

1 Department of Commerce

2

3 Adopted Permanent Rules Relating to Modified Guaranteed
4 Annuities

5

6 Rules as Adopted

7 2751.0100 PURPOSE.

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

11 2751.0200 AUTHORITY.

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

15 2751.0300 APPLICABILITY AND SCOPE.

16 This chapter applies to:

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

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

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

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

25 2751.0400 DEFINITIONS.

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

28 Subp. 2. Commissioner. "Commissioner" means the
29 commissioner of the Department of Commerce of the state of
30 Minnesota.

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

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

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

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

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

15 2751.0500 **AUTHORITY OF INSURERS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

13 2751.0600 FILING OF CONTRACTS.

14 The filing requirements applicable to modified guaranteed
15 annuities are those filing requirements otherwise applicable
16 under existing statutes and rules of this state with respect to
17 individual and group life insurance and annuity contract form
18 filings, to the extent appropriate. Filings shall include a
19 demonstration in a form satisfactory to the commissioner that
20 the nonforfeiture provisions of the contract comply with part
21 2751.0700, subpart 1.

22 2751.0700 CONTRACT REQUIREMENTS.

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

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

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

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

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

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

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

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

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

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

5 A. This subpart does not apply to any:

6 (1) reinsurance;

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

15 (3) premium deposit fund;

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

18 (5) reversionary annuity; or

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

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

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

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

1 period of six months after demand.

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

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

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

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

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

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

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

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

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

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

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

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

26 The annual contract charge of \$30, the collection charge of
27 \$1.25 per collection, and the single consideration contract
28 charge of \$75 referred to in this subitem, will be adjusted to
29 reflect changes in the CPI-U in accordance with item 3.

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

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

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

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

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

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

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

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

1 amount is less than \$2,000.

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

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

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

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

26 2751.0800 RESERVE LIABILITIES.

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

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

32 B. the variable nature of benefits provided; and

33 C. any mortality guarantees.

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

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

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

13 2751.0900 SEPARATE ACCOUNTS.

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

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

23 Subp. 3. **Valuation of assets.** Investments of the separate
24 account shall be valued at their market value on the date of
25 valuation, or at amortized cost if it approximates market value,
26 or pursuant to standards contained in Minnesota Statutes,
27 section 61A.14.

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

32 2751.1000 REPORTS TO POLICYHOLDERS.

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

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

5 2751.1100 FOREIGN COMPANIES.

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

12 2751.1200 AUTHORIZATION OF AGENTS.

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

17 2751.1300 RESTRICTION ON ISSUANCE.

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