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October 22, 2012

Legislative Reference Library
645 State Office Building
100 Constitution Avenue
St. Paul, Minnesota 55155

Re: In The Matter of the Proposed Rules of the State Department of Commerce Governing the Regulation of Actuarial Opinion and Memorandum, Minnesota Rules, chapter 2711; Governor's Tracking #RD3944

Dear Librarian:

The Minnesota Department of Commerce intends to adopt rules governing the Regulation of Actuarial Opinion and Memorandum. We plan to publish a Notice of Intent to Adopt Rules without a Public Hearing in the October 29, 2012, State Register.

The Department has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Department is sending the Library an electronic copy of the Statement of Need and Reasonableness at the same time we are mailing our Notice of Intent to Adopt Rules.

If you have questions, please contact me at 651-296-8458.

Yours very truly,

A handwritten signature in black ink, appearing to read "Susan Bergh", followed by a long horizontal line extending to the right.

Susan Bergh
Rules Coordinator
Minnesota Department of Commerce

Enclosure: Statement of Need and Reasonableness

Minnesota Department of Commerce

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendment to Rules Governing the Regulation of Actuarial Opinion and Memorandum, *Minnesota Rules*, chapter 2711.

I. INTRODUCTION

The Minnesota Department of Commerce (Department) proposes amendment to existing Minnesota Rules, Chapter 2711, governing the regulation of actuarial opinion and memorandum.

Minnesota Statutes, chapter 61A, charges the Department with the responsibility for monitoring the ability of each life insurance company doing business in Minnesota to satisfy its policyholders' expected future claims. To estimate the value of the reserve required to provide for its policyholders' expected future claims, a life insurance company must adhere to certain guidelines set forth in Minnesota Statutes, section 61A.25, Minnesota's Standard Valuation Law (Act). Further, each life insurance company must annually submit to the Department the opinion of a qualified actuary stating whether the life insurance company's reserves are computed in accordance with those guidelines.

The specific contents of the actuarial opinion and supporting memoranda are currently prescribed in Minnesota Rules, chapter 2711, which is based on the model regulation of the National Association of Insurance Commissioners (NAIC) entitled "Actuarial Opinion and Memorandum Regulation" (AOMR).

NAIC is the regulatory support organization created and governed by the chief insurance regulators from the 50 states. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight. NAIC members, together with the central resources of the NAIC, form the national system of state-based insurance regulation in the U.S.

In the early 1990's, NAIC developed a state accreditation program to establish and maintain standards to promote sound insurance company financial solvency regulation. The NAIC accreditation program allows for inter-state cooperation and reduces regulatory redundancies. All fifty states are currently accredited. Once accredited, a state is subject to a full accreditation review every five years.

Without accreditation, the examinations performed by the Department on the financial condition of insurers, primarily domestic insurance companies, need not be given full faith and credit by the other states in which these companies are doing business. Accordingly, those states can conduct their own examinations of Minnesota domestic insurers. As these examinations are rather expensive and time consuming, duplication would impose a severe financial burden on a non-accredited state's domestic insurers, who must pay the expenses of an examination.

Consequently, the Minnesota domestic insurance industry has fully supported the accreditation process.

The accreditation process has performed a significant public service because increased regulation and better standards reduce the likelihood of insolvency and loss to policyholders. The insurance industry benefits by not having to pay, through the guaranty associations and similar means, the cost of insurance failures. The state gains through increased confidence in the insurance products being sold in Minnesota. In addition, by preventing insolvencies that involve domestic insurers, Minnesota maintains jobs and income for its residents. The NAIC accreditation process was codified into the 1991 Solvency Bill (Chapter 325 of the 1991 Session Laws). Under this bill, the legislature adopted most of the NAIC model acts not previously enacted in Minnesota, and brought previously adopted model acts into conformity with the current NAIC versions of those acts. In addition, the 1991 Solvency Bill granted the Department of Commerce other powers and all authority believed to be necessary for the Department to receive NAIC accreditation. It was a full and unqualified endorsement of the process. Minnesota was accredited by the NAIC in June of 1992 and has maintained its accreditation since, while undergoing periodic five-year on-site reviews of its regulatory framework, staff, and processes to be sure that each is up to current NAIC accreditation standards.

