



# Notice of Intent to Adopt Rules

Revised October 2014

<b>1. General Information</b>		
a. Agency/Board Name Wyoming Department of Insurance		
b. Agency/Board Address 106 E. 6th Avenue	c. City Cheyenne	d. Zip Code 82001
e. Name of Contact Person Heather M. Canarecci	f. Contact Telephone Number 307-777-6916	
g. Contact Email Address heather.canarecci1@wyo.gov		
h. Date of Public Notice February 29, 2016	i. Comment Period Ends April 18, 2016	
j. Program General Rules		

**2. Rule Type and Information:** For each chapter listed, indicate if the rule is New, Amended, or Repealed.

a. If "New," provide the Enrolled Act numbers and years enacted:		
b. Provide the Chapter Number, Short Title, and Rule Type of Each Chapter being Created/Amended/Repealed <i>Please use the Additional Rule Information form for more than 10 chapters, and attach it to this certification.</i>		
Chapter Number: 27	Chapter Name: Variable Contract Regulation	<input type="checkbox"/> New <input type="checkbox"/> Amended <input checked="" type="checkbox"/> Repealed
Chapter Number: 66	Chapter Name: Variable Annuity Contract Regulation	<input checked="" type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number: 67	Chapter Name: VARIABLE LIFE INSURANCE CONTRACT REGULATION	<input checked="" type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
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Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed

c.  The Statement of Reasons is attached to this Notice and, in compliance with *Tri-State Generation and Transmission Association, Inc. v. Environmental Quality Council*, 590 P.2d 1324 (Wyo. 1979), includes a brief statement of the substance or terms of the rule and the basis and purpose of the rule.

Complete all that apply:

The following chapters do not differ from the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j):  
\_\_\_\_\_ (Provide chapter numbers)

These chapters differ from the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j) (see Statement of Reasons).  
\_\_\_\_\_ (Provide chapter numbers)

N/A These rules are not impacted by the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j).

d.  N/A  In consultation with the Attorney General's Office, the Agency's Attorney General representative concurs that strike and underscore is not required as the proposed amendments are pervasive (Section 5 of the Rules on Rules).

e. A copy of the proposed rules\* may be obtained:  
 By contacting the Agency at the physical and/or email address listed in Section 1 above.  
 At the following URL: \_\_\_\_\_

\* If item "d" above is not checked, the proposed rules shall be in strike and underscore format.

**3. Public Comments and Hearing Information**

a. A public hearing on the proposed rules has been scheduled.  Yes  No

If "Yes:"	Date:	Time:	City:	Location:

b. What is the manner in which interested persons may present their views on the rulemaking action?  
 By submitting written comments to the Agency at the physical and/or email address listed in Section 1 above.  
 At the following URL: \_\_\_\_\_

A public hearing will be held if requested by 25 persons, a government subdivision, or by an association having not less than 25 members. Requests for a public hearing may be submitted:  
 To the Agency at the physical and/or email address listed in Section 1 above.  
 At the following URL: \_\_\_\_\_

c. Any person may urge the Agency not to adopt the rules and request the Agency to state its reasons for overruling the consideration urged against adoption. Requests for an agency response must be made prior to, or within thirty (30) days after adoption, of the rule, addressed to the Agency and Contact Person listed in Section 1 above.

**4. Federal Law Requirements**

a. These rules are created/amended/repealed to comply with federal law or regulatory requirements.  Yes  No

If "Yes:"	Applicable Federal Law or Regulation Citation:

Indicate one (1):  
 The proposed rules meet, but do not exceed, minimum federal requirements.  
 The proposed rules exceed minimum federal requirements.

Any person wishing to object to the accuracy of any information provided by the Agency under this item should submit their objections prior to final adoption to:  
 To the Agency at the physical and/or email address listed in Section 1 above.  
 At the following URL: \_\_\_\_\_

**5. State Statutory Requirements**

a. Indicate one (1):  
 The proposed rule change *MEETS* minimum substantive statutory requirements.  
 The proposed rule change *EXCEEDS* minimum substantive statutory requirements. Please attach a statement explaining the reason that the rules exceed the requirements.

b. Indicate one (1):  
 The Agency has complied with the requirements of W.S. 9-5-304. A copy of the assessment used to evaluate the proposed rules may be obtained:  
 By contacting the Agency at the physical and/or email address listed in Section 1 above.  
 At the following URL: \_\_\_\_\_  
 Not Applicable.

**6. Authorization**

a. I certify that the foregoing information is correct.

Printed Name of Authorized Individual	Tom Glause <i>TG</i>
Title of Authorized Individual	Insurance Commissioner
Date of Authorization	2/11/14

Distribution List:

- Attorney General and LSO: Hard copy of Notice of Intent; Statement of Reasons; clean copy of the rules; and strike-through and underline version of rules (if applicable). Electronic copies (PDFs) of all items noted (in addition to hard copies) may be emailed to LSO at [Criss.Carlson@wvleg.gov](mailto:Criss.Carlson@wvleg.gov).
- Secretary of State: Electronic version of Notice of Intent sent to [Rules@wyo.gov](mailto:Rules@wyo.gov).

DEPARTMENT OF INSURANCE

STATE OF WYOMING

IN THE MATTER OF THE REPEAL OF )  
CHAPTER 27, AND )  
THE PROMULGATION OF )  
CHAPTERS 66 AND 67 OF THE WYOMING )  
DEPARTMENT OF INSURANCE RULES )  
AND REGULATIONS, ) Docket Nos. 15-36 & 15-38

STATEMENT OF PRINCIPAL REASONS

FOR

The repeal of Chapter 27 (Variable Contract Regulation), and Promulgation of Chapter 66 (Variable Annuity Contract Regulation) and Chapter 67 (Variable Life Insurance Contract Regulation) of the Wyoming Insurance Department Regulations

The Wyoming Department of Insurance (DOI) files this Statement of Principal Reasons regarding its repeal of Chapter 27 of the DOI Rules and Regulations, and the promulgation of new regulations, Chapter 66 and Chapter 67. These changes to the DOI Rules and Regulations have been made for the following reasons.

Wyoming Statutes § 26-16-502 was recodified in the Session Laws of Wyoming, 1967, HB 40, Chapter 136. As presently written, this statute provides specific requirements for allocation of funds into separate accounts from life insurance or annuity contracts, and provides for regulation of various variable contracts. In 1968, the Department of Insurance (DOI) promulgated Chapter 27 of its Rules and Regulations, and amended it in 1997, to provide additional guidance regarding variable contracts. At the time Chapter 27 was originally promulgated, the use of variable contracts was developing.

Much has changed in the insurance market during the nearly twenty years since Chapter 27 was last amended. During this time, the insurance industry has seen a tremendous increase in the use of variable contracts and the types of variable products available. Chapter 27 originally attempted to address the regulation of all variable contracts in one regulation. However, given the extraordinary level of change in the use and types of variable contracts now available, Chapter 27 is insufficient to address all of the regulatory issues related to variable life and variable annuity contracts.

On or about November 25, 2013, Governor Mead required all State Agencies to reduce their Rules both in number and in length. Due to the extensive changes in the insurance industry regarding the use and types of variable contracts, it was necessary to expand the regulation of these insurance products to enhance consumer protection. The DOI initially considered incorporating the necessary changes into its existing Chapter 27. However, it rapidly became apparent that expanding the existing regulation resulted in a regulation that was overly cumbersome, confusing and difficult to use. Instead, the DOI has elected to repeal Chapter 27 and adopt two new regulations to take its place, Chapter 66 and Chapter 67, even though this action increases the total number of current regulations for the DOI.

The new Chapter 66 and Chapter 67 are based upon model language drafted by the National Association of Insurance Commissioners (NAIC). The NAIC provides the opportunity for input from all states and territories, as well as from the insurance industry, regarding proposed language to be included in model regulations regarding various subjects. In its Chapter 66 and Chapter 67, the DOI has adopted substantially all of the language in the

NAIC model regulation regarding variable life and variable annuity contracts. The NAIC model regulation has been modified to incorporate the appropriate statutory references and to remove any inconsistencies or conflicts with Wyoming law.

Although the repeal of Chapter 27 and promulgation of new Chapter 66 and Chapter 67 have the net effect of increasing the total number of DOI regulations, it is a necessary change to ensure appropriate and contemporary consumer protection in the changing insurance environment.

