

Excluded Nonnarcotic Products

Company	Trade Name	NDC Code	Form	Controlled Substance	mg or mg/m//L
Bioline Laboratories	Theophed	00719-1945	TB	Phenobarbital	8.00
Aphena Pharma Solutions—New York, LLC	Nasal decongestant/ inhaler/vapor			Levomethamphetamine (l-desoxyephedrine)	50.00
Goldline Laboratories	Guiaphed Elixir	00182-1377	EL	Phenobarbital	4.00
Goldline Laboratories	Tedrigen Tablets	00182-0134	TB	Phenobarbital	8.00
Hawthorne Products, Inc.	Choate's Leg Freeze		LQ	Chloral hydrate	246.67
Parke-Davis & Co.	Tedral	00071-0230	TB	Phenobarbital	8.00
Parke-Davis & Co.	Tedral Elixir	00071-0242	EX	Phenobarbital	40.00
Parke-Davis & Co.	Tedral S.A.	00071-0231	TB	Phenobarbital	8.00
Parke-Davis & Co.	Tedral Suspension	00071-0237	SU	Phenobarbital	80.00
Parmed Pharmacy	Asma-Ese	00349-2018	TB	Phenobarbital	8.10
Rondex Labs	Azma-Aids	00367-3153	TB	Phenobarbital	8.00
Smith Kline Consumer	Benzedrex	49692-0928	IN	Propylhexedrine	250.00
Sterling Drug, Inc.	Bronkolixir	00057-1004	EL	Phenobarbital	0.80
Sterling Drug, Inc.	Bronkotabs	00057-1005	TB	Phenobarbital	8.00
Vicks Chemical Co.	Vicks Inhaler	23900-0010	IN	l-Desoxyephedrine	113.00
White Hall Labs	Primatene (P-tablets)	00573-2940	TB	Phenobarbital	8.00

AUTHORITY: sections 195.015 and 195.195, RSMo 2000. Material found in this rule previously filed as 19 CSR 30-1.010. Original rule filed April 14, 2000, effective Nov. 30, 2000. Amended: Filed Jan. 31, 2003, effective July 30, 2003. Amended: Filed Sept. 30, 2016.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Health and Senior Services, Bureau of Narcotics and Dangerous Drugs, Michael Boeger, Administrator, PO Box 570, Jefferson City, MO 65102-6500. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION**

**Division 400—Life, Annuities and Health
Chapter 5—Advertising and Material Disclosures**

PROPOSED AMENDMENT

20 CSR 400-5.100 Advertisements of Life Insurance [Advertising] and Annuities. The director is amending the rule name, purpose, and sections (1)–(8), and deleting section (9).

PURPOSE: This amendment will make this rule consistent with the 2015 version of the National Association of Insurance Commissioners (NAIC) Advertisements of Life Insurance and Annuities Model Regulation #570.

PURPOSE: [These rules] The purpose of this rule is to set forth minimum standards and guidelines to assure a full and truthful disclosure to the public of material and relevant information in the

advertising of life insurance policies and annuity contracts [and to specify the criteria by which the Missouri Department of Insurance will evaluate life insurance advertising]. This rule was adopted pursuant to the provisions of section 374.045, RSMo and [to implement] effectuates and aids in the interpretation of sections 375.934 and 375.936, RSMo.

(1) Definitions [for the Purpose of These Rules]. For the purpose of this rule—

(A) “Advertisement” [shall be] means material designed to create public interest in life insurance or annuities or in an insurer or to induce the public to purchase, increase, modify, reinstate, or retain a policy including:

1. Printed and published material, audio-visual material, and descriptive literature of an insurer used in direct mail, newspapers, magazines, radio and television scripts, telemarketing scripts, billboards and similar displays, and the Internet or any other mass communication media;

2. Descriptive literature and sales aids of all kinds [issued] authored by [an] the insurer, [or] its insurance producers, or third parties, issued, distributed, or used by the insurer or insurance producer; including, but not limited to, circulars, leaflets, booklets, depictions, illustrations, and form letters;