During its recent accreditation review, the Department was notified by the review team that Minnesota Rules, chapter 2711, needed to be brought into compliance with the current model regulation for AOMR. Adoption of the proposed rules is necessary to maintain NAIC accreditation. Further, failure to adopt the updated model regulation would leave Minnesota without regulations that are consistent with the current law. The purpose of the proposed rules is to prescribe guidelines and standards to be followed by life insurance companies for statements of actuarial opinion and supporting memoranda submitted in accordance with the Act and for the appointment of an appointed actuary.

II. ALTERNATIVE FORMAT

Upon request, this Statement of Need and Reasonableness (SONAR) can be made available in an alternative format, such as large print, Braille, or cassette tape. To make a request, contact Susan Bergh at the Department of Commerce, 85 7th Place East, St. Paul, MN 55101, phone: (651) 296-8458, email Susan.Bergh@state.mn.us

III. STATUTORY AUTHORITY

This rulemaking is an amendment of rules for which the Legislature has not revised the statutory authority since and so Minnesota Statutes, section 14.125, does not apply.

The Department's statutory authority to adopt the rules is stated in Minnesota Statutes, Section 45.023, which provides:

The commissioner of commerce may adopt, amend, suspend, or repeal rules in accordance with chapter 14, and as otherwise provided by law, whenever necessary or proper in discharging the commissioner's official responsibilities.

Further, Minnesota Statutes, Section 61A.25, subdivision 2a (a), provides:

Every life insurance company doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this state. The commissioner may by rule define the specifics of this opinion and add any other items considered to be necessary to its scope. The opinion must be included in the company's annual statement.

Under these statutes, the Department has the necessary statutory authority to amend these rules.

IV. REGULATORY ANALYSIS

Minnesota Statutes, section 14.131, sets out eight factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (8) below quote these factors and then give the Department's response.

(1) A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule:

- The classes of persons who will be most directly affected include the life insurance companies licensed in Minnesota. However, any impact should be minimal, since most states have already adopted the proposed rules changes and companies generally file actuarial opinions and memoranda that are consistent from state to state.
- The cost of the proposed rules will be borne by the life insurance companies filing actuarial opinions and memoranda in compliance with the proposed rules. However, the proposed rules have been adopted in most states already, and any additional cost of implementation is expected to be negligible.
- Those who will benefit from the proposed rules include the life insurance companies licensed in Minnesota who will benefit from more uniform regulation across the states. In addition, policyholders and citizens will also benefit, because the Department will be better able to ensure that companies are strong and not susceptible to future losses that could cause an impairment and endanger the company's ability to make good on its promised contractual benefits. An important additional benefit from the proposed rules inures to the Department and its ability to remain accredited, as discussed above.

(2) The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues:

- There is little chance of any additional costs to the Department with regard to implementation and enforcement of the proposed rules.
- There should be no costs to any other agency with regard to implementation and enforcement.
- There should be no effect on state revenues.

(3) A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule:

- Since there is only a slight chance that there may be minor costs associated with the implementation and enforcement of the proposed rules (as described under Item 5 below), there is no need to identify less costly methods for achieving the purpose of the proposed rules.
- The Department believes that the proposed rules will not be intrusive on life insurance companies. Consequently, the Department has not been able to identify any less intrusive methods for achieving the purposes of the proposed rules.

(4) A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule:

- The purposes of the proposed rules have been temporarily achieved through administrative means. However, the importance of formalizing the regulatory requirements through adoption of the proposed rules was emphasized by the accreditation review team and required for the Department's continued NAIC accreditation. In addition, adoption of the proposed rules will be beneficial to regulated insurers who conduct business in more than one state. Uniform adoption of the proposed rules in all states is important to ensure consistency of regulation of the companies issuing the affected policies.

(5) The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals:

- Companies that are affected by the proposed rules will already have developed or acquired the systems required to comply, because their state of domicile or key states in which they do business very likely have adopted a similar rule. Thus, the marginal additional costs of compliance with the proposed rules will likely be very minor.