CHAPTER 27  
VARIABLE CONTRACT REGULATION

**REPEALED**

CHAPTER 27  
VARIABLE CONTRACT REGULATION

**Section 1. — Authority**

~~These rules (regulations) pertaining to "variable contracts", as herein defined, supplement the provisions of the Wyoming Insurance Code pertaining to the offer and sale of agreements providing benefits in variable amounts and the qualification and licensing of insurers and new agents to deliver such contracts within this state. They are promulgated by authority of and pursuant to the Wyoming Administrative Procedure Act (W.S. 16-3-101 et seq.) and to the Wyoming Insurance Code, Sections 26-2-110, 26-9-116, 26-10-104 and 26-16-502 W.S. 1977.~~

**Section 2. — Purpose**

~~The purpose of these rules is to provide a comprehensive plan: for the qualification and licensing of insurers to write policies or contracts on a variable basis; for establishment of separate accounts and the investment of assets contained; for the filing and approval of policy and contract forms; for reports to contract holders; for the qualification, examination and licensing of agents and other persons; providing for the establishment and preservation of certain records and the establishment of other standards pertaining to the offering and sale of such contracts.~~

**Section 3. — Definitions**

~~The definitions of certain terms as used herein shall be as follows:~~

~~(a) — The term "contract on a variable basis" or "variable contract," when used in this regulation, shall mean any policy or contract which provides for insurance or annuity benefits which may vary according to the investment experience of any separate account or accounts maintained by the insurer as to such policy or contract.~~

~~(b) — "Agent," when used in this regulation, shall mean any the laws of this state is licensed as a life insurance agent, or solicitor, general agent, or life insurance broker.~~

~~(c) — "Variable contract agent," when used in this regulation, shall mean an agent who shall sell or offer to sell any contract on a variable basis.~~

~~(d) — A "satisfactory alternative examination" to Part I of the written examination called for by paragraph c of Section 10 shall include any securities examination which is declared by the Commissioner to be equivalent examination on the basis of content and administration. The following examinations are deemed to be a satisfactory alternative examination:~~

~~(i) — The State Securities Sales Examination;~~

~~(ii) — The National Association of Securities Dealers, Inc. Examination for Principals, or~~

~~Examination for Qualification as a Registered Representative;~~

~~(iii) The various securities examinations required by the New York Stock Exchange, the American Stock Exchange, Pacific Coast Stock Exchange, or any other registered national securities exchange;~~

~~(iv) The Securities and Exchange Commission test given pursuant to Section 15(b)(8) of the Securities Exchange Act of 1934, as amended;~~

~~(v) The examination recommended for the testing of variable contract agents by the National Association of Insurance Commissioners, when adopted by the Insurance Department of any State or Territory of the United States and approved for use by such Department by the Securities and Exchange Commission.~~

~~**Section 4. Qualification of Insurers to Issue Variable Contracts**~~

~~(a) No insurer shall deliver or issue for delivery variable contracts within this state unless—~~

~~(i) it is licensed or organized to do a life insurance or annuity business in this state; and~~

~~(ii) the Commissioner is satisfied that its condition or method of operation in connection with the issuance of such 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:~~

~~(A) The history and financial condition of the company;~~

~~(B) The character, responsibility and fitness of the officers and directors of the company; and~~

~~(C) In the case of an insurer other than a domestic insurer, whether the statutes or regulations of the jurisdiction of its incorporation provide a degree of protection to policyholders and the public which is substantially equal to that provided by the Wyoming Insurance Code and such rules and regulations as are promulgated thereunder.~~

~~(b) No insurer shall be admitted which does not satisfy the requirements of the Wyoming Insurance Code (Section 26-3-109, W.S., 1977, as amended), nor which is not then possessed of such capital and surplus as is then required for a new life insurer under the Wyoming Insurance Code or under the statutes of its state or place of incorporation, whichever is greater.~~

~~(c) Before any insurer shall deliver or issue for delivery variable contracts within this state it shall submit to the Commissioner (1) a general description of the kinds of variable contracts it intends to issue; (2) if requested by the Commissioner, a copy of the statutes and regulations of its state of domicile under which it is authorized to issue variable contracts and (3) if requested by the Commissioner, biographical data with respect to officers and directors of the insurer on the~~



NAIC uniform biographical data form.

## **Section 5. — Separate Accounts**

~~(a) — A domestic insurer issuing variable contracts shall establish one or more separate accounts pursuant to Section 26-16-502, Wyoming Insurance Code, subject to the following provisions of this Article:~~

~~(i) — Except as hereinafter provided, amounts allocated to any separate account and accumulation thereon may be invested and reinvested without regard to any requirements or limitations prescribed by the laws of this state governing the investments of life insurance companies; provided, that to the extent that the company's reserve liability with regard to (i) benefits guaranteed as to dollar amount and duration, and (ii) funds guaranteed as to principal amount or stated rate of interest is maintained in any separate account, a portion of the assets of such separate account at least equal to such reserve liability shall be invested in accordance with applicable provisions of W.S. 26-7-101 et seq. The investments in such separate account or accounts shall not be taken into account in applying the investment limitations applicable to other investments of the insurer.~~

~~(ii) — With respect to 75% of the market value of the total assets in a separate account no insurer shall purchase or otherwise acquire the securities of any issuer, other than securities issued or guaranteed as to principal or interest by the United States, if immediately after such purchase or acquisition the market value of such investment, together with prior investments of such separate account in such security taken at market, would exceed 10% of the market value of the assets of said separate account; provided, however, that the Commissioner may waive such limitation if, in his opinion, such waiver will not render the operation of such separate account hazardous to the public or the policyholders in this state.~~

~~(iii) — No insurer shall, whether for its separate accounts or otherwise, invest in the voting securities of a single issuer in an amount in excess of 10% of the total issued and outstanding voting securities of such issuer; provided that the foregoing shall not apply with respect to securities held in separate accounts, the voting rights in which are exercisable only in accordance with instructions from persons having interests in such accounts.~~

~~(iv) — The limitations provided in subparagraphs (2) and (3) above shall not apply to the investment with respect to a separate account in the securities of an investment company registered under the Investment Company Act of 1940, provided that the investments of such investment company comply in substance with subparagraphs (2) and (3) hereof.~~

~~(b) — Unless otherwise approved by the Commissioner: assets allocated to a separate account shall be valued at their market value on the date of valuation, or if there is no readily available market, then as provided under the terms of the contract or the rules or other written agreement applicable to such separate account; provided, that the portion of the assets of such separate account equal to the company's reserve liability with regard to the benefits and funds referred to in clause (i) and (ii) of paragraph a (1) of this section, if any, shall be valued in~~

~~accordance with the rules otherwise applicable to the company's assets.~~

~~(e) — If and to the extent so provided under the applicable contracts, that portion of the assets of any such 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 insurer may conduct.~~

~~In accordance with the provisions of Section 26-16-502, Wyoming Insurance Code and other provisions of law an insurer may:~~

~~(i) — With respect to any separate account registered with the Securities and Exchange Commission as a unit investment trust, exercise voting rights in connection with any securities of a regulated investment company registered under the Investment Company Act of 1940 and held in such separate accounts in accordance with instructions from persons having interests in such accounts ratably as determined by the insurer, or~~

~~(ii) — With respect to any separate account registered with the Securities and Exchange Commission as a management investment company, establish for such account a committee, board, or other body, the members of which may or may not be otherwise affiliated with such company and may be elected to such membership by the vote of persons having interests in such account ratably as determined by the insurer. — Such committee, board or other body may have the power, exercisable alone or in conjunction with others, to manage such separate account and the investment of its assets.~~

~~An insurer, committee, board or other body may make such other provisions in respect to any such separate account as may be deemed appropriate to facilitate compliance with requirements of any Federal or State law now or hereafter in effect; provided that the Commissioner approves such provisions as not hazardous to the public or the company's policy holders in this State.~~

~~(d) — No sale, exchange or other transfer of assets may be made by a company between any of its separate accounts or between any other investment account and one or more of its separate accounts unless, in case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made, and unless such transfer, whether into or from a separate account, is made (1) by a transfer of cash, or (2) by a transfer of securities having a valuation which could be readily determined in the marketplace, provided that such transfer of securities is approved by the Commissioner. — The Commissioner may authorize other transfers among such accounts if, in his opinion, such transfers would not be inequitable.~~

~~(e) — The company shall maintain in each such separate account assets with a value at least equal to the reserves and other contract liabilities with respect to such account, except as may otherwise be approved by the Commissioner.~~

~~(f) — Rules under any provision of the Insurance Law of this State or any regulation~~

applicable to the officers and directors of insurance companies with respect to conflicts of interest shall also apply to members of any separate account's committee, board or other similar body. No officer or director of such company nor any member of the committee, board or body of a separate account shall receive directly or indirectly any commission or any other compensation with respect to the purchase or sale of assets of such separate account.

#### **Section 6. — Filing of Contracts**

The filing requirements applicable to variable contracts shall be those filing requirements otherwise applicable under existing statutes and regulations of this state with respect to individual and group life insurance and annuity contract form filings, to the extent appropriate. In addition, each insurer shall file with the Commissioner a copy of each prospectus adopted by it for use in conjunction with the sale of any contract offered for sale in this state.

#### **Section 7. — Contracts Providing for Variable Benefits**

(a) — Any variable contract providing benefits payable in variable amounts delivered or issued for delivery in this state shall contain a statement of the essential features of the procedures to be followed by the insurer in determining the dollar amount of such variable benefits. Any such contract, including a group contract and any certificate issued thereunder, shall state that such dollar amount will vary to reflect investment experience and shall contain on its first page a clear statement to the effect that the benefits thereunder are on a variable basis.

(b) — Illustrations of benefits payable under any contract providing benefits payable in variable amounts shall not include projections of past investment experience into the future or attempted predictions of future investment experience; provided that nothing contained herein is intended to prohibit use of hypothetical assumed rates of return to illustrate possible levels of annuity payments.