3. Material used for the recruitment, training, and education of an insurer's [sales personnel, and] insurance producers which is designed to be used or is used to induce the public to purchase, increase, modify, reinstate, borrow on, replace, or retain a policy; [and]

4. Prepared sales talks, presentations, and materials for use by [sales personnel and] insurance producers[.];

(B) “Advertisement” for the purpose of [these rules] this rule shall not include[:]—

1. Communications or materials used within an insurer's own organization and not intended for dissemination to the public;

2. Communications with policyholders other than material urging policyholders to purchase, increase, modify, reinstate, borrow on, replace, or retain a policy; and

3. A general announcement from a group or blanket policyholder to eligible individuals on an employment or membership list that a policy or program has been written or arranged; provided the announcement clearly indicates that it is preliminary to the issuance

or a booklet explaining the proposed coverage./.);

(C) "Determinable elements" means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion, but where the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates (including any bonus), benefits, values, non-interest based credits, charges, or elements of formulas used to determine any of these. These elements may be described as guaranteed but not determined at issue. An element is considered determinable if it was calculated from underlying determinable elements only, or from both determinable and guaranteed elements;

(D) "Guaranteed elements" means the premiums, benefits, values, credits or charges under a policy, or elements of formulas used to determine any of these that are guaranteed and determined at issue;

(E) "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance;

[(C)](F) "Insurer" [shall include] means any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyd's, fraternal benefit society, and any other legal entity which is defined as an "insurer" in the insurance code of this state or issues life insurance or annuities in this state and is engaged in the advertisement of a policy./.);

(G) "Nonguaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, non-interest based credits, charges, or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any underlying nonguaranteed elements are used in its calculation;

[(D)](H) "Policy" [shall include] means any policy, plan, certificate, including a fraternal benefit certificate, contract, agreement, statement of coverage, rider, or endorsement which provides for life insurance or annuity benefits./.);

(I) "Preneed funeral contract or prearrangement" means an arrangement by or for an individual before the individual's death relating to the purchase or provision of specific funeral or cemetery merchandise or services;

(J) "Registered product" means an annuity contract or life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.

(2) Applicability.

(A) [These rules] This rule shall apply to any life insurance or annuity advertisement intended for dissemination in this state. In variable contracts and other registered products where disclosure requirements are established pursuant to federal regulation, this rule shall be interpreted so as to eliminate conflict with federal regulation.

(B) All advertisements, regardless of by whom written, created, designed, or presented, shall be the responsibility of the insurer, as well as the producer who created or presented the advertisement. [Every insurer] Insurers shall establish and at all times maintain a system of control over the content, form, and method of dissemination of all advertisements of its policies. [All these advertisements, regardless of by whom written, created, designed or presented shall be the responsibility of the insurer.] A system of control shall include regular and routine notification, at least once a year, to agents, brokers, and others authorized by the insurer to disseminate advertisements of the requirement and procedures for company approval prior to the use of any advertisements that is not furnished by the insurer and that clearly sets forth within the notice the most serious consequence of not obtaining the required prior approval.

(3) Form and Content of Advertisements.

(A) Advertisements shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a policy

shall be sufficiently complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive as used in this rule shall be determined by the director [of insurance] from the overall impression that the advertisement may be reasonably [may be] expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

(B) No advertisement shall use the terms "investment," "investment plan," "founder's plan," "charter plan," "deposit," "expansion plan," "profit," "profits," "profit sharing," "interest plan," "savings," "savings plan," "private pension plan," "retirement plan," or other similar terms in connection with a policy in a context or under such circumstances or conditions as to have the capacity or tendency to mislead a purchaser or prospective purchaser of [the] such policy to believe that s/he will receive, or that it is possible that s/he will receive, something other than a policy or some benefit not available to other persons of the same class and equal expectation of life.

(4) Disclosure Requirements.