(6) The probable costs of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals:

- The consequences of not adopting the proposed amendments to Chapter 2711 are, first, the endangerment of NAIC accreditation of Minnesota, and second, the hazard of leaving Minnesota without insurance regulations that are consistent with the current law.

(7) An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference:

- There are no federal regulations that pertain to the proposed rules.

(8) An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule:

- There are no other federal or state regulations that pertain to the proposed rules.

V. PERFORMANCE-BASED RULES

The Department, in developing the amended rules, considered and implemented performance-based standards that emphasize superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals as follows:

The Department believes that certain components of the proposed rules clearly enable the Department personnel reviewing regulated company financial statements to accomplish their goals more efficiently and more effectively. In one respect this is embodied in the requirements pertaining to the regulatory asset adequacy issues summary, which permit the reviewing actuary to screen the work of the company's appointed actuary to determine if further in-depth analysis of the appointed actuary's confidential memoranda might be required. In addition to benefiting the Department through review efficiencies, flexibility is provided to the regulated company due to the uniform regulatory requirements.

The Department will continue to analyze and implement changes to the valuation process as methods for providing additional flexibility to insurers are evaluated and proposed as model regulations by the NAIC.

VI. ADDITIONAL NOTICE

This Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved in a September 25, 2012 letter by Administrative Law Judge Manuel J. Cervantes.

In addition to the statutory requirements to publish notice in the *State Register* and to mail notice to the persons on the Department of Commerce rulemaking list, the Department has provided the following additional notice:

1. Mailing the notice of the proposed rule amendments to the following persons:

C Bryan Cox
Regional Vice President, State Relations
American Council of Life Insurers

101 Constitution Ave., NW, Suite 700
Washington, DC, 20001-2133
bryancox@acli.com

Robyn Rowen
Executive Director
Minnesota Insurance and Financial Services Council
407 River St
Minneapolis, MN 55401
robynrowen@MNIFSC.org

Joseph J. Annotti
President and CEO
American Fraternal Alliance
1301 West 22nd Street, Suite 700
Oak Brook, IL 60523
jannotti@fraternalalliance.org

2. Placing a summary of the notice of rulemaking on the Department of Commerce web page at www.commerce.state.mn.us.

Our Notice Plan also includes giving notice required by statute. We will mail the [rules and] Notice of Intent to Adopt to everyone who has registered to be on the Department's rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1a. We will also give notice to the Legislature per Minnesota Statutes, section 14.116. The notice and proposed rules will be published in the *State Register* on October 29, 2012.

Our Notice Plan did not include notifying the Commissioner of Agriculture because the rules do not affect farming operations per Minnesota Statutes, section 14.111. Our Notice Plan did not include submitting the rules to the state Council on Affairs of Chicano/Latino People at least 15 days before their initial publication in the State Register per Minnesota Statutes, section 3.922 because the rules will not have their primary effect on Chicano/Latino people.

VII. CONSULTATION WITH MINNESOTA MANAGEMENT AND BUDGET ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes, section 14.131, the Department will consult with Minnesota Management and Budget to help evaluate the fiscal impact and fiscal benefits of the proposed rules on units of local governments.

The Department will do this by sending to Minnesota Management and Budget copies of the documents required to be sent to the Governor's Office for review and approval by the Governor's Office on the same day we send them to the Governor's office. We will do this before the Department publishes the Notice of Intent to Adopt. The documents included: the

Governor's Office Proposed Rule and SONAR Form; almost final draft rules; and almost final SONAR. The Department will submit a copy of the cover correspondence and any response received from Minnesota Management and Budget to OAH with the documents it submits for ALJ review.

VIII. DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION

As required by Minnesota Statutes, section 14.128, subdivision 1, the Department has considered whether these proposed rules will require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules. The Department has determined that they do not because the sole affect of the rules is on actuarial activities by insurance companies.

VIII. COST OF COMPLYING FOR SMALL BUSINESS OR CITY

As required by Minnesota Statutes, section 14.127, the Department has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. The Department has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city, because the cost of complying will be minimal and will solely be borne by domestic insurance companies, none of which qualify as small businesses.