(c) — No individual variable annuity contract calling for the payment of periodic stipulated payments shall be delivered or issued for delivery in this state unless it contains in substance the following provisions or provisions which in the opinion of the Commissioner are more favorable to the holders of such contracts:

(i) — A provision that there shall be a period of grace of one month, but not less than thirty (30) days, 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 such payment received during the period of grace shall be applied to produce the values under the contract arising therefrom;

(ii) — A provision that, at anytime within one (1) year from the date of default in making periodic stipulated payments to the insurer during the life of the annuitant, 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 the contract, and payment or reinstatement 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 such overdue payments and indebtedness shall be applied to produce the values under the contract arising therefrom;~~

~~(iii) A provision specifying the options available in the event of default in a periodic stipulated payment. Such options may include an option to surrender the contract for a cash value as determined by the contract, and shall include an option to receive a paid-up annuity if the contract is not surrendered for cash, the amount of such paid-up annuity being determined by applying the value of the contract at the annuity commencement date in accordance with the terms of the contract.~~

~~(d) Any individual variable annuity contract delivered or issued for delivery in this state shall stipulate the expense, mortality, and investment increment factors to be used in computing the dollar amount of variable benefits or other contractual payments or values thereunder, and may guarantee that expense and/or mortality results shall not adversely affect such dollar amounts.~~

~~In computing the dollar amount of variable benefits or other contractual payments or values under an individual variable annuity contract:~~

~~(i) The annual net investment increment assumption shall not exceed 5%, except with the approval of the Commissioner;~~

~~(ii) To the extent that the level of benefits may be affected by mortality results, the mortality factor shall be determined from the Annuity Mortality Table for 1949, Ultimate, or any modification of that table not having a higher mortality rate at any age, or, if approved by the Commissioner, from another table.~~

~~"Expense," as used in this paragraph, may exclude some or all taxes, as stipulated in the contract.~~

~~(e) The reserve liability for variable annuities shall be established pursuant to the requirements of the standard valuation law in accordance with actuarial procedures that recognize the variable nature of the benefits provided.~~

### **Section 8. Required Reports**

~~(a) Any insurer issuing individual variable contracts providing benefits in variable amounts shall mail to the contract holder at least once in each contract year after the first at his last address known to the company, a statement or statements reporting the investments held in the separate account and, in the case of contracts under which payments have not yet commenced, a statement reporting as of a date not more than four months previous to the date of mailing, (1) the number of accumulation units credited to such contracts and the dollar value of a unit, or (2) the value of the contractholder's account.~~

~~(b) — The insurer shall submit annually to the Insurance Commissioner a statement of the business of its separate account or accounts in such form as may be prescribed by the National Association of Insurance Commissioners.~~

### **Section 9. — Foreign Insurers**

~~If the law or regulation in the place of domicile of a foreign insurer provides a degree of protection to the policyholders and the public which is substantially equal to that provided by these regulations, the Commissioner, to the extent deemed appropriate by him in his discretion, may consider compliance with such law or regulation as compliance with these regulations.~~

### **Section 10. — Examination of Agents and Other Persons**

~~(a) — No agent shall be eligible to sell or offer for sale a contract on a variable basis unless prior to making any solicitation or sale of such a contract, he also be licensed as a variable contract agent. Any agent who participates only in the sale or offering for sale of variable contracts that are not registered under the federal Securities Act of 1933 need not be licensed as a variable contract agent.~~

~~(b) — Any agent applying for a license as a variable contract agent shall do so by filing with this Department an application in such form as the Commissioner shall prescribe.~~

~~(c) — The licensing as a variable contract agent of any agent complying with paragraph b shall not become effective until such agent shall have satisfactorily passed a written examination upon securities and variable contracts. Such examination shall be divided into two parts. Part I shall be on securities generally. Part II shall deal with variable contracts, and shall be composed of at least fifteen questions, but not more than fifty questions, concerning the history, purpose, regulation, and sale of contracts on a variable basis.~~

~~(d) — The examination will be given in such places and at such times as the Commissioner shall from time to time designate. Upon application for license as a variable contract agent, the applicant shall be notified of the date of the next examination.~~

~~(e) — The examination recommended for the testing of variable contract agents by the National Association of Insurance Commissioners is hereby adopted for use in this state in its present form, or as it may be amended, and it shall be used in all tests given pursuant to this regulation.~~

~~(f) — Any applicant for license as a variable contract agent shall not be required to take Part I of the NAIC examination if, at the time of application, evidence is presented that the applicant (1) has previously passed a satisfactory alternative examination as defined in paragraph d of Section 3 of these rules, or (2) is currently registered with the federal Securities and Exchange Commission as a broker dealer, or is currently associated with a broker dealer and has met qualification requirements with respect to such association.~~

~~(g) — Every applicant applying for a license as a variable contract agent shall satisfactorily complete Part II of the examination required by paragraph c with a grade of at least seventy percent (70%), or shall present evidence of successful completion of either a variable contract examination given under the supervision of an Insurance Department of any State or Territory of the United States which has adopted Part II of the examination recommended for the testing of variable contract agents by the National Association of Insurance Commissioners or has been examined and licensed by any such department prior to its adoption of the National Association of Insurance Commissioners Model Regulation.~~

~~(h) — Any applicant who fails to pass Part I of the examination required by paragraph c may not take Part I of the examination again until 30 days after initially taking it. After a second such failure, such applicant may not take the examination again until 60 days after taking the second examination. After a third and any subsequent such failure, such applicant may not take the examination again until 90 days after the third and any subsequent examinations.~~

~~Any applicant failing to pass Part II of the examination may take Part II again 30 days after the first and any subsequent examinations.~~

~~(i) Every application for a license as a variable contract agent shall be accompanied by an examination fee of \$10.00. A fee of \$10.00 will be charged for each re-examination administered to an applicant.~~

~~(j) Report of the results of any examination given pursuant to this regulation shall be made by the Department on "Commissioner's Report of Examination No. \_\_\_\_\_" a copy of which is attached hereto as Exhibit A.~~

~~(k) — Except as modified by these regulations, the regulations of this Department governing the licensing of life insurance agents including examinations therefor shall apply hereto.~~

~~(l) Part I of the written examination provided for in paragraph c shall also be administered to other persons who are not required to be licensed to sell life insurance in this state upon their submission of the proper application and payment of the examination fee.~~

~~(m) — Results of the examination administered pursuant to paragraph c will be reported by this Department to the Securities and Exchange Commission (as to Part I), and to the insurer represented by the applicant. In addition, examination results will be reported by this Department to any other State Insurance Department requesting confirmation of the examination grade, either upon request of such Department or upon request of the applicant or the insurer represented by him.~~

~~(n) — Records of the examination grade of each applicant upon an examination administered by this Department, or upon an examination deemed to be a satisfactory alternative examination and administered by another agency or authority and reported to this Department, will be retained in the file pertaining to said applicant.~~

~~(o) — Any person licensed in this state as a variable contract agent shall immediately report to the Commissioner (1) any suspension or revocation of his variable contract agent's license or life insurance agent's license in any other State or Territory of the United States, (2) the imposition of any disciplinary sanction (including suspension or expulsion from membership, suspension or revocation of or denial of registration) imposed upon him by any national securities exchange, or national securities association, or any Federal, or State or Territorial agency with jurisdiction over securities or contracts on a variable basis, (3) any judgment or injunction entered against him on the basis of conduct deemed to have involved fraud, deceit, misrepresentation, or violation of any insurance or securities law or regulation. Failure to so report any such action within ten (10) days of the date thereof shall constitute adequate grounds for revocation of the license issued hereunder.~~

~~(p) — The Commissioner may reject any application or suspend or revoke or refuse to renew any variable contract agent's license upon any grounds that would bar such applicant or such agent from being licensed to sell life insurance contracts in this state. The rules governing any proceeding relating to the suspension or revocation of a life insurance agent's license shall also govern any proceeding for suspension or revocation of a variable contract agent's license.~~

~~(q) — A variable contract agent's license shall continue in force in the same manner as other agent's licenses and subject to the same appointment requirements.~~

#### **Section 11. — Sales Practices**

~~(a) — All variable contract agents shall be subject to the same requirements of law and subject to the same regulations with respect to sales practices as life insurance agents.~~

~~(b) — In connection with the sale of variable contracts to individuals (as distinguished from group policies) each insurer shall require its agents to make a reasonable effort to ascertain facts from each individual prospect concerning the prospect's age, family responsibilities, estimated income, estimated worth, and such other facts as are relevant to demonstrate the suitability of a variable contract as an investment by the individual concerned. In the event that any part of the purchase price of the variable contract is to be financed directly or indirectly through surrender for cash value or borrowing against loan values of any existing insurance policy, this fact shall be reported giving full details as to the type and date of the policy or policies, the name of the insurer, and the amount of funds to be obtained therefrom. A written memorandum containing all such information shall be prepared by the agent and reviewed by his general agent or such other person as the insurer shall designate, which memorandum shall be reviewed and initialed by the general agent or other person designated, prior to delivery of the contract. Such memorandum shall be retained for a period of not less than three (3) years, and shall be made available for inspection by the Commissioner or his representative upon demand.~~

#### **Section 12. — Promulgation of Rules and Effective Date**

~~(a) — These rules are jointly promulgated by the Insurance Commissioner and the Wyoming State Board of Insurance Agent's Examiners.~~

~~(b) These rules shall become effective twenty days after the date of filing thereof in the Office of the Secretary of State.~~



~~EXHIBIT A~~

~~Commissioner's Report of Examination No. \_\_\_\_\_~~

~~STATE OF WYOMING DEPARTMENT OF INSURANCE~~

~~APPROVAL OF LICENSE AS A VARIABLE CONTRACT AGENT~~

~~\_\_\_\_\_  
Name of Applicant~~

~~When validated by the Department of Insurance, this will be your notice of approval of your qualification for a Variable Contract agent's license.~~