(A) The information required to be disclosed by [these rules] this rule shall not be minimized, [obscured] rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

(B) No advertisement shall omit material information or use words, phrases, statements, references, or illustrations if this omission or the use has the capacity, tendency, or effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any policy benefit payable, loss covered, premium payable, or state or federal tax consequences. The fact that the policy offered is made available to a prospective insured for inspection prior to consummation of the sale, or an offer is made to refund the premium if the purchaser is not satisfied or that the policy or contract includes a "free look" period that satisfies or exceeds regulatory requirements, does not [correct or] remedy misleading statements.

(C) In the event an advertisement uses "non-medical," "no medical examination required," or similar terms where issue is not guaranteed, [those] terms shall be accompanied by a further disclosure of equal prominence and in juxtaposition thereto to the effect that issuance of the policy may depend upon the answers to the health questions set forth in the application.

(D) An advertisement shall not use as the name or title of a life insurance policy any phrase [which] that does not include the words "life insurance" unless accompanied by other language clearly indicating it is life insurance. An advertisement shall not use as the name or title of an annuity contract any phrase that does not include the word "annuity" unless accompanied by other language clearly indicating it is an annuity. An annuity advertisement shall not refer to an annuity as a CD annuity, or deceptively compare an annuity to a certificate of deposit.

(F) An advertisement of an insurance policy marketed by [the] direct response techniques shall not state or imply that because there is no insurance producer or commission involved there will be a cost saving to prospective purchasers unless that is the fact. No cost savings may be stated or implied without justification satisfactory to the director [of insurance] prior to use.

(G) An advertisement for a life insurance policy containing graded or modified benefits shall prominently display any limitation of benefits. If the premium is level and coverage decreases or increases with age or duration, that fact shall be prominently disclosed. An advertisement of or for a life insurance policy under which the death benefit varies with the length of time the policy has been in force shall accurately describe and clearly call attention to the amount of minimum death benefit under the policy.

(H) An advertisement for the types of policies described in subsections (4)(F) and (4)(G) of this rule shall not use the words "inexpensive," "low cost," or other phrase or words of similar import when the policies being marketed are guaranteed issue.

(I) Premiums.

[(H)]1. An advertisement for a policy with non-level premiums

shall prominently describe the premium changes.

2. An advertisement in which the insurer describes a policy where it reserves the right to change the amount of premium during the policy term, but which does not prominently describe this feature, is deceptive and misleading and is prohibited.

3. An advertisement shall not contain a statement or representation that premiums paid for a life insurance policy can be withdrawn under the terms of the policy. Reference may be made to amounts paid into an advance premium fund, which are intended to pay premiums at a future time, to the effect that they may be withdrawn under the conditions of the prepayment agreement. Reference may also be made to withdrawal rights under any unconditional premium refund offer.

4. An advertisement that represents that a pure endowment benefit has a "profit" or "return" on the premium paid, rather than a policy benefit for which a specified premium is paid, is deceptive and misleading and is prohibited.

5. An advertisement shall not represent in any way that premium payments will not be required for each year of the policy in order to maintain the illustrated death benefits, unless that is the fact.

6. An advertisement shall not use the term "vanish," or "vanishing premium," or a similar term that implies the policy becomes paid up, to describe a plan using nonguaranteed elements to pay a portion of future premiums.

(J) Analogies between a life insurance policy's or annuity contract's cash values and savings accounts or other investments and between premium payments and contributions to savings accounts or other investments shall be complete and accurate. An advertisement shall not emphasize the investment or tax features of a life insurance policy to such a degree that the advertisement would mislead the purchaser to believe the policy is anything other than a life insurance policy or an annuity contract.

(K) An advertisement shall not state or imply in any way that interest charged on a policy loan or the reduction of death benefits by the amount of outstanding policy loan is unfair, inequitable, or in any manner an incorrect or improper practice.

(L) If nonforfeiture values are shown in any advertisement, the values must be shown either for the entire amount of the basic life policy death benefit or for each one thousand dollars (\$1,000) of the initial death benefit.

(M) The words "free," "no cost," "without cost," "no additional cost," "at no extra cost," or words of similar import shall not be used with respect to any benefit or service being made available with a policy unless true. If there is no charge to the insured, then the identity of the payor shall be prominently disclosed. An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the premium or use other appropriate language.