IX. RULE-BY-RULE ANALYSIS

As more specifically stated in the following paragraphs, the proposed rules are necessary to provide guidelines and standards which are in compliance with updates to the NAIC model actuarial opinion and memorandum regulation. While some of the detail in the rules is covered in a very detailed fashion, such detail is crucial to clearly specify the requirements to comply with the standards of the American Academy of Actuaries, the national public policy organization for actuaries practicing in all specialties within the United States. The Academy develops and upholds standards of conduct, qualification and practice and the Code of Professional Conduct for all actuaries practicing in the United States.

PART 2711.0200 SCOPE

This part restates the statutory requirement that the rules apply to all life insurance companies and fraternal benefit societies doing business in the state and to all life insurance companies and fraternal benefit societies which are authorized to reinsure life insurance, annuities, or accident and health insurance business in the state. It also states that the chapter must be applied in a manner that allows the appointed actuary to use professional judgment in performing the asset analysis and developing the actuarial opinion and supporting memoranda, consistent with relevant actuarial standards of practice. However, the Commissioner may specify specific methods of actuarial analysis and actuarial assumptions when, in the Commissioner's judgment,

these specifications are necessary for an acceptable opinion to be rendered relative to the adequacy of reserves and related items. Finally, this part requires that an actuarial opinion on the adequacy of the reserves and related actuarial items based on an asset adequacy analysis be filed annually pursuant to parts 2711.0230 and 2711.0240, respectively.

PART 2711.0210 DEFINITIONS

Part 2711.0210 defines terms used in these rules. The definitions clarify the terms used in the body of the rules. All the definitions are identical to those in the NAIC model regulation.

PART 2711.0220 GENERAL REQUIREMENTS

Subpart 1. Submission of statement of actuarial opinion. The Act requires that an actuarial opinion be filed with the annual statement. As discussed in the "Introduction" section earlier in this SONAR, the purpose of the actuarial opinion is to ensure that a qualified professional actuary has certified that the requirements of the Act have been carried out, namely, that there has been sound provision made by the company for meeting its contractual obligations.

Item A of this subpart specifies the requirements which must be complied with by companies filing opinions.

Item B provides for the granting of an extension of the date for filing the actuarial opinion, upon a written request by the company. These requirements are based upon the NAIC model regulation.

It is important to note that all of these general requirements, and the parts which follow, are in accordance with the national model regulation, in order to ensure economies of effort and cost, and to promote consistency and meaningful communication between the states which adopt the model regulation. Adopting the updated model regulation in this instance is the most effective means to ensure continuation of this uniformity and efficiency in communication.

Subpart 2. Qualified Actuary. This subpart defines the requirements for a qualified actuary.

Item A requires the actuary to be a member in good standing of the American Academy of Actuaries. The American Academy of Actuaries is the professional organization which is responsible for, among other things, the professional conduct, the standards of practice, and the expressions of professional actuarial opinions as they relate to its member actuaries.

Item B requires that the actuary be qualified, through experience and training, under the standards of the American Academy of Actuaries to sign statements of actuarial opinion for life and health insurance company annual statements.

Item C requires that the actuary be familiar with the valuation requirements applicable to life and health insurance companies, which includes the Standard Valuation Law provisions. This is important to distinguish the experience required of the actuary as specifically relating to life and health insurance areas.

Item D is required because even though an actuary may apparently satisfy the requirements in items A through C above, there may be evidence that the actuary has violated the law or has not met the standards established for sound and reliable actuarial practices. Item D sets forth specific areas that could cause an actuary to fail to meet the definition of "qualified actuary." These standards are identical to those required in the NAIC model regulation and are necessary to ensure the integrity of actuarial opinions required under the enabling statute. It is important to note that before the Commissioner can use any of the criteria listed under Item D to find that an actuary is "unqualified," appropriate notices and hearings must have been provided to the actuary, as may be required under the Administrative Procedures Act or other areas of applicable law. This protects the actuary's right to due process.

Item E excludes from the definition of "qualified actuary" any actuary who fails to notify the Commissioner if the commissioner of any other state has taken action as stated in item D of this subpart to disqualify the actuary. An actuary who fails to comply with Minnesota law to provide such disclosure is a risk to the integrity of the actuarial opinion system. Accordingly, it is necessary to keep such actuaries from rendering actuarial opinions under these rules.