~~\_\_\_\_\_  
Address~~

~~Enter Name and Address of broker or dealer and of the company to which approval of Application for Variable Contract agent's license should be directed.~~

~~\_\_\_\_\_  
Broker Dealer~~

~~LICENSE APPROVED DATE \_\_\_\_\_~~

~~\_\_\_\_\_  
Address~~

~~\_\_\_\_\_  
Commissioner~~

~~\_\_\_\_\_  
Company~~

~~TEST SCORE: NAIC EXAMINATION  
Securities \_\_\_\_\_ Part I \_\_\_\_\_  
Variable Contracts \_\_\_\_\_ Part II \_\_\_\_\_~~

~~\_\_\_\_\_  
Address~~

~~(If Test Waived, Indicate Variable Contract Regulation Section Conferring Exemption)~~

~~If NAIC Examination not taken, then name of General Securities examination acceptable to the SEC:~~

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Test Score \_\_\_\_\_ **REPEALED**~~

**CHAPTER 66**  
**VARIABLE ANNUITY CONTRACT REGULATION**

**Section 1. Authority**

These regulations governing variable annuity contracts. They are promulgated by the authority of and pursuant to the Wyoming Administrative Procedure Act, W.S. §§ 16-3-101 through 16-3-115, and the Wyoming Insurance Code, W.S. §§ 26-2-110, 26-9-217 and 26-16-502.

**Section 2. Definitions**

“Variable annuity,” as used in this regulation shall mean any policy or contract which provides for annuity benefits which may vary according to the investment experience of any separate account or accounts maintained by the insurer for such policy or contract.

**Section 3. Qualification of Insurance Companies To Issue Variable Annuities**

(a) A company shall not deliver or issue for delivery variable annuities within this state unless it is licensed or organized to do a life insurance or annuity business in this state 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 connection, the commissioner shall consider among other things:

(i) The history and financial condition of the company;

(ii) The character, responsibility and fitness of the officers and directors of the company; and

(iii) In the case of an insurer other than a domestic insurer, whether the statutes or regulations of the jurisdiction of its incorporation provide a degree of protection to policyholders and the public which is substantially equal to that provided by the Wyoming Insurance Code and such rules and regulations as are promulgated.

(b) If the company is a subsidiary of an admitted life insurance company, or affiliated with a company by common management or ownership, it may be deemed by the commissioner to have satisfied the provisions of subsection (a)(ii) if either it or the admitted life company satisfies the provisions of subsection (a)(ii). Companies licensed and having a satisfactory record of doing business in this state for a period of at least three (3) years may be deemed to have satisfied the commissioner with respect to subsection (a)(ii) above.

(c) Before any company shall deliver or issue for delivery variable annuities within this state it shall submit to the commissioner:

(i) A general description of the kinds of variable annuities it intends to issue;

(ii) If requested by the commissioner, a copy of the statutes and regulations of its state of domicile under which it is authorized to issue variable annuities; and

(iii) If requested by the commissioner, biographical data with respect to officers and directors of the company on the NAIC uniform biographical data forms.

#### **Section 4. Separate Account**

(a) A domestic company issuing variable annuities shall establish one or more separate accounts pursuant to W.S. § 26-16-502, subject to the following provisions:

(i) Except as may be provided with respect to reserves for guaranteed benefits and funds referred to in subsection (a)(ii):

(A) Amounts allocated to a separate account and its accumulations may be invested and reinvested without regard to any requirements or limitations prescribed by the laws of this state governing the investments of life insurance companies; and

(B) The investments in the separate account or accounts shall not be taken into account in applying the investment limitations otherwise applicable to the investments of the company.

(ii) Reserves for benefits guaranteed as to dollar amount and duration and funds guaranteed as to principal amount or stated rate of interest may be maintained in a separate account if a portion of the assets of the separate account at least equal to the reserve liability is invested in accordance with the laws and regulations of this state governing the investments of life insurance companies. That portion of the assets also shall not be taken into account in applying the investment limitations otherwise applicable to the investments of the company.

(iii) With respect to seventy-five percent (75%) of the market value of the total assets in a separate account a company shall not purchase or otherwise acquire the securities of an issuer, other than securities issued or guaranteed as to principal or interest by the United States, if immediately after the purchase or acquisition the market value of the investment, together with prior investments of the separate account in the security taken at market, would exceed ten percent (10%) of the market value of the assets of the separate account. The commissioner, may waive this limitation if, in the opinion of the commissioner, the waiver will not render the operation of the separate account hazardous to the public or policyholders in this state.

(iv) Unless otherwise permitted by law or approved by the commissioner, a company shall not purchase or otherwise acquire for its separate accounts the voting securities of an issuer if, as a result of the acquisition, the insurance company and its separate accounts, in the aggregate, will own more than ten percent (10%) of the total issued and outstanding voting securities of the issuer. This shall not apply with respect to securities held in separate accounts

where the voting rights are exercisable only in accordance with instructions from persons having interest in the accounts.

(v) The limitations provided in Paragraphs (iii) and (iv) of this subsection shall not apply to investments with respect to a separate account in the securities of an investment company registered under the Investment Company Act of 1940, if the investments of the investment company comply in substance with Paragraphs (iii) and (iv).

(b) Unless otherwise approved by the commissioner, assets allocated to a separate account shall be valued at their market value on the date of valuation, or if there is no readily available market, then as provided under the terms of the contract or the rules or other written agreement applicable to the separate account. Unless otherwise approved by the commissioner, the portion, if any, of the assets of the separate account equal to the company's reserve liability with regard to the benefits and funds referred to in Subsection a(ii) shall be valued in accordance with the rules otherwise applicable to the company's assets.

(c) To the extent provided under the applicable contracts, that portion of the assets of a separate account equal to the reserves and other contract liabilities with respect to the account shall not be chargeable with liabilities arising out of any other business the company may conduct.

(d) Notwithstanding any other provisions of law, a company may:

(i) With respect to a separate account registered with the Securities and Exchange Commission as a unit investment trust, exercise voting rights in connection with securities of a regulated investment company registered under the Investment Company Act of 1940 and held in such separate accounts in accordance with instructions from persons having interests in such accounts ratably as determined by the company; or

(ii) With respect to a separate account registered with the Securities and Exchange Commission as a management investment company, establish for the account a committee, board or other body, whose members may or may not be otherwise affiliated with the company and may be elected to membership by the vote of persons having interests in the account ratably as determined by the company. The committee, board or other body may have the power, exercisable alone or in conjunction with others, to manage the separate account and the investment of its assets.

(iii) A company, committee, board or other body may make other provisions in respect to a separate account as may be deemed appropriate to facilitate compliance with requirements of any federal or state law now or hereafter in effect if the commissioner approves the provisions as not hazardous to the public or the company's policyholders in this state.

(e) No sale, exchange or other transfer of assets may be made by a company between any of its separate accounts or between any other investment account and one or more of its separate accounts unless, in the case of a transfer into a separate account, the transfer is made solely to establish the account or to support the operation of the contracts with respect to the

separate account to which the transfer is made, and unless the transfer, whether into or from a separate account, is made:

(i) By a transfer of cash; or

(ii) By a transfer of securities having a valuation which could be readily determined in the marketplace, if that transfer of securities is approved by the commissioner.

(iii) The commissioner may authorize other transfers among such accounts, if, in his opinion, such transfers would not be inequitable.

(f) The company shall maintain in each such separate account assets with a value at least equal to the reserves and other contract liabilities with respect to the account, except as may otherwise be approved by the commissioner.

(g) Rules under any provision of the insurance laws of this state or any regulation applicable to the officers and directors of insurance companies with respect to conflict of interest shall also apply to members of a separate accounts committee, board or other similar body. No officer or director of the company nor a member of the committee, board or body of a separate account shall receive directly or indirectly any commission or any other compensation with respect to the purchase or sale of assets of the separate account.

## **Section 5. Filing of Contracts**

The filing requirements applicable to variable annuities shall be those filing requirements otherwise applicable under existing statutes and regulations of this state with respect to individual and group life insurance and annuity contract form filings, to the extent appropriate. Contract form filings shall also include a certification by a member of the American Academy of Actuaries as to the compliance with Section 7. In addition, each insurer shall file with the Commissioner a copy of each prospectus adopted by it for use in conjunction with the sale of any contract offered for sale in this state.

## **Section 6. Variable Annuity Contracts**

(a) A variable annuity providing benefits payable in variable amounts delivered or issued for delivery in this state shall contain a statement of the essential features of the procedures to be followed by the insurance company in determining the dollar amount of variable benefits. A contract, including a group contract and a certificate in evidence of variable benefits issued under the contract, shall state that the dollar amount will vary to reflect investment experience and shall contain on its first page a clear statement to the effect that the benefits of the contract are on a variable basis.

(b) Illustrations of benefits payable under any variable annuity shall not include projections of past investment experience into the future or attempted predictions of future investment experience. Nothing contained herein is intended to prohibit use of hypothetical assumed rates of return to illustrate possible levels of benefits.

(c) No individual variable annuity contract calling for the payment of periodic stipulated payments shall be delivered or issued for delivery in this state unless it contains in substance the following provision or provisions which in the opinion of the commissioner are more favorable to the holders of contracts:

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

(ii) A provision that there shall be a reinstatement period in accordance with W.S. 26-16-110.

