MINNESOTA CODE OF AGENCY RULES

RULES OF THE MINNESOTA STATE RETIREMENT SYSTEM

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MINNESOTA STATE RETIREMENT SYSTEM

Rules of the Board of Directors

Deferred Compensation Plan

RULES OF THE BOARD OF DIRECTORS

Minnesota State Retirement System

2 MCAR § 3.0001 Election of board of directors.

A. State employee member. The procedure for the biennial election of the four state employee members of the board of directors as provided in Minn. Stat. § 352.03, and laws amendatory thereof, shall be as follows:

Any employee covered by the system who desires to be a candidate for membership on the board of directors shall file a nominating petition signed by ten (10) employees covered by the system with the executive director of the system not later than October first of each odd numbered year. A candidate may not withdraw his candidacy after October 15. If the employees whose names are thus filed are eligible to election or reelection as a member of the board of directors as provided by Minn. Stat. § 352.03, and laws amendatory thereof, their name and the name of the department in which they are employed shall be printed upon the ballots sent to employees covered by the system as hereinafter provided. The name of any employee covered by the system may be written in on the ballot provided for that purpose.

Between December 26 of each odd numbered year and the following January 5 inclusive, the executive director shall send by mail, express, or regular messenger service notices of election to be held, ballots and envelopes to the respective heads of departments and state agencies having employees who are covered by the system. The heads of departments and state agencies shall deliver or cause to be delivered to each such employee who receives salary or wages from which deductions are made for the system on the department's or agency's payroll abstract covering the last full pay period ending in December a notice of election that two members are to be elected to the board of directors, each such notice to be accompanied by a ballot and two envelopes. Department heads shall also mail such election material to their employees on approved leave of absence or seasonal layoff during the last full pay period in December and shall certify to the executive director the names of the employees to whom ballots were mailed. The Minnesota State Retirement System shall reimburse the departments for the cost of the postage for such mailing. Each employee participating in the election shall place the ballots, not exceeding two, imprinted with the names of the candidates of their choice, or shall write or indicate by appropriate mark on the blank ballot provided for that purpose the names, not exceeding a vote for a total of two candidates of any state employees covered by the system for whom he wishes to vote for directors, place the ballots in the envelope marked "ballots" (upon which there shall be no writing except the printed word "ballots" and the words "insert ballots and seal" on the flap); thereafter seal and place in the envelope, likewise sealed, addressed to "Tellers, Minnesota State Retirement System", at its office in St. Paul, Minnesota 55101.

The employee shall write his or her name, department, home address, and social security number in the upper left-hand corner of the envelope addressed to said tellers, and return it to the office of the system not later than February 1, in each even numbered year. If the employee so elects, he or she may place the tellers envelope in another envelope and mail or deliver this to the retirement system. Ballots in envelopes postmarked any time up to midnight on February 1 of each even numbered year shall be counted, as shall ballots in envelopes received at the office of the system by messenger service up to the close of office hours on February 1 of each even numbered year, or, if February 1 falls on a Saturday or Sunday, postmarked any time up to midnight or received up to the close of office hours on the following Monday of each even numbered year, provided instructions hereinbefore prescribed have been complied with. Heads of departments and agencies shall promptly notify the executive director of the retirement system that notices, ballots, and envelopes have been delivered to such employees as herein before required.

The name and social security number in the upper left-hand corner of envelopes addressed to the tellers shall be checked against the department payroll abstract or facsimile listing (the abstract covering the last full pay period ending in December) and certified listing of those on seasonal layoff or leave of absence and if the name of the employee on the envelope is found on such payroll abstract or facsimile listing and deductions are taken for the retirement fund which are not deductions in error from the salary of an employee not covered by the system, or if the employee is on approved leave of absence or seasonal layoff during the pay period, the envelope and abstract or facsimile listing shall be noted as "found", and if the name of the employee does not appear thereon, the envelope shall be marked "not found." The envelopes noted as "found" shall be placed in one container and those marked "not found" in another. At eight o'clock in the forenoon on the third Thursday in February in even numbered years, three tellers appointed by the board of directors shall meet and verify the notations on the sealed envelopes addressed to the tellers who shall then remove and set aside the sealed ballot envelopes of those employees verified as eligible to vote. After the verification above required is completed, the small envelopes containing the ballots shall be opened and ballots tabulated by the tellers. The two candidates receiving the highest number of votes shall be the elected members of the board of directors for a term of four years as provided by Minn. Stat. § 352.03 subd. 1 and laws amendatory thereof. In the case of a tie vote as to any candidates, the election shall be resolved by lot.