(N) No insurance producer may use terms such as "financial planner," "investment adviser," "financial consultant," or "financial counseling" in such a way as to imply that he or she is generally engaged in an advisory business in which compensation is unrelated to sales unless that actually is the case. This provision is not intended to preclude persons who hold some form of formal recognized financial planning or consultant designation from using this designation. This provision also is not intended to preclude persons who are members of a recognized trade or professional association having such terms as part of its name from citing the membership, providing that a person citing the membership, if authorized only to sell insurance products, shall disclose that fact. This provision does not permit persons to charge an additional fee for services that are customarily associated with the solicitation, negotiation, or servicing of policies.

(O) Nonguaranteed Elements.

1. An advertisement shall not utilize or describe nonguaranteed elements in a manner that is misleading or has the capacity or tendency to mislead.

2. An advertisement shall not state or imply that the payment or amount of nonguaranteed elements is guaranteed. Unless otherwise specified in sections 375.1500 to 375.1527, RSMo, if nonguaranteed elements are illustrated, they shall be based on the insurer's current scale and the illustration shall contain a statement to the effect that they are not to be construed as guarantees or estimates of amounts to be paid in the future.

3. Unless otherwise specified in sections 375.1500 to 375.1527, RSMo, an advertisement that includes any illustrations or statements containing or based upon nonguaranteed elements shall set forth, with equal prominence comparable illustrations or statements containing or based upon the guaranteed elements.

4. An advertisement shall not use or describe determinable elements in a manner that is misleading or has the capacity or tendency to mislead.

5. Advertisement may describe determinable elements as guaranteed but not determinable at issue. This description should include an explanation of how these elements operate, and their limitations, if any.

6. If an advertisement refers to any nonguaranteed element, it shall indicate that the insurer reserves the right to change any such element at any time and for any reason. However, if an insurer has agreed to limit this right in any way; such as, for example, if it has agreed to change these elements only at certain intervals or only if there is a change in the insurer's current or anticipated experience, the advertisement may indicate any such limitation on the insurer's right.

7. An advertisement shall not refer to dividends as "tax-free" or use words of similar import, unless the tax treatment of dividends is fully explained and the nature of the dividend as a return of premium is indicated clearly.

8. An advertisement may not state or imply that illustrated dividends under either or both a participating policy or pure endowment will be or can be sufficient at any future time to assure without the future payment of premiums, the receipt of benefits, such as a paid-up policy, unless the advertisement clearly and precisely explains the benefits or coverage provided at that time and the conditions required for that to occur.

(I) Dividends.

1. An advertisement shall not utilize or describe dividends in a manner which is misleading or has the capacity or tendency to mislead.

2. An advertisement shall not state or imply that the payment or amount of dividends is guaranteed. If dividends are illustrated, they must be based on the insurer's current dividend scale and the illustration must contain a statement to the effect that they are not to be construed as guarantees or estimates of dividends to be paid in the future.

3. An advertisement shall not state or imply that illustrated dividends under a participating policy, pure endowment, or both, will be or can be sufficient at any future time to assure, without the further payment of premiums, the receipt of benefits, such as a paid-up policy, unless the advertisement clearly and precisely explains what benefits or coverage would be provided at that time and under what conditions this would occur.]

[(J)](P) An advertisement shall not state that a purchaser of a policy will share in or receive a stated percentage or portion of the earnings on the general account assets of the company.

[(K)](Q) Testimonials, Appraisals, Analysis, or Endorsements by Third Parties.

1. Testimonials, appraisals, or analysis used in advertisements must be genuine; represent the current opinion of the author; be applicable to the policy advertised, if any; and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective insureds. In using [a] testimonials, appraisals, or analysis; the insurer or insurance producer makes as its own all of the statements contained [in it] therein, and these statements are

subject to all the provisions of *[these rules]* this rule.

2. If the individual making a testimonial, appraisal, analysis, or *[an]* endorsement has a financial interest in the insurer or *[a]* related entity as a stockholder, director, officer, employee or otherwise, or receives any benefit directly or indirectly other than required union scale wages, *[this]* that fact shall be prominently disclosed in the advertisement.

