. the required contract form and provisions for issuance of this coverage in this state; and

D. the manner in which separate account assets, supporting these contracts, are to be maintained and reported.

2751.0400 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of this chapter, the terms defined in this part have the meanings given them.

Subp. 2. **Commissioner.** "Commissioner" means the commissioner of the Department of Commerce of the state of Minnesota.

Subp. 3. **Interest credits.** "Interest credits" means all interest that is credited to the contract.

Subp. 4. **Modified guaranteed annuity.** "Modified guaranteed annuity" is a deferred annuity contract, the

Approved by Revisor

underlying assets of which are held in a separate account, and the values of which are guaranteed if held for specified periods. The annuity contains nonforfeiture values based upon a market-value adjustment formula if held for shorter periods. This formula may, or may not, reflect the value of assets held in a separate account during the period, or periods, when the contract holder can surrender the contract.

Subp. 5. **NAIC.** "NAIC" means the National Association of Insurance Commissioners.

Subp. 6. **Separate account.** "Separate account" means a separate account established pursuant to Minnesota Statutes, sections 61A.13 to 61A.21 or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.

2751.0500 AUTHORITY OF INSURERS.

Subpart 1. **Application.** The following requirements in this part apply to all insurers seeking authority to issue modified guaranteed annuities in this state.

Subp. 2. **Licensing and approval to do business.** No company shall deliver or issue for delivery modified guaranteed annuities within this state unless it is licensed or organized to do a life insurance or annuity business in their state pursuant to Minnesota Statutes, section 60A.07, and the commissioner is satisfied that its condition or method of operation in connection with the issuance of these contracts will not render its operation hazardous to the public or its policyholders in this state. In this connection, the commissioner shall consider among other things the history and financial condition of the company; the character, responsibility, and fitness of the officers and directors of the company; and the law and regulation under which the company is authorized in the state of domicile to issue these annuities.

If the company is a subsidiary of an admitted life insurance company, or affiliated with the company by common management or ownership, it may be considered by the

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commissioner to have satisfied the requirements of this subpart, if either it or the admitted life company satisfies the requirements of this subpart. Companies licensed and having a satisfactory record of doing business in this state for a period of at least three years may be considered by the commissioner to have satisfied the requirements of this subpart.

Before any company delivers or issues for delivery modified guaranteed annuities within this state, it shall submit to the commissioner a general description of the kinds of these annuities it intends to issue; if requested by the commissioner, a copy of the statutes and regulations of its state of domicile under which it is authorized to issue these annuities; and if requested by the commissioner, biographical data with respect to officers and directors of the company on the NAIC uniform biographical data form.

Subp. 3. **Use of sales materials.** An insurer authorized to transact modified guaranteed annuity business in this state shall not use any sales material, advertising material, or descriptive literature or other materials of any kind in connection with its modified guaranteed annuity business in this state that is false, misleading, deceptive, or inaccurate.

Illustrations of benefits payable under any modified guaranteed annuity shall not include projections of past investment experience into the future or attempted predictions of future investment experience. Hypothetical assumed interest credits may be used to illustrate possible levels of benefits.

Before any insurer delivers or issues for delivery any modified guaranteed annuity contract in this state, the commissioner may require the filing of a copy of any prospectus or other sales material to be used in connection with the marketing of that insurer's modified guaranty annuity contract. The sales material must clearly illustrate that there can be both upward and downward adjustments due to the application of the market value adjustment formula in determining nonforfeiture benefits.

Subp. 4. **Reports.** An insurer authorized to transact the

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business of modified guaranteed annuities in this state shall submit to the commissioner:

A. a separate account annual statement that includes the business of its modified guaranteed annuities; and

B. additional information concerning its modified guaranteed annuity operations or separate accounts the commissioner considers necessary.

Subp. 5. **Authority of commissioner to disapprove.** Any material required to be filed with and approved by the commissioner shall be disapproved by the commissioner if the commissioner finds that it does not comply with the standards established by this chapter.

2751.0600 FILING OF CONTRACTS.

The filing requirements applicable to modified guaranteed annuities are those filing requirements otherwise applicable under existing statutes and rules of this state with respect to individual and group life insurance and annuity contract form filings, to the extent appropriate. Filings shall include a demonstration in a form satisfactory to the commissioner that the nonforfeiture provisions of the contract comply with part 2751.0700, subpart 1.

2751.0700 CONTRACT REQUIREMENTS.

Subpart 1. **Mandatory contract benefit and design requirements.** The following benefit and design requirements apply to a modified guaranteed annuity contract delivered or issued for delivery in this state:

A. The contract must contain a statement of the essential features of the procedures to be followed by the insurance company in determining the dollar amount of nonforfeiture benefits.