(d) A variable annuity contract delivered or issued for delivery in this state shall stipulate the investment increment factors to be used in computing the dollar amount of variable benefits or other variable contractual payments or values thereunder, and may guarantee that expense and mortality results shall not adversely affect the dollar amounts.

(i) In the case of an individual variable annuity contract under which the expense and/or mortality results may adversely affect the dollar amount of benefits.

(A) The expense and mortality factors used in computing the dollar amount of variable benefits or other contractual payments or values shall be stipulated in the contract.

(B) Actual emerging expense and mortality results may be reflected in the dollar amount of benefits only through a mortality and expense charge that may vary only within a specified range indicated in the policy.

(ii) In computing the dollar amount of variable benefits or other contractual payments or values under an individual variable annuity contract:

(A) The annual net investment increment assumption shall not exceed five percent (5%) except with the approval of the commissioner.

(B) To the extent that the level of benefits may be affected by future mortality results, the mortality factor shall be determined from the Annuity 2000 Mortality Table, or any modification of that table not having a lower life expectancy at any age, or any annuity mortality table adopted after 1996 by the National Association of Insurance Commissioners that is approved by the commissioner for this purpose.

(C) “Expense” as used in this subsection, may exclude some or all taxes, as stipulated in the contract.

(e) The reserve liability for variable annuities shall be established pursuant to the requirements of W.S. § 26-6-201 et seq. in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

## **Section 7. Nonforfeiture Benefits**

(a) This section shall not apply to any:

(i) Reinsurance;

(ii) Group annuity contract purchases 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, or other than plans providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended;

(iii) Premium deposit fund;

(iv) Investment annuity;

(v) Immediate annuity;

(vi) Deferred annuity contract after annuity payments have commenced;

(vii) Reversionary annuity; or

(viii) To any contract which is to be delivered outside this state through an insurance producer or other representative of the company issuing the contract.

(b) To the extent that a variable annuity contract provides benefits that do not vary in accordance with the investment performance of a separate account before the annuity commencement date, the contract shall contain provisions that satisfy the requirements of W.S. §§ 26-16-401 et seq. and shall not otherwise be subject to this section.

(c) For contracts issued on or after the effective date of this regulation no variable annuity contract, except as stated in Subsections (a) and (b), shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or provisions which in the opinion of the commissioner are at least as favorable to the contractholder, upon cessation of payment of considerations under the contract:

(i) That upon cessation of payment of considerations under a contract, the company will grant a paid-up annuity benefit on a plan described in the contract that complies with Subsection (g). The description will include a statement of the mortality table, if any, and guaranteed or assumed interest rates used in calculating annuity payments.

(ii) If a contract provides for a lump sum settlement at maturity or at any other time, that upon surrender of the contract at or prior to the commencement of annuity payments, the company will pay in lieu of a paid-up annuity benefit a cash surrender benefit described in the contract that complies with Subsection (h). The contract may provide that the company reserves the right, at its option, to defer the determination and payment of a cash surrender benefit for any period during which the New York Stock Exchange is closed for trading (except for normal holiday closing) or when the Securities and Exchange Commission has determined that a state of emergency exists that may make determination and payment impractical.

(iii) A statement that a paid-up annuity, cash surrender or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract or any prior withdrawals from or partial surrenders of the contract.

(d) The minimum values as specified in this section of paid-up annuity, cash surrender or death benefits available under a variable annuity contract shall be based upon nonforfeiture amounts meeting the requirements of this subsection.

(i) The minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to that time at rates of interest equal to the net investment return (as hereinafter defined) of the net considerations (as defined in Subsection (e)) paid prior to that time, decreased by the sum of Paragraphs (A) through (D) below:

(A) Any prior withdrawals from or partial surrenders of the contract accumulated at rates of interest equal to the net investment return;

(B) An annual contract charge of \$50, accumulated at rates of interest equal to the net investment return;

(C) Any premium tax paid by the company for the contract, accumulated at rates of interest equal to the net investment return; and

(D) The amount of any indebtedness to the company on the contract, including interest due and accrued.

(ii) "Net investment return" means that the rate of investment return to be credited to the variable annuity contract in accordance with the terms of the contract after deductions for tax



charges, if any, and for asset charges either at a rate not in excess of that stated in the contract, or in the case of a contract issued by a nonprofit corporation under which the contractholder participates fully in the investment, mortality and expense experience of the account, in an amount not in excess of the actual expense not offset by other deductions. The net investment return to be credited to a contract shall be determined at least monthly.

(e) The net considerations for a given contract year used to define the minimum nonforfeiture amount in Subsection (d) shall be an amount equal to eighty-seven and one-half percent (87.5%) of the gross considerations credited to the contract during that contract year.

(f) Demonstration that a contract's nonforfeiture amounts comply with this section shall be based on the following assumptions:

(i) Values should be tested at the end of each of the first twenty (20) contract years;

(ii) A net investment return of seven percent (7%) per year should be used;

(iii) If the contract provides for transfers to another separate account or to another investment division within the same separate account, one transfer per contract year should be assumed;

(iv) In determining the state premium tax applicable to the contract, the state of residence should be assumed to equal the state of delivery;

(v) With respect to contracts providing for periodic considerations, monthly considerations of \$100 should be assumed for each of the first 240 months;

(vi) With respect to contracts providing for a single consideration, a \$10,000 single consideration should be assumed; and

(g) Any paid-up annuity benefit available under a variable annuity contract shall be such 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.

(h) For variable 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 computed after the request for surrender is received by the company. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

(i) A variable 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.

(j) Notwithstanding the requirements of this section, a variable annuity contract may provide under the situations specified in Paragraph (i) or (ii) of this subsection that the company, at its option, may cancel the annuity and pay the contractholder its accumulated value and by such payment be released of any further obligation under the contract:

(i) If, at the time the annuity becomes payable, the accumulated value is less than \$2,000, or would provide an initial income of less than \$20 per month; or

(ii) If, prior to the time the annuity becomes payable under a periodic payment variable annuity contract, no considerations have been received under the contract for a period of two (2) full years and the total considerations paid prior to such period, reduced to reflect any partial withdrawals from or partial surrenders of the contract, and the accumulated value amount to less than \$2,000.

(k) For a variable 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 Subsection (d) of this section, additional benefits payable in the event of total and permanent disability, as reversionary annuity or deferred reversionary annuity benefits, or as other policy benefits additional to life insurance, endowment and annuity benefits, and considerations for all such 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 section. The inclusion of additional benefits shall not be required in any paid-up benefits, unless the additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits.

## **Section 8. Required Reports**

(a) A company issuing individual variable annuities shall mail to the contractholder at least once in each contract year after the first at his or her last address known to the company, a statement or statements reporting the investments held in the separate account. The company shall submit annually to the insurance commissioner a statement of business of its separate account or accounts in such form as may be prescribed by the National Association of Insurance Commissioners.

(b) A company issuing individual variable annuities shall mail to the contractholder at least once in each contract year after the first at his or her last address known to the company a statement reporting as of a date not more than four (4) months previous to the date of mailing. In the case of an annuity contract under which payments have not yet commenced, the statement shall contain:

- (i) The number of accumulation units credited to the contract and the dollar value of a unit; or
- (ii) The value of the contractholder's account.

**Section 9. 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 substantially equal to that provided by these regulations, the commissioner, to the extent deemed appropriate by the commissioner, may consider compliance with that law or regulation as compliance with these regulations.

**Section 10. Qualifications of Insurance Producers for the Sale of Variable Annuities**

Any person selling or offering for sale a variable annuity contract shall have a valid license under W.S. § 26-9-206, authorizing the solicitation of variable life and variable annuity products as defined in W.S. § 26-9-207(a)(v), and shall provide verification of required registration by the Financial Industry Regulatory Authority (FINRA) and have successfully completed the Series 6 or Series 7 and Series 63 examinations, or successfully completed the examination for other applicable FINRA licenses.

**Section 11. Effective Date.**

This Rule shall become effective immediately upon filing with the Secretary of State.

**CHAPTER 67**  
**VARIABLE LIFE INSURANCE CONTRACT REGULATION**

**Section 1. Authority**

These regulations governing variable life insurance contracts. They are promulgated by the authority of and pursuant to the Wyoming Administrative Procedure Act, W.S. §§ 16-3-101 through 16-3-115, and the Wyoming Insurance Code, W.S. §§ 26-2-110, 26-9-217 and 26-16-502.

**Section 2. Definitions**

As used in this regulation:

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

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

(c) “Benefit base” means the amount to which the net investment return is applied.

(d) “Control” (including the terms “controlling,” “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing more than ten percent (10%) of the voting securities of any other person. This presumption may be rebutted by a showing made to the satisfaction of the commissioner that control does not exist in fact. The commissioner may determine, after furnishing to all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(e) “Flexible premium policy” means any variable life insurance policy other than a scheduled premium policy as specified in Subsection (o) of this section.

(f) “General account” means all assets of the insurer other than assets in separate accounts established pursuant to W.S. § 26-16-502 of the insurance laws of this state or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer, whether or not for variable life insurance.

(g) “Incidental insurance benefit” means all insurance benefits in a variable life insurance policy, other than the variable death benefit and the minimum death benefit, including but not limited to, accidental death and dismemberment benefits, disability benefits, guaranteed insurability options, family income or term riders.