3. An advertisement shall not state or imply that an insurer or a policy has been approved or endorsed by a group of individuals, society, association, or other organization unless *[that]* such is the fact and unless any proprietary relationship between an organization and the insurer is disclosed. If the entity making the endorsement or testimonial is owned, controlled, or managed by the insurer, or receives any payment or other consideration from the insurer for making the endorsement or testimonial, *[this]* that fact shall be disclosed in the advertisement.

4. When a testimonial, appraisal, analysis, or endorsement refers to benefits received under a policy for a specific claim, the claim date, including claim number, date of loss, and other pertinent information shall be retained by the insurer for inspection for a period of five (5) years after the discontinuance of its use.

[(L)](R) An advertisement shall not contain statistical information relating to any insurer or policy unless it accurately reflects recent and relevant facts. The source of any such statistics used in an advertisement shall be identified.

(S) Policies Sold to Students.

1. The envelope in which insurance solicitation material is contained may be addressed to the parents of students. The address may not include any combination of words which imply that the correspondence is from a school, college, university, or other education or training institution nor may it imply that the institution has endorsed the material or supplied the insurer with information about the student unless such is a correct and truthful statement.

2. All advertisements including, but not limited to, informational flyers used in the solicitation of insurance shall be identified clearly as coming from an insurer or insurance producer, if such is the case, and these entities shall be clearly identified as such.

3. The return address on the envelope may not imply that the soliciting insurer or insurance producer is affiliated with a university, college, school, or other educational or training institution, unless true.

[(M)](T) Introductory, Initial or Special Offers, and Enrollment Periods.

1. An advertisement of an individual policy or combination of these policies shall not state or imply that the policy or combination of policies is an introductory, initial or special offer, or that applicants will receive substantial advantages not available at a later date, or that the offer is available only to a specified group of individuals, unless that is the fact. An advertisement shall not describe an enrollment period as "special" or "limited" or use similar words or phrases in describing it when the insurer uses successive enrollment periods as its usual method of marketing its policies.

2. An advertisement shall not state or imply that only a specific number of policies will be sold, or that a time is fixed for the discontinuance of the sale of the particular policy advertised because of special advantages available in the policy.

3. An advertisement shall not offer a policy *[which]* that utilizes a reduced initial premium rate in a manner *[which]* that over-/emphasizes the availability and the amount of the reduced initial premium. A reduced initial or first year premium may not be described as constituting free insurance for a period of time. When an insurer charges an initial premium that differs in amount from the amount of the renewal premium payable on the same mode, all references to the reduced initial premium shall be followed by an asterisk or other appropriate symbol *[which]* that refers the reader to that specific portion of the advertisement *[which]* that contains the full rate schedule for the policy being advertised.

4. An enrollment period during which a particular insurance policy may be purchased on an individual basis shall not be offered within this state unless there has been a lapse of not less than three (3) months between the close of the immediately preceding enrollment period for the same policy and the opening of the new enrollment period. The advertisement shall specify the date by which the applicant must mail the application, which shall be not less than ten (10) days and not more than forty (40) days *[following]* from the date on which the enrollment period is advertised for the first time. This rule applies to all advertising media—*[that is]* i.e., mail, newspapers, radio, television, magazines, and periodicals—by any one (1) insurer or insurance producer. The phrase "any one (1) insurer" includes all the affiliated companies of a group of insurance companies under common management or control. This rule does not apply to the use of a termination or cutoff date beyond which an individual application for a guaranteed issue policy will not be *[acceptable]* accepted by an insurer in those instances where the application has been sent to the applicant in response to *[his/her]* his or her request. It is also inapplicable to solicitations of employees or members of a particular group or association which otherwise would be eligible under specific provisions of the insurance code for group, blanket, or franchise insurance. In cases where an insurance product is marketed on a direct mail basis to prospective insureds by reason of some common relationship with a sponsoring organization, this rule shall be applied separately to each sponsoring organization.

[(N)](U) An advertisement of a particular policy shall not state or imply that prospective insureds shall be or become members of a special class, group, or quasi-group and as such enjoy special rates, dividends, or underwriting privileges, unless that is the fact.