Subpart 3. Appointed Actuary. The individual who is designated as appointed actuary by the company is central to the entire process of rendering the actuarial opinion. This is the actuary that the company appoints to perform the professional work required to render the opinion. It is this individual who is responsible for the opinion and the supporting memorandum describing the asset adequacy analysis which was performed. The rules outline the procedures which the company must follow relative to this important appointment.

Subpart 4. Standards for asset adequacy analysis. This subpart makes it clear that the actuary must follow the standards set by the Actuarial Standards Board. The Actuarial Standards Board is an independent entity within the American Academy of Actuaries, which, among other things, is charged to direct, manage, and identify the need for the development of standards of practice in all areas of actuarial science, and to determine, publish, review, eliminate, etc., such standards.

In this regard Items A and B require that the asset adequacy analysis required by these rules conform to the standards of the Actuarial Standards Board, and to the methods of analysis contained in those standards which are appropriate for the purpose of asset adequacy analysis.

Subpart 5. Liabilities to be covered.

Item A identifies the reserves which are to be opined upon and where they are found in the annual statements filed by the company.

Item B provides for the reporting of additional reserves, over and above those calculated according to specified Act provisions, which the actuary determines are required based upon the results of an asset adequacy analysis.

Item C provides for the release of additional reserves established under item B and deemed no longer necessary. However, any amounts released must be disclosed in the actuarial opinion. The rules state that the release of such reserves is not to be considered an adoption of a lower

standard of valuation.

PART 2711.0230 STATEMENT OF ACTUARIAL OPINION BASED ON AN ASSET ADEQUACY ANALYSIS

Subpart 1. General description. This subpart contains the components of a statement of actuarial opinion which is based upon an asset adequacy analysis.

Item A provides for the identification of the appointed actuary and the actuary's qualifications.

Item B is needed to provide instruction to the appointed actuary in identifying the reserves to which the appointed actuary is expressing an opinion and describing the scope of the appointed actuary's work, including a delineation of the reserves and related items which have been analyzed for asset adequacy and the method of analysis, as well as those reserves and items which have not been so analyzed.

Item C contains recommended language so that the appointed actuary can properly describe whether or not reliance has been placed upon other experts with respect to developing data, procedures or assumptions. In the instance where reliance has been placed upon another, a statement of the form described in subpart 5 is to be obtained.

Item D provides for the appointed actuary's opinion with respect to the adequacy of the supporting assets to mature the liabilities.

Item E describes additional paragraphs that the appointed actuary should include in the opinion paragraph as needed. For example, there should be a paragraph included if the appointed actuary finds it necessary to qualify the opinion; if there has been an inconsistency in the method of analysis or basis of asset allocation from that used for the prior opinion; if there has been a reserve release since the prior opinion and the extent thereof; or if the appointed actuary chooses to add a paragraph briefly describing the assumptions that form the basis of the opinion.

Subpart 2. Recommended language. This subpart expands upon the outline of the prior subpart, and describes for the appointed actuary the detailed requirements for an opinion covered by this part 2711.0230. Without this, the actuary would be uncertain of accurate compliance with the provisions of the Act.

Item A provides recommended opening paragraphs covering the appointed actuary's relationship to the company and qualifications to sign the opinion, whether an employee of the company or a consultant.

Item B contains recommended scope language, as well as a table format to detail all the reserves and liabilities which have been subjected to asset adequacy analysis, any additional reserves which are determined by the appointed actuary to be required as a result of such analysis, and other statement reserves and items which might have been relied upon.

Item C provides the required language for the appointed actuary to identify other experts which

have been relied upon, with subpart 5 including the language which is to be followed by the expert in making the appropriate statement to be included in the opinion.

Items D and E cover the language requirements for the appointed actuary relative to the examination of the underlying asset and liability records. If the appointed actuary has relied upon the work of a third person or entity, the rules provide the form to indicate this, and prescribe that subpart 5 shall be complied with to make the appropriate statement to be included in the opinion.

Item F contains the specific language which is to be included in the opinion paragraph. While the language is in accordance with both the model regulation and the standards of the American Academy of Actuaries, it is needed in these rules to be certain the appointed actuary is in compliance with the Act. There is a special proviso that the language can be omitted at the discretion of the Commissioner for an opinion filed by a company doing business only in Minnesota and in no other state.