B. If the contract calls for the payment of periodic stipulated payments, it must contain in substance the following provisions:

(1) a provision that there shall be a period of grace of 30 days or of one month, within which any stipulated

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payment to the insurer falling due after the first may be made, during which period of grace the contract shall continue in force. The contract may include a statement of the basis for determining the date as of which any payment received during the period of grace shall be applied to produce the values under the contract arising therefrom; and

(2) a provision that, at any time within one year from the date of default, in making periodic stipulated payments to the insurer during the life of the annuitant and unless the cash surrender value has been paid, the contract may be reinstated upon payment to the insurer of such overdue payments as required by contract, and of all indebtedness to the insurer on the contract, including interest. The contract may include a statement of the basis for determining the date as of which the amount to cover these overdue payments and indebtedness shall be applied to produce the values under the contract arising therefrom.

C. The market-value adjustment formula, used in determining nonforfeiture benefits, must be stated in the contract, and must be applicable for both upward and downward adjustments. When a contract is filed, it must be accompanied by an actuarial statement indicating the basis for the market-value adjustment formula and that the formula provides reasonable equity to both the contract holder and the insurance company.

D. If and to the extent so provided under the applicable contracts, that portion of the assets of any separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the company may conduct.

E. The application for a modified guaranteed annuity shall prominently set forth immediately preceding the signature line, language denoting that amounts payable under the contract are subject to a market value adjustment prior to a date or dates specified in the contract.

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by Revisor _____

Subp. 2. **Nonforfeiture benefits.** The following nonforfeiture benefit requirements apply to a modified guaranteed annuity contract delivered or issued for delivery in this state:

A. This subpart does not apply to any:

(1) reinsurance;

(2) group annuity contract purchased in connection with one or more retirement plans or plans of deferred compensation established or maintained by or for one or more employers, including partnerships or sole proprietorships, employee organizations, or any combination thereof, other than plans providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code of 1986, as amended through December 31, 1988;

(3) premium deposit fund;

(4) deferred annuity contract after annuity payments have commenced;

(5) reversionary annuity; or

(6) contract which is to be delivered outside this state through an agent or other representative of the company issuing this contract.

B. The contract must contain in substance the provisions of subitems (1) and (2).

(1) Upon cessation of payment of considerations under a contract, the insurer will grant a paid-up annuity benefit on a plan described in the contract that complies with item E. The description will include a statement of the mortality table, if any, and guaranteed or assumed interest rates used in calculating annuity payments.

(2) If a contract provides for a lump sum settlement at maturity, or at any other time, upon surrender of the contract at or prior to the commencement of any annuity payments, the insurer will pay in lieu of any paid-up annuity benefit a cash surrender benefit as described in the contract that complies with item F. The contract may provide that the insurer may defer payment of the cash surrender benefit for a

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period of six months after demand.

C. The minimum values as specified in this part of any paid-up annuity, cash surrender, or death benefits available under a modified guaranteed annuity contract must be based upon nonforfeiture amounts meeting the requirements of this item.

The unadjusted minimum nonforfeiture amount on any data prior to the annuity commencement date must be an amount equal to the percentages of net considerations, as specified in item D, increased by the interest credits allocated to the percentage of net considerations, which shall be reduced to reflect the effect of the following:

(1) any partial withdrawals from or partial surrender of the contract;

(2) the amount of any indebtedness on the contract, including interest due and accrued;

(3) an annual contract charge not less than zero and equal to (a) the lesser of $30 and two percent of the end of year contract value less (b) the amount of any annual contract charge deducted from any gross considerations credited to the contract during the contract year; and

(4) a transaction charge of $10 for each transfer to another investment division within the same contract.

The minimum nonforfeiture amount shall be the unadjusted minimum nonforfeiture amount adjusted by the market-value adjustment formula contained in the contract.

The annual contract charge of $30 and the transaction charge of $10 referenced will be adjusted to reflect changes in the consumer price index for all urban consumers (CPI-U) in accordance with item D. The CPI-U is published by the Bureau of Labor Statistics, United States Department of Labor, and is incorporated by reference. It is subject to frequent change and is available from the Minitex interlibrary loan system.

Guaranteed interest credits in each year of any period of time for which interest credits are guaranteed shall be reasonably related to the average guaranteed interest credits over that period of time.

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D. The percentages of net considerations used to define the minimum nonforfeiture amount in item C must meet the requirements of this item.

(1) With respect to contracts providing for periodic considerations, the net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of $30 and less a collection charge of $1.25 per consideration credited to the contract during that contract year and less any charges for premium taxes. The percentages of net considerations shall be 65 percent for the first contract year and 87.5 percent for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be 65 percent of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was 65 percent.

(2) With respect to contracts providing for a single consideration, the net consideration used to define the minimum nonforfeiture amount shall be the gross consideration less a contract charge of $75 and less any charge for premium taxes. The percentage of the net consideration shall be 90 percent.

The annual contract charge of $30, the collection charge of $1.25 per collection, and the single consideration contract charge of $75 referred to in this subitem, will be adjusted to reflect changes in the CPI-U in accordance with item 3.

(3) The above contract charges shall be multiplied by the ratio of (a) the CPI-U for June of the calendar year preceding the date of filing, to (b) the CPI-U for June 1979.