[(O)](V) An advertisement shall not make unfair or incomplete comparisons of policies, benefits, dividends, or rates of other insurers. An advertisement shall not *[falsely or unfairly describe]* disparage other insurers, *[their]* insurance producers, policies, services, or methods of marketing.

[(P)](W) For individual deferred annuity products or deposit funds, the following shall apply:

1. Any illustrations or statements containing or based upon nonguaranteed interest *[rates higher than the guaranteed accumulation interest]* rates shall likewise *[shall]* set forth with equal prominence comparable illustrations or statements containing or based upon the guaranteed accumulation interest rates. *[These higher]* The nonguaranteed interest rate/s shall not be greater than those currently being credited by the company unless the *[higher]* nonguaranteed rates have been publicly declared by the company with an effective date for new issues not more than three (3) months subsequent to the date of declaration;

2. If an advertisement states the net premium accumulation interest rate, whether guaranteed or not, it also shall disclose in close proximity thereto and with equal prominence, the actual relationship between the gross and net premiums;

3. If any contract does not provide a cash surrender benefit prior to commencement of payment of any annuity benefits, *[any]* an illustration/s or statement/s concerning the contract shall prominently state that cash surrender benefits are not provided/.; and

4. Any illustrations, depictions, or statements containing or based on determinable elements shall likewise set forth with equal prominence comparable illustrations, depictions, or statements containing or based on guaranteed elements.

(X) An advertisement of a life insurance policy or annuity contract that illustrates nonguaranteed values shall only do so in accordance with current applicable state law relative to illustrating such values for life insurance policies and annuity contracts.

(Y) An advertisement for the solicitation or sale of a preneed funeral contract or prearrangement as defined in subsection (1)(H) that is funded or to be funded by a life insurance policy or annuity contract shall adequately disclose the following:

1. The fact that a life insurance policy or annuity contract is being used to fund a preneed funeral contract or a prearrangement as defined in subsection (1)(H); and

2. The nature of the relationship among the soliciting agent

or agents, the provider of the funeral or cemetery merchandise services, the administrator and any other person.

(Z) Failure to comply with the requirements set forth in section (4) of this rule shall constitute false information and/or misrepresentations and false advertising of insurance policies as those terms are used in section 375.936(4) and (6), RSMo.

(5) Identity of Insurer.

(A) The name of the insurer shall be clearly identified in *[each]* all advertisements about the insurer or its products, and if any specific individual policy is advertised it shall be identified either by form number or other appropriate description. If an application is a part of the advertisement, the name of the insurer shall be shown on the application. However, if an advertisement contains a listing of rates or features that is a composite of several different policies or contracts of different insurers, the advertisement shall so state, shall indicate, if applicable, that not all policies or contracts on which the composite is based may be available in all states, and shall provide a rating of the lowest rated insurer and reference the rating agency, but need not identify each insurer. If an advertisement identifies the issuing insurers, insurance issuer ratings need not be stated.

(B) An advertisement shall not use a trade name, an insurance group designation, name of the parent company of the insurer, name of a particular division of the insurer, a reinsurer of the insurer, service mark, slogan, symbol, or other device or reference without disclosing the name of the insurer, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the insurer or create the impression that a company other than the insurer would have any responsibility for the financial obligation under a policy.

[(B)](C) [No advertisement shall] An advertisement shall not use any combination of words, symbols, or physical materials *[which]* that by their content, phraseology, shape, color, or other characteristics are so similar to a combination of words, symbols, or physical materials used by a governmental program or agency or otherwise appear to be of such a nature that they tend to mislead prospective insureds into believing that the solicitation is in some manner connected with *[that]* a governmental program or agency.

(D) Failure to comply with the requirements set forth in section (5) of this rule shall constitute false information and/or misrepresentations and false advertising of insurance policies as those terms are used in section 375.936(4) and (6), RSMo.

(6) Jurisdictional Licensing and Status of Insurer.

(A) An advertisement *[which]* that is intended to be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed shall not imply licensing beyond those limits.