Subpart 3. Assumptions for new issues. When performing an asset adequacy analysis, the actuary is called upon to use professional judgment in making assumptions in accordance with the standards as prescribed by the Actuarial Standards Board. This subpart allows the appointed actuary to adopt different actuarial assumptions for new issues, claims or liabilities, without such adoption being termed a change in actuarial assumptions within the meaning of part 2711.0230. This is important because the recommended opinion language in this part includes statements as to the consistency of assumptions with those employed the prior year end, and requires disclosure of any inconsistencies. The use of different assumptions pursuant to this subpart is not considered a change requiring disclosure.

Subpart 4. Adverse opinions. This subpart describes what has to be done if the appointed actuary is unable to form an opinion, or if the opinion is adverse or qualified. This would occur if, based upon the asset adequacy analysis, the actuary was unable to properly certify that the assets supporting the reserve were sufficient to mature the future contractual obligations of the company.

Subpart 5. Reliance on data furnished by other persons. This subpart specifies that the appointed actuary is to obtain a certification of others in the form described in the subpart, if the actuary does not express an opinion as to the accuracy and completeness of any data underlying the actuarial opinion, or the appropriateness of any other information used by the appointed actuary in forming the actuarial opinion. In addition, the subpart provides very specific instructions as to the format of such certification.

Subpart 6. Alternate option. This subpart describes alternative approaches to permit the Commissioner to accept the valuation of a foreign insurer when that valuation meets in the aggregate the requirements applicable to a company domiciled in Minnesota. Under the broad authority provided by the Act, the Commissioner may make one or more of three specific approaches available, as described in the subpart, as an alternative to the requirements in subpart 2, Item F, subitem (3). Under the first alternative a formal written list of standards and conditions

must be made available by the Commissioner. If no such list is available, the alternative is not available. Under the second alternative a formal request must be made by the company and pre-approved by the Commissioner. Under the third alternative the company must provide on a confidential basis a comparison list showing for the total company gross nationwide direct and assumed reserves on the domicile state basis and the Minnesota basis for a previously published list of products. If the Commissioner does not publish such a list, the alternative is not available.

PART 2711.0240 DESCRIPTION OF ACTUARIAL MEMORANDUM INCLUDING AN ASSET ADEQUACY ANALYSIS

As described earlier in this Statement, an actuarial memorandum is prepared by the appointed actuary in support of an actuarial opinion based upon an asset adequacy analysis. Such a memorandum will contain the details of the methods, assumptions and results used by the actuary in rendering the opinion. As stated earlier the opinion is the actuary's certification as to the adequacy of the assets supporting reserves to mature the future contractual obligations of the company (i.e., provide assurance that the company will be able to make future policyholder payments as they come due). Such a memorandum must be prepared in order for the actuary to be in compliance with the provisions of these rules and the professional standards of the Actuarial Standards Board.

Subpart 1. General. In accordance with the Act, item A of this subpart requires the appointed actuary to prepare a memorandum in support of an opinion rendered under part 2711.0230. It specifically allows the Commissioner to examine the memorandum, but not to retain it or consider it a record of the Department of Commerce, or to require its automatic filing. Once again pursuant to the model regulation, these provisions facilitate maintenance of the confidential, and proprietary nature of the company's memorandum. It is important to note that the rule is not creating a new confidentiality provision, but rather is present to encourage cooperation by companies for full disclosure, which will ultimately contribute to greater public protection.

Item B permits the appointed actuary to rely on other actuaries who prepare their own memoranda, as long as they are qualified according to part 2711.0220, subpart 2. This provision eliminates duplication of effort and may reduce costs to parties involved.

Item C permits the Commissioner to designate a qualified actuary to review the opinion and prepare a supporting memorandum, if no memorandum exists, or if the Commissioner determines that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board or the standards and requirements of these rules. The cost of such an independent review is to be borne by the company.

Item D is needed to specify the status and independence of the reviewing actuary and the disposition of the actuary's work papers, with specific attention to the confidentiality of the work papers.