E. Any paid-up annuity benefit available under a modified guaranteed annuity contract shall be that its present value on the annuity commencement date is at least equal to the

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minimum nonforfeiture amount on that date. The present value shall be computed using the mortality table, if any, and the guaranteed or assumed interest rates used in calculating the annuity payments.

F. For modified guaranteed annuity contracts that provide cash surrender benefits, the cash surrender benefit at any time prior to the annuity commencement date shall not be less than the minimum nonforfeiture amount next computed after the request for surrender is received by the insurer. The death benefit under the contracts shall be at least equal to the cash surrender benefit.

G. Any modified guaranteed annuity contract that does not provide cash surrender benefits, or does not provide death benefits at least equal to the minimum nonforfeiture amount, prior to the annuity commencement date shall include a statement in a prominent place in the contract that these benefits are not provided.

H. Notwithstanding the requirements of this part, a modified guaranteed annuity contract may provide under the situations specified below that the insurer, at its option, may cancel the annuity and pay the contract holder the larger of the unadjusted minimum nonforfeiture amount and the minimum nonforfeiture amount, and by this payment be released of any further obligation under the contract:

(1) if at the time the annuity becomes payable, the larger of the unadjusted minimum nonforfeiture amount and the minimum nonforfeiture amount is less than $2,000, or would provide an income the initial amount of which is less than $20 per month; or

(2) if before the time the annuity becomes payable under a periodic payment contract no considerations have been received under the contract for a period of two full years and both (a) the total considerations paid before the period, reduced to reflect any partial withdrawals from or partial surrenders of the contract, and (b) the larger of the unadjusted minimum nonforfeiture amount and the minimum nonforfeiture

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amount is less than $2,000.

I. For any modified guaranteed annuity contract that provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of item B, additional benefits payable:

(a) in the event of total and permanent disability;

(b) as reversionary annuity or deferred reversionary annuity benefits; or

(c) as other policy benefits additional to life insurance, endowment, and annuity benefits, and considerations for all additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits that may be required by this part. The inclusion of additional benefits is not required in any paid-up benefits, unless additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits.

2751.0800 RESERVE LIABILITIES.

Reserve liabilities for modified guaranteed annuities shall be established in accordance with actuarial procedures that recognize:

A. that assets of the separate account are based on market values;

B. the variable nature of benefits provided; and

C. any mortality guarantees.

As a minimum, the separate account liability will equal the surrender value based upon the market-value adjustment formula

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contained in the contract. If that liability is greater than the market value of the assets, a transfer of assets will be made into the separate account so that the market value of the assets at least equals that of the liabilities. Also, any additional reserve that is needed to cover future guaranteed benefits will also be set up by the valuation actuary.

The market-value adjustment formula, the interest guarantee, and the degree to which projected cash flow of assets and liabilities are matched must also be considered. Each year, the valuation actuary must provide an opinion on whether the assets in the separate account are adequate to provide all future benefits that are guaranteed.

2751.0900 SEPARATE ACCOUNTS.

Subpart 1. **Establishment and administration.** Any domestic insurer issuing modified guaranteed annuities shall establish one or more separate accounts pursuant to Minnesota Statutes, section 61A.14.

Subp. 2. **Amounts.** The insurer shall maintain in each separate account assets with a market or other value meeting the standards set out in Minnesota Statutes, section 61A.14, at least equal to the valuation reserves and other contract liabilities respecting such account.

Subp. 3. **Valuation of assets.** 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, or pursuant to standards contained in Minnesota Statutes, section 61A.14.

Subp. 4. **Applicability of other laws.** Unless otherwise approved by the commissioner, separate accounts relating to modified guaranteed annuities will be subject to investment laws applicable to the insurer's general asset account.

2751.1000 REPORTS TO POLICYHOLDERS.

Companies shall annually provide their contract holders with a report showing both the account value and the cash surrender value. The report must clearly indicate that the

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account value is prior to the application of any surrender charges or market value adjustment formula. It must also specify the surrender charge and market value adjustment used to determine the cash surrender value.

2751.1100 FOREIGN COMPANIES.

If the law or regulation in the place of domicile of a foreign company provides a degree of protection to the policyholders and the public which is substantially similar to that provided by this chapter, the commissioner to the extent the commissioner considers appropriate may consider compliance with that law or regulation as compliance with this chapter.

2751.1200 AUTHORIZATION OF AGENTS.

No person, corporation, partnership, or other legal entity may sell or offer for sale in this state any modified guaranteed annuity contract unless licensed to sell variable annuities under the insurance laws of this state.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Modified Guaranteed Annuities

AGENCY: Department of Commerce

MINNESOTA RULES: Chapter 2751

INCORPORATION BY REFERENCE:
2751.0700, subpart 2: Consumer Price Index for all urban consumers (CPI-U) published by the Bureau of Labor Statistics, United States Department of Labor

The attached rules are approved for publication in the State Register

Paul M. Marinac
Assistant Deputy Revisor