(B) An advertisement may state that an insurer or insurance producer is licensed in *[the state where the advertisement appears]* a particular state or states, provided it does not exaggerate that fact or suggest or imply that competing insurers or insurance producers may not be so licensed.

(C) An advertisement shall not create the impression that the insurer, its financial condition or status, the payment of its claims, or the merits, desirability, or advisability of its policy forms or kinds of plans of insurance are *[currently or have been]* recommended or endorsed by any governmental entity *[unless that is the fact]*. However, when a governmental entity has recommended or endorsed a policy form or plan, that fact may be stated if the entity authorize/d/s its recommendation or endorsement to be used in an advertisement.

(D) Failure to comply with the requirements set forth in section (6) of this rule shall constitute false information and/or misrepresentations and false advertising of insurance policies as those terms are used in section 375.936(4) and (6), RSMo.

(7) Statements About the Insurer.

(A) An advertisement shall not contain statements, pictures, or

illustrations *[which]* that are false or misleading, in fact or by implication, with respect to the assets, liabilities, insurance in force, corporate structure, financial condition, age, or relative position of the insurer in the insurance business. An advertisement shall not contain a recommendation by any commercial rating system unless it clearly defines the scope, *[basis]* and extent of the recommendation including, but not limited to, the placement of the insurer's rating in the hierarchy of the rating system cited.

(B) Failure to comply with the requirements set forth in section (7) of this rule shall constitute false information and/or misrepresentations and false advertising of insurance policies as those terms are used in section 375.936(4) and (6), RSMo.

(8) Enforcement Procedures.

(A) Each insurer shall maintain at its home or principal office a complete file containing a specimen copy of every printed, published, or prepared advertisement of its individual policies and specimen copies of typical printed, published, or prepared advertisements of its blanket, franchise and group policies disseminated in this state, with a notation indicating the manner and extent of distribution and the form number of any policy advertised. This file shall be subject to inspection by the director *[or his/her lawfully appointed agents]*. All *[these]* advertisements shall be maintained in the file for a period of *[either three (3) years or until the filing of the next regular report on examination of the insurer, whichever is the longer period of time]* five (5) years after discontinuance of its use.

(B) If the director determines that an insurer's or insurance producer's advertisement has the capacity or tendency to mislead or deceive the public, the director may require the insurer or insurance producer to submit all or any part of their advertising material for review or approval prior to use.

[(B)](C) Each insurer subject to the provisions of *[these rules]* this rule shall file with the director with its annual statement a certificate of compliance executed by an authorized officer of the insurer *[where it is stated]* stating that to the best of *[his/her]* his or her knowledge, information and belief, *[the advertisements [which] that were disseminated by or on behalf of the insurer in this state during the preceding statement year, or during the portion of [that] the year when [these rules were] this rule was in effect, complied or were made to comply in all respects with the provisions of [these rules] this rule and the insurance laws of this state as implemented and interpreted by [these rules] this rule.*

[(9) Conflict With Other Rules. It is not intended that these rules conflict with or supersede any rules currently in force or subsequently adopted in this state governing specific aspects of the sale or replacement of life insurance including, but not limited to, rules dealing with life insurance cost comparison indices, deceptive practices in the sales of life insurance and replacement of life insurance policies. Consequently, no disclosure required under any such rules shall be deemed to be an advertisement within the meaning of these rules.]

AUTHORITY: sections 374.045, 375.141, 375.143, and 375.144, RSMo Supp. 2013, and sections 375.934 [and], 375.936, and 375.948, RSMo 2000. This rule was previously filed as 4 CSR 190-13.020. Original rule filed Dec. 23, 1975, effective Jan. 2, 1976. Amended: Filed July 9, 1976, effective Feb. 20, 1977. Amended: Filed July 12, 2002, effective Jan. 30, 2003. Amended: Filed Sept. 30, 2016.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: *Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Insurance, Financial Institutions and Professional Registration, Attention: Tamara W. Kopp, Receivership Counsel, Director's Office, PO Box 690, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION**

**Division 400—Life, Annuities and Health
Chapter 5—Advertising and Material Disclosures**

PROPOSED AMENDMENT

20 CSR 400-5.400 [Replacement of] Life Insurance and Annuities Replacement. The director is amending the rule title, amending the purpose, deleting sections (1)-(10) and exhibit A. The director is adding new sections (1)-(9) and appendices A, B, and C.