(h) “Minimum death benefit” means the amount of the guaranteed death benefit, other than incidental insurance benefits, payable under a variable life insurance policy regardless of the investment performance of the separate account.

(i) “Net investment return” means the rate of investment return in a separate account to be applied to the benefit base.

(j) “Person” means an individual, corporation, partnership, association, trust or fund.

(k) “Policy processing day” means the day on which charges authorized in the policy are deducted from the policy’s cash value.

(l) “Scheduled premium policy” means a variable life insurance policy under which both the amount and timing of premium payments are fixed by the insurer.

(m) “Separate account” means a separate account established pursuant to W.S. § 26-16-502 or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.

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

(o) “Variable life insurance policy” means an individual policy that provides for life insurance the amount or duration of which varies according to the investment experience of any separate account or accounts established and maintained by the insurer as to the policy, pursuant to W.S. § 26-16-502 or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.

### **Section 3. Qualification of Insurer to Issue Variable Life Insurance**

The following requirements are applicable to all insurers either seeking authority or having authority to issue variable life insurance in Wyoming.

(a) **Licensing and Approval to do Business in Wyoming.** An insurer shall not deliver or issue for delivery in this state any variable life insurance policies unless:

(i) The insurer is licensed to transact life insurance business in Wyoming;

(ii) The insurer has obtained the written approval of the commissioner for the issuance of variable life insurance policies in Wyoming. The commissioner shall grant written approval only after the commissioner has found that:

(A) The plan of operation for the issuance of variable life insurance policies is not unsound;

(B) The general character, reputation and experience of the management and those persons or firms proposed to supply consulting, investment, administrative or custodial services to the insurer are such as to reasonably assure competent operation of the variable life insurance business of the insurer in Wyoming; and

(C) The present and foreseeable future financial condition of the insurer and its method of operation in connection with the issuance of such policies is not likely to render its operation hazardous to the public or its policyholders in Wyoming. The commissioner shall consider, among other things:

(I) The history of operation and financial condition of the insurer;

(II) The qualifications, fitness, character, responsibility, reputation and experience of the officers and directors and other management of the insurer and those persons or firms proposed to supply consulting, investment, administrative or custodial services to the insurer;

(III) The law and regulations under which the insurer is authorized in its state of domicile to issue variable life insurance policies. The state of entry of an alien insurer shall be deemed its state of domicile for this purpose; and

(IV) If the insurer is a subsidiary of, or is affiliated by common management or ownership with another company, its relationship to such other company and the degree to which the requesting insurer, as well as the other company, meets these standards.

(b) **Filing for Approval to do Business in Wyoming.** The commissioner may, at his discretion, require that an insurer, before it delivers or issues for delivery any variable life insurance policy in Wyoming, file with the department the following information for the consideration of the commissioner in making the determination required by Subsection a(ii) of this section:

(i) Copies of and a general description of the variable life insurance policies it intends to issue;

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

(iii) With respect to any separate account maintained by an insurer for a variable life insurance policy, a statement of the investment policy the issuer intends to follow for the investment of the assets held in the separate account and a statement of procedures for changing the investment policy. The statement of investment policy shall include a description of the investment objectives intended for the separate account;

(iv) A description of any investment advisory services contemplated as required by Section 6(j);

(v) A copy of the statutes and regulations of the state of domicile of the insurer under which it is authorized to issue variable life insurance policies;

(vi) Biographical data with respect to officers and directors of the insurer on the NAIC Uniform Biographical Data Form; and

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

(c) **Use of Sales Materials.** An insurer authorized to transact variable life insurance business in Wyoming shall file with the commissioner all sales material, advertising material, or descriptive literature or other materials of any kind in connection with its variable life insurance business as required by W.S. § 26-15-110(b), and shall not use any of these materials which are false, misleading, deceptive or inaccurate.

(d) **Requirements Applicable to Contractual Services.** Any material contract between an insurer and suppliers of consulting, investment, administrative, sales, marketing, custodial or other services with respect to variable life insurance operations shall be in writing and provide that the supplier of such services shall furnish the commissioner with any information or reports in connection with the services which the commissioner may request in order to ascertain whether the variable life insurance operations of the insurer are being conducted in a manner consistent with these regulations, and any other applicable law or regulations.

(e) **Reports to the Commissioner.**

(i) An insurer authorized to transact the business of variable life insurance in Wyoming shall submit to the commissioner, in addition to any other materials that may be required by this regulation or any other applicable laws or regulations:

(A) An annual statement of the business of its separate account or accounts in such forms as may be prescribed by the NAIC; and

(B) Prior to the use in Wyoming any information furnished to applicants as provided for in Section 7; and

(C) Prior to the use in Wyoming the form of any of the reports to policyholders as provided for in Section 9; and

(D) Such additional information concerning its variable life insurance operations or its separate accounts as the commissioner shall deem necessary.

(ii) Any material submitted to the commissioner under this section shall be disapproved if it is found to be false, misleading, deceptive or inaccurate in any material respect and, if previously distributed, the commissioner shall require the distribution of amended material.

(iii) **Authority of Commissioner to Disapprove.** Any material required to be filed with and approved by the commissioner shall be subject to disapproval if at any time it is found not to comply with the standards established in this regulation.

#### **Section 4. Insurance Policy Requirements**

(a) **Filing of Variable Life Insurance Policies.** All variable life insurance policies, and all riders, endorsements, applications and other documents that are to be made a part of the policy and which relate to the variable nature of the policy, shall be filed with the commissioner and approved by him or her prior to delivery or issuance for delivery in Wyoming. In addition, each insurer shall file with the Commissioner a copy of each prospectus adopted by it for use in conjunction with the sale of any contract offered for sale in Wyoming.

(i) The procedures and requirements for filing and approval shall be the same as those otherwise applicable to other life insurance policies.

(ii) The commissioner may approve variable life insurance policies and related forms with provisions the commissioner deems to be not less favorable to the policyholder and the beneficiary than those required by this regulation.

(b) **Mandatory Policy Benefit and Design Requirements.** Variable life insurance policies delivered or issued for delivery in this state shall comply with the following minimum requirements.

(i) Mortality and expense risks shall be borne by the insurer. The mortality and expense charges shall be subject to the maximums stated in the contract.



(ii) For scheduled premium policies, a minimum death benefit shall be provided in an amount at least equal to the initial face amount of the policy so long as premiums are duly paid (subject to the provisions of Subsection (d) of this section);

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

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

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

(vi) The cash value of each variable life insurance policy shall be determined at least monthly. The method of computation of cash values and other nonforfeiture benefits, as described either in the policy or in a statement filed with the commissioner of the state in which the policy is delivered, or issued for delivery, shall be in accordance with actuarial procedures that recognize the variable nature of the policy. The method of computation shall be such that, if the net investment return credited to the policy at all times from the date of issue should be equal to the assumed investment rate with premiums and benefits determined accordingly under the terms of the policy, then the resulting cash values to the minimum values required by W.S. § 26-16-201, et seq, for a general account policy with such premiums and benefits. The assumed investment rate shall not exceed the maximum interest rate permitted under the Standard Nonforfeiture Law of Wyoming. If the policy does not contain an assumed investment rate this demonstration shall be based on the maximum interest rate permitted under the Standard Nonforfeiture Law. The method of computation may disregard incidental minimum guarantees as to the dollar amounts payable. Incidental minimum guarantees include, for example, but are not limited to, a guarantee that the amount payable at death or maturity shall be least equal to the amount that otherwise would have been payable if the net investment return credited to the policy at all times from the date of issue had been equal to the assumed investment rate.

(vii) The computation of values required for each variable life insurance policy may be based upon such reasonable and necessary approximations as are acceptable to the commissioner.

(c) **Mandatory Policy Provisions.** Every variable life insurance policy filed for approval in this state shall contain at least the following:

(i) The cover page or pages corresponding to the cover page of each policy shall contain:

(A) A prominent statement in either contrasting color or in bold-faced type that the amount or duration of death benefit may be variable or fixed under specified conditions;

(B) A prominent statement in either contrasting color or in bold-faced type that cash values may increase or decrease in accordance with the experience of the separate account subject to any specified minimum guarantees;

(C) A statement describing any minimum death benefit required pursuant to Subsection (b)(ii) of this section;

(D) The method, or a reference to the policy provision which describes the method, for determining the amount of insurance payable at death;

(E) To the extent permitted by state law, a captioned provision that the policyholder may return the variable life insurance policy within ten (10) days of receipt of the policy by the policyholder and receive a refund equal to the sum of the difference between the premiums paid including any policy fees or other charges and the amounts allocated to any separate accounts under the policy and the value of the amounts allocated to any separate accounts under the policy, on the date the returned policy is received by the insurer or its insurance producer. Until such time as state law authorizes the return of payments as calculated in the preceding sentence, the amount of the refund shall be the total of all premium payments for such policy.

(F) Such other items as are currently required for fixed benefit life insurance policies and which are not inconsistent with this regulation.

(ii) Policy premiums

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

(B) For flexible premium policies, a provision for a grace period beginning on the policy processing day when the total charges authorized by the policy that are necessary to keep the policy in force until the next policy processing day exceed the amounts available under the policy to pay such charges in accordance with the terms of the policy. The grace period shall end on a date not less than sixty-one (61) days after the mailing date of the Report to Policyholders required by Section 9(c).