In accordance with Minnesota Statutes, section 61A.25, subdivision 2a, Item E of this subpart requires the appointed actuary to prepare a regulatory asset adequacy issues summary, the

contents of which are specified in subpart 3. The regulatory asset adequacy issues summary is to be kept confidential similar to the actuarial memorandum prepared in support of an opinion rendered under part 2711.0230.

Subpart 2. Details of the memorandum section documenting asset adequacy analysis. In order to demonstrate that the asset adequacy analysis has been performed in accordance with the standards of the Actuarial Standards Board referred to in part 2711.0220, subpart 4, and any additional standards under these rules, the memorandum must contain specific information. This subpart contains the components which the appointed actuary must include in the actuarial memorandum to be certain of compliance with these rules and the requirements of the Act. These components include detailed information on the reserves and assets; identification of any general account guarantees made related to separate account policies or similar contracts; documentation of the assumptions employed to test reserves and assets, sufficiently detailed so that a reviewing actuary could form a conclusion as to the reasonableness of the assumptions; specifics on the basis of the analysis; how rigorous the analysis was for different blocks of business; what the criteria were for determining asset adequacy; the effects of certain factors such as taxes; a summary of material changes in methods, procedures, or assumptions from the prior year's asset adequacy analysis; and the summary of results and conclusions.

Subpart 3. Details of the regulatory asset adequacy issues summary. Subpart 3 specifies the components to be included in the regulatory asset adequacy issues summary. The requirements for the regulatory asset adequacy issues summary are included in the model regulation and were a key focus during the 2012 accreditation review. Adoption of the proposed rules change was strongly encouraged by the review team.

Item A, subitem (1), provides for a description of the scenarios tested and the testing approach, the sensitivity testing relative to those scenarios, and specific discussion of any negative ending surplus results and how those negative results can be eliminated. Subitems (2) and (3) require discussion of assumptions and product lines tested that differ from the previous asset adequacy analysis. Subitem (4) provides for comments on any interim results that may be of concern to the appointed actuary and subitems (5) and (6) require the appointed actuary to describe methods used to recognize the impact of reinsurance and indicate whether he or she is satisfied that all options and equity-like features have been appropriately considered in the asset adequacy analysis.

Item B merely requires that the regulatory asset adequacy issues summary include the name of the company for which the regulatory asset adequacy issues summary is being supplied, along with the date and signature of the appointed actuary rendering the actuarial opinion.

Subpart 4. Conformity to standards of practice. This subpart includes specific language with regard to the standards of practice as promulgated by the Actuarial Standards Board, which must be included in the memorandum. The statement described is required so that the actuary certifies that the appropriate standards have been followed.

Subpart 5. Use of assets supporting interest maintenance reserve and asset valuation reserve.

This subpart instructs the appointed actuary in the use of the assets supporting these reserves in the asset adequacy analysis. It provides for the mandatory use of the interest maintenance reserve assets, and the elective use of the assets supporting the asset valuation reserve if, in the professional opinion of the actuary, such utilization is appropriate. The actuary is required to disclose the amount and selection process for the assets so utilized, and this subpart describes how the actuary is to do so. As has been stated previously these rules conform to the model regulation.

Subpart 6. Required interest scenarios. This subpart requires the appointed actuary to follow the standards of the Actuarial Standards Board relative to performing an asset adequacy analysis. This subpart also specifies for the appointed actuary seven interest rate scenarios which must be used in the actuary's asset adequacy analysis. Specific instruction is provided for the actuary with regard to low interest rates (to avoid the possibility of unduly small or even negative rates when decreasing interest rate scenarios are used), and how to determine the beginning yield curve of interest rates. While not a part of the updated NAIC model regulation, this subpart from the prior version of the rules has been retained to ensure that an interest rate scenario standard framework, commonly utilized by many companies in their asset adequacy analyses, is present in the proposed rules.

Subpart 7. Documentation. This subpart specifies a seven year retention period for the documentation of the appointed actuary's analysis. This retention period is in compliance with the NAIC model regulation.

CONCLUSION

Based on the foregoing, the proposed rules are both needed and reasonable.

10-17-12

Date



Michael Rothman
Commissioner of Commerce