PURPOSE: *This amendment updates life insurance and annuity replacement requirements for insurers and producers in accordance with the National Association of Insurance Commissioners Life Insurance and Annuities Replacement Model Regulation #613.*

PURPOSE: *This rule regulates the activities of insurers, agents, and brokers with respect to the replacement of existing life insurance and annuities and protects the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement transactions. This rule effectuates and aids in the interpretation of sections 375.934, 375.936, and 375.948, RSMo.*

(1) Purpose. *The purpose of this rule is to—*

(A) Regulate the activities of insurers and insurance producers with respect to the replacement of existing life insurance and annuities; and

(B) Protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement transactions by—

1. Assuring that purchasers receive information with which a decision can be made in his/her own best interest;

2. Reducing the opportunity for misrepresentation and incomplete disclosures; and

3. Establishing penalties for failure to comply with requirements of this rule.

(2) Definition of Replacement. *Replacement means any transaction in which new life insurance or a new annuity is to be purchased, and it is known or should be known to the proposing insurance producer or to the proposing insurer if there is no insurance producer, that by reason of that transaction, existing life insurance or annuity has been or is to be—*

(A) Lapsed, forfeited, surrendered or otherwise terminated;

(B) Converted to reduced paid-up insurance, continued as extended term insurance or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

(C) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

(D) Reissued with any reduction in cash value; or

(E) Pledged as collateral or subjected to borrowing, whether in a single loan or under a schedule of borrowing over a period of time for amounts in the aggregate exceeding twenty-five percent (25%) of the loan value set forth in the

policy.

(3) Other Definitions.

(A) Conservation means any attempt by the existing insurer or its insurance producer to dissuade a policyowner from the replacement of existing life insurance or annuity. Conservation does not include routine administrative procedures such as late payment reminders, late payment offers or reinstatement offers.

(B) Direct-response sales means any sale of life insurance or annuity where the insurer does not utilize an insurance producer in the sale or delivery of the policy.

(C) Existing insurer means the insurance company whose policy is or will be changed or terminated in a manner as described within the definition of replacement.

(D) Existing life insurance or annuity means any life insurance or annuity in force, including life insurance under a binding or conditional receipt or a life insurance policy or annuity that is within an unconditional refund period.

(E) Policy summary or ledger statement as defined by section 376.704, RSMo.

(F) Registered contract means variable annuities, investment annuities, variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in separate account or any other contracts issued by life insurance companies which are registered with the Federal Securities and Exchange Commission.

(G) Replacing insurer means the insurance company that issues or proposes to issue a new policy or contract which is a replacement of existing life insurance or annuity.

(4) Exemptions. *Unless otherwise specifically included, this rule shall not apply to transactions involving—*

(A) Credit life insurance;

(B) Group life insurance or group annuities;

(C) An application to the existing insurer that issued the existing life insurance where a contractual change or conversion privilege is being exercised;

(D) Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;

(E) Transactions where the replacing insurer and the existing insurer are the same or are subsidiaries or affiliates under common ownership or control; provided, however, insurance producers proposing replacement shall comply with the requirements of subsection (5)(A);

(F) Registered contracts shall be exempt from the requirements of paragraphs (7)(B)2. and 3. requiring provision of policy summary or ledger statement information; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required in lieu of it; and

(G) Policies issued in connection with a pension, profit sharing and individual retirement account or other benefit plan qualifying for tax deductibility of premium.

(5) Duties of Insurance Producers.

(A) Each insurance producer who initiates the application shall submit to the insurer to which an application for life insurance or annuity is presented, with or as part of each application—

1. A statement signed by the applicant as to whether replacement of existing life insurance or annuity is involved in the transaction; and

2. A signed statement as to whether the insurance producer knows replacement is or may be involved in the transaction.