(C) The death benefit payable during the grace period will equal the death benefit in effect immediately prior to such period less any overdue charges. If the policy processing days occur monthly, the insurer may require the payment of not more than three (3) times the charges that were due on the policy processing day on which the amounts available under the policy were insufficient to pay all charges authorized by the policy that are necessary to keep the policy in force until the next policy processing day.

(iii) For scheduled premium policies, a provision that the policy will be reinstated at any time within three (3) years from the date of default upon the written application of the insured and evidence of insurability, including good health, satisfactory to the insurer, unless the cash surrender value has been paid or the period of extended insurance has expired, upon the payment of any outstanding indebtedness arising subsequent to the end of the grace period following the date of default together with accrued interest thereon to the date of reinstatement and payment of an amount not exceeding all overdue premiums with interest at a rate not exceeding six percent (6%) per annum compounded annually and any indebtedness in effect at the end of the grace period following the date of default with interest at a rate not exceeding six percent (6%) per annum compounded annually.

(iv) A full description of the benefit base and of the method of calculation and application of any factors used to adjust variable benefits under the policy;

(v) A provision specifying what documents constitute the entire insurance contract under Wyoming law;

(vi) A designation of the officers who are empowered to make an agreement or representation on behalf of the insurer and an indication that statements by the insured, or on his or her behalf, shall be considered as representations and not warranties;

(vii) An identification of the owner of the insurance contract;

(viii) A provision setting forth conditions or requirements as to the designation, or change of designation, of a beneficiary and a provision for disbursement of benefits in the absence of a beneficiary designation;

(ix) A statement of any conditions or requirements concerning the assignment of the policy;

(x) A description of any adjustments in policy values to be made in the event of misstatement of age of the insured;

(xi) A provision that the policy shall be incontestable by the insurer after it has been in force for two (2) years during the lifetime of the insured. However, any increase in the amount of the policy's death benefits subsequent to the policy issue date, which occurred upon a new application or request of the owner and was subject to satisfactory proof of the insured's insurability, shall be incontestable after the increase has been in force, during the lifetime of the insured, for two (2) years from the date of issue of increase;

(xii) A provision stating that the investment policy of the separate account shall not be changed without the approval of the insurance commissioner of the state of domicile of the insurer, and that the approval process is on file with the commissioner of Wyoming;

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

(A) For up to six (6) months from the date of request, if the payments are based on policy values which do not depend on the investment performance of the separate account after making a written request and receiving written approval of the commissioner; or

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

(xiv) If settlement options are provided, at least one option shall be provided on a fixed basis only;

(xv) A description of the basis for computing the cash value and the surrender value under the policy shall be included;

(xvi) Premiums or charges for incidental insurance benefits shall be stated separately;

(xvii) Any other policy provision required by this regulation;

(xviii) Such other items as are currently required for fixed benefit life insurance policies and are not inconsistent with this regulation; and

(xix) A provision for nonforfeiture insurance benefits. The insurer may establish a reasonable minimum cash value below which any nonforfeiture insurance options will not be available.

(d) Policy Loan Provisions. Every variable life insurance policy, other than term insurance policies and pure endowment policies delivered or issued for delivery in this state shall contain provisions which are not less favorable to the policyholder than a provision for policy loans after the policy has been in force for three (3) full years which provides the following:

(i) The policy's cash surrender value may be borrowed in accordance with W.S. 26-16-108(b).

(ii) The amount borrowed shall bear interest at a rate not to exceed that permitted by W.S. 26-16-108(g).

(iii) Any indebtedness shall be deducted from the proceeds payable on death.

(iv) Any indebtedness shall be deducted from the cash surrender value upon surrender or in determining any nonforfeiture benefit.

(v) For scheduled premium policies, whenever the indebtedness exceeds the cash surrender value, the insurer shall give notice of any intent to cancel the policy in accordance with W.S. 26-16-108(c)(ii). For flexible premium policies, whenever the total charges authorized by the policy that are necessary to keep the policy in force until the next following policy processing day exceed the amounts available under the policy to pay the charges, a report must be sent to the policyholder containing the information specified by Section 9(c).

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

(vii) The policy may specify a reasonable minimum amount that may be borrowed at any time but the minimum shall not apply to any automatic premium loan provision.

(viii) No policy loan provision is required if the policy is under extended insurance nonforfeiture option.

(ix) The policy loan provisions shall be constructed so that variable life insurance policyholders who have not exercised such provisions are not disadvantaged by the exercise thereof.

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

(e) Other Policy Provisions. The following provision may in substance be included in a variable life insurance policy or related form delivered or issued for delivery in this state:

(i) An exclusion for suicide, in accordance with W.S. 26-16-119(a)(ii)(E); provided, however, that to the extent of the increased death benefits only, the policy may provide an exclusion for suicide within two (2) years of any increase in death benefits which result from an application of the owner subsequent to the policy issue date;

(ii) Incidental insurance benefits may be offered on a fixed or variable basis;

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

(A) The amount of the dividend may be credited against premium payments;

(B) The amount of the dividend may be applied to provide amounts of additional fixed or variable benefit life insurance;

(C) The amount of the dividend may be deposited in the general account at a specified minimum rate of interest;

(D) The amount of the dividend may be applied to provide paid-up amounts of fixed benefit one-year term insurance;

(E) The amount of the dividend may be deposited as a variable deposit in a separate account.

(iv) A provision allowing the policyholder to elect in writing in the application for the policy or thereafter an automatic premium loan on a basis not less favorable than that required of policy loans under Subsection (d) of this section, except that a restriction that no more than two (2) consecutive premiums can be paid under this provision may be imposed;

(v) A provision allowing the policyholder to make partial withdrawals; and

(vi) Any other policy provision approved by the commissioner.

## **Section 5. Reserve Liabilities For Variable Life Insurance**

(a) **Reserve Liabilities Under Standard Valuation Law.** Reserves liabilities for variable life insurance policies shall be established under W.S. § 26-6-201 et seq. in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

(b) **Reserve Liabilities for the Guaranteed Minimum Death Benefit.** Reserve liabilities for the guaranteed minimum death benefit shall be the reserve needed to provide for the contingency of death occurring when the guaranteed minimum death benefit exceeds the death benefit that would be paid in the absence of the guarantee, and shall be maintained in the general account of the insurer and shall not be less than the greater of the following minimum reserves:

(i) The aggregate total of the term costs, if any, covering a period of one full year from the valuation date or, if less, covering the period provided for in the guarantee not otherwise provided for by the reserves held in the separate account, on each variable life insurance contract, assuming an immediate one-third depreciation in the current value of the assets in the separate account followed by a net investment return equal to the assumed investment rate; or

(ii) The aggregate total of the “attained age level” reserves on each variable life insurance contract. The “attained age level” reserve on each variable life insurance contract shall not be less than zero and shall equal the “residue,” as described in Subparagraph (A) below, of the prior year’s “attained age level” reserve on the contract, with any such “residue,” increased or

decreased by a payment computed on an attained age basis as described in Subparagraph (B) below.

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

(B) The payment referred to in this paragraph shall be computed so that the present value of a level payment of that amount each year over the future period for which charges for this risk will be collected under the contract, is equal to (A) minus (B) minus (C), where (A) is the present value of the future guaranteed minimum death benefits, (B) is the present value of the future death benefits that would be payable in the absence of such guarantee, and (C) is any “residue,” as described in Subparagraph (A), of the prior year’s “attained age level” reserve on such variable life insurance contract. If no future charges for this risk will be collected under the contract, the payment shall equal (A) minus (B) minus (C). The amounts of the future death benefits referred to in (B) shall be computed assuming a net investment return of the separate account which may differ from the assumed investment rate or the valuation interest but in no event may exceed the maximum interest rate permitted for the valuation of life contracts.

(iii) The valuation interest rate and mortality table used in computing the two minimum reserves described in Paragraph (i) and (ii) of this subsection shall conform to permissible standards for the valuation of life insurance contracts. In determining such minimum reserves, the company may employ suitable approximations and estimates, including but not limited to groupings and averages.

(c) **Incidental Insurance Benefit.** Reserve liabilities for all fixed incidental insurance benefits and any guarantees associated with variable incidental insurance benefits shall be maintained in the general account and reserve liabilities for all variable aspects of the variable incidental insurance benefits shall be maintained in a separate account, in amounts determined in accordance with the actuarial procedures appropriate to the benefit.

## **Section 6. Separate Accounts**

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

(a) **Establishment and Administration of Separate Accounts.** A domestic insurer issuing variable life insurance shall establish one or more separate accounts pursuant to W.S. § 26-16-502.

(i) If no law or other regulation provides for the custody of separate account assets and if the insurer is not the custodian of the separate account assets, all contracts for custody of these assets shall be in writing and the commissioner shall have authority to review and approve of both the terms of the contract and the proposed custodian prior to the transfer of custody.

(ii) The insurer shall not without prior written approval of the commissioner employ in any material connection with the handling of separate account assets any person who:

(A) Within the last ten (10) years has been convicted of any felony or a misdemeanor arising out of such person's conduct involving embezzlement, fraudulent conversion, or misappropriation of funds or securities or involving violation of Sections 1341, 1342 or 1343 of Title 18, United States Code; or

(B) Within the last ten (10) years has been found by any state regulatory authority to have violated or has acknowledged violation of any provision of any state insurance law involving fraud, deceit or knowing misrepresentation; or

(C) Within the last ten (10) years has been found by federal or state regulatory authorities to have violated or has acknowledged violation of any provision of federal or state securities laws involving fraud, deceit or knowing misrepresentation.

(iii) All persons with access to the cash, securities, or other assets of the separate account shall be under bond in the amount of not less than ten percent (10%) of the insurer's previous year's gross premiums or other amount the commissioner prescribes.

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

(b) **Amounts in the Separate Account.** The insurer shall maintain in each separate account assets with a value at least equal to the greater of the valuation reserves for the variable portion of the variable life insurance policies or the benefit base for these policies.

(c) **Investments by the Separate Account.**

(i) No sale, exchange, or other transfer of assets may be made by an insurer or any of its affiliates between any of its separate accounts or between any other investment account and one or more of its separate accounts unless:

(A) In case of transfer into a separate account, the transfer is made solely to establish the account or to support the operation of the policies with respect to the separate account to which the transfer is made; and

(B) The transfer, whether into or from a separate account, is made by a transfer of cash; but other assets may be transferred if approved by the commissioner in advance.



(ii) The separate account shall have sufficient net investment income and readily marketable assets to meet anticipated withdrawals under policies funded by the account.

(d) **Limitations on Ownership.**

(i) A separate account shall not purchase or otherwise acquire the securities of an issuer, other than securities issued or guaranteed as to principal and interest by the United States, if immediately after the purchase or acquisition the value of the investment, together with prior investments of the account in the security valued as required by these regulations, would exceed ten percent (10%) of the value of the assets of the separate account. The commissioner may waive this limitation in writing if the commissioner believes the waiver will not render the operation of the separate account hazardous to the public or the policyholders in this state.

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

(iii) The percentage limitation specified in Paragraph (i) of this subsection shall not be construed to preclude the investment of the assets of separate accounts in shares of investment companies registered pursuant to the Investment Company Act of 1940 or other pools of investment assets if the investments and investment policies of such investment companies or asset pools comply substantially with the provisions of Subsection (c) of this section and other applicable portions of this regulation.

(e) **Valuation of Separate Account 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.

(f) **Separate Account Investment Policy.** The investment policy of a separate account operated by a domestic insurer filed under Section 3(b)(iii) shall not be changed without first filing the change with the insurance commissioner.

(i) Any change filed pursuant to this section shall be effective sixty (60) days after the date it was filed with the commissioner, unless the commissioner notifies the insurer before the end of the sixty-day period of the Commissioner's disapproval of the proposed change. At any time the commissioner may, after notice and public hearing, disapprove any change that has become effective pursuant to this section.

(ii) The commissioner may disapprove the change if he or she determines that the change would be detrimental to the interests of the policyholders participating in the separate accounts.

(g) **Charges Against Separate Account.** The insurer shall disclose in writing, prior to or contemporaneously with delivery of the policy, all charges that may be made against the separate account, including, but not limited to, the following:

(i) Taxes or reserves for taxes attributable to investment gains and income of the separate account;

(ii) Actual cost of reasonable brokerage fees and similar direct acquisition and sale costs incurred in the purchase or sale of separate account assets;

(iii) Actuarially determined costs of insurance (tabular costs) and the release of separate account liabilities;

(iv) Charges for administrative expenses and investment management expenses, including internal costs attributable to the investment management of assets of the separate account;

(v) A charge, at a rate specified in the policy, for mortality and expense guarantees;

(vi) Any amounts in excess of those required to be held in the separate accounts; and

(vii) Charges for incidental insurance benefits.

(h) **Standards of Conduct.** Every insurer seeking approval to enter into the variable life insurance business in this state shall adopt by formal action of its board of directors a written statement specifying the standards of conduct of the insurer, its officers, directors, employees and affiliates with respect to the purchase or sale of investments of separate accounts. The standards of conduct shall be binding on the insurer and those to whom it refers. A code or codes of ethics meeting the requirements of Section 17(j) under the Investment Company Act of 1940 and its applicable rules and regulations shall satisfy the provisions of this section.

(i) **Conflicts of Interest.** Rules under any provision of the insurance laws of this state or any regulation applicable to the officers and directors of insurance companies with respect to conflicts of interest shall also apply to members of any separate account's committee or other similar body.

(j) **Investment Advisory Services to a Separate Account.**

(i) An insurer shall not enter into a contract under which any person undertakes, for a fee, to regularly furnish investment advice to such insurer with respect to its separate accounts maintained for variable life insurance policies unless:

(A) The person providing advice is registered as an investment adviser under the Investment Advice Act of 1940; or

(B) The person providing advice is an investment manager under the Employee Retirement Income Security Act of 1974 with respect to the assets of each employee benefit plan allocated to the separate account; or

(C) The insurer has filed with the commissioner and continues to file annually the following information and statements concerning the proposed advisor:

(I) The name and form of organization, state of organization, and its principal place of business;

(II) The names and addresses of its partners, officers, directors and persons performing similar functions or, if the investment advisory is an individual, of the individual;

(III) A written standard of conduct complying in substance with the requirements of Subsection (h) of this section which has been adopted by the investment advisor and is applicable to the investment advisor, its officers, directors, and affiliates;

(IV) A statement provided by the proposed advisor as to whether the advisor or any person associated therewith:

(1.) Has been convicted within ten (10) years of a felony or misdemeanor arising out of the person's conduct as an employee, salesman, officer or director of an insurance company, a banker, an insurance producer, a securities broker or an investment advisor involving embezzlement, fraudulent conversion or misappropriation of funds or securities, or involving the violation of Sections 1341, 1342, or 1343 of Title 18 of United States Code;

(2.) Has been permanently or temporarily enjoined by an order, judgment or decree of a court of competent jurisdiction from acting as an investment advisor, underwriter, broker or dealer, or as an affiliated person or as an employee of an investment company, bank or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity;

(3.) Has been found by federal or state regulatory authorities to have willfully violated or have acknowledged willful violation of any provision of federal or state securities laws or state insurance laws or of any rule or regulation under these laws; or

(4.) Has been censured, denied an investment advisor registration, had a registration as an investment advisor revoked or suspended, or been barred or suspended from being associated with an investment advisor by order of federal or state regulatory authorities; and

(D) The investment advisory contract shall be in writing and provide that it may be terminated by the insurer without penalty to the insurer or the separate account upon no more than sixty (60) days' written notice to the investment advisor.

(ii) The commissioner may, after notice and opportunity for hearing, by order require the investment advisory contract to be terminated if the commissioner deems continued operation under the contract to be hazardous to the public or the insurer's policyholders.

## **Section 7. Information Furnished To Applicants**

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

(a) A summary explanation, in non-technical terms, of the principal features of the policy, including a description of the manner in which the variable benefits will reflect the investment experience of the separate account and the factors that affect the variation. The explanation shall include notices of the provision required by Sections 4(c)(i)(E) and 4(c)(v);

(b) A statement of the investment policy of the separate account, including:

(i) A description of the investment objectives intended for the separate account and the principal types of investments intended to be made; and

(ii) Any restrictions or limitations on the manner in which the operations of the separate account are intended to be conducted;

(c) A statement of the net investment return of the separate account for each of the last ten (10) years or such lesser period as the separate account has been in existence;

(d) A statement of the charges levied against the separate account during the previous year;

(e) A summary of the method to be used in valuing assets held by the separate account;

(f) A summary of the federal income tax aspects of the policy applicable to the insured, the policyholder and the beneficiary; and

(g) Illustrations of benefits payable under the variable life insurance contract. The illustrations shall be prepared by the insurer and shall not include projections of past investment experience into the future or attempted predictions of future investments experience, provided

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

## **Section 8. Applications**

The application for a variable life insurance policy shall contain:

- (a) A prominent statement that the death benefit may be variable or fixed under specified conditions;
- (b) A prominent statement that cash values may increase or decrease in accordance with the experience of the separate account (subject to any specified minimum guarantees); and
- (c) Questions designed to elicit information that enables the insurer to determine the suitability of variable life insurance for the applicant in accordance with applicable federal or state law.

## **Section 9. Reports to Policyholders**

An insurer delivering or issuing for delivery in this state a variable life insurance policy shall mail to each variable life insurance policyholder's last known address the following reports:

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

(b) Annually, a statement or statements including:

(i) A summary of the financial statement of the separate account based on the last annual statement filed with the commissioner;

(ii) The net investment return of the separate account for the last year and, for each year after the first, a comparison of the investment rate of the separate account during the last year with the investment rate during prior years, up to a total of not less than five (5) years when available;

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

(iv) Any charges levied against the separate account during the previous year; and

(v) A statement of any change, since the last report, in the investment objective and orientation of the separate account, in any investment restriction or material quantitative or qualitative investment requirement applicable to the separate account or in the investment advisor of the separate account.

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

## **Section 10. 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 that is substantially similar to that provided by these regulations, the commissioner may consider compliance with such law or regulation as compliance with these regulations.

## **Section 11. Qualifications Of Insurance Producers For The Sale Of Variable Life Insurance**

Any person selling or offering for sale a variable annuity contract shall have a valid license under W.S. § 26-9-206, authorizing the solicitation of variable life and variable annuity products as defined in W.S. § 26-9-207(a)(v), and shall provide verification of required registration by the Financial Industry Regulatory Authority (FINRA) and have successfully completed the Series 6 or Series 7 and Series 63 examinations, or successfully completed the examination for other applicable FINRA licenses.

**Section 12. Effective Date**

These regulations shall become effective immediately upon filing with the Secretary of State.