B. Highway patrolmen's fund member. As provided in Minn. Stat. § 352B.29, the members of the highway patrolmen's retirement fund shall elect one of their membership to serve as a member of the board of directors. The election of such board member shall be separate and distinct, but shall be conducted at the same time by the same tellers and shall follow the same procedure as prescribed in 2 MCAR § 3.0001 A. The term of the first highway patrolmen fund member so elected shall terminate on the first Monday in March 1978. Such members shall serve for a term of four years and until the successor is elected and has qualified.

C. Retired employee member. As provided in Minn. Stat. § 352.03, retired state employees shall elect one retired state employee to serve as a member of the board of directors. The election of such board member shall be separate and distinct but shall be conducted at the same time by the same tellers and shall follow the same procedure as prescribed in 2 MCAR § 3.0001 A. except as follows:

Retired employees who are eligible for election to the board and eligible to vote for a candidate for the board shall be any person receiving an annuity from MSRS as of January 1 of each even numbered year.

Between July 1 and August 15, of each odd numbered year the director shall mail a notice of election to all eligible retired employees giving them notice of election and instructions for becoming a candidate for membership on the board.

Any eligible retired employee who desires to be a candidate for membership on the board of directors must submit a nominating petition, signed by ten (10) or more eligible retired employees to the executive director of the system not later than October 1 in each odd numbered year. If the retired employees whose names are thus filed are eligible to election as a member of the board of directors their names shall be printed in alphabetical order upon the ballots sent to retired employees as hereinafter provided.

No nominee may withdraw his candidacy after October 10th. The name of any eligible retired employee of the system may be written in on the ballot in the space provided for that purpose.

In January of each even numbered year, the executive director shall mail ballots and envelopes to the retired employees eligible to vote. The election material shall be mailed to the last address given to the system by the retired employee for the mailing of the annuity checks unless the retired employee notifies the system in writing by November 1st of a different address to be used for this purpose. The name and social security number in the upper left-hand corner of the envelopes addressed to the tellers shall be checked against the annuity abstract or facsimile listing covering the annuity payments for January of each even numbered year.

2 MCAR § 3.0002 Form and manner of applications and requests. All applications to the executive director shall be made in writing upon such forms and in such manner as he may require.

All applications for annuity and refundment shall be subscribed to before a notary public, or other person having statutory authority of a notary public, who shall affix his acknowledgment or jurat thereto.

2 MCAR § 3.0003 Certain powers of attorney not acceptable. Powers of attorney which involve an assignment of moneys, annuities or benefits shall not be acceptable except as may be expressly authorized by the laws governing the plans and funds administered by the Minnesota State Retirement System.

2 MCAR § 3.0004 Closing of office on normal workday—effect of. In the event the office of the system is closed by executive order, strike or work stoppage on a normal workday, so that there is no mail delivery to the office of the system any application for an annuity or disability benefit mailed in an envelope having a postmark which indicates the application would have been received at the office of the system on the day on which the office was closed shall for the purpose of determining when the annuity or disability benefit begins to accrue, be deemed to have been received on the first normal workday the office was closed or the date the application was notarized, whichever is later.

If there is no postmark or if the postal employees are on strike and the application is notarized on or after the date the office was closed or the beginning of the postal employees strike, the date of notarization shall be used.

2 MCAR § 3.0005 Annuities paid under "savings clause". No increase in the social security benefit (PIA) authorized by social security due to an automatic or summary recalculation shall reduce the amount of benefits payable from any retirement fund or plan administered by the system.

2 MCAR § 3.0006 Annuity, benefit and refund checks—mailing provisions. No checks covering an annuity or disability benefit shall be mailed outside the United States. Refund checks, however, may be mailed to a foreign country at the written request of the former employee.

2 MCAR § 3.0007 Acknowledgment of receipt of annuity and disability benefits required. Written acknowledgment is required not less than semi-annually from the retired or disabled employee that he has received his annuity or disability benefit. If the retired employee has directed that his check be mailed to a financial institution, such financial institution may acknowledge receipt in his stead. The director shall mail a form with the annuity or benefit checks at least twice each year for acknowledgment of receipt of the check. No payment for the following months shall be made until such acknowledgment is on file in the office of the retirement system.

2 MCAR § 3.0008 Repayment of refundments. In determining the amount of the payment required to repay a refundment, the director shall make any adjustment required by reason of deductions taken in error, not taken or taken at an incorrect rate. Repayment of refundments may be made in a lump sum when expressly provided by the laws governing the repayment or in installments by payroll deduction.

An employee covered by the system who elects to repay a refundment and who intends to retire, becomes disabled or whose state service will terminate before he has completed the repayment, shall have the privilege of completing such payment in a lump sum before his retirement or termination of state service. If the refundment is not fully repaid, the total amount which he had paid to the fund shall be returned to him, and his status shall then be the same as if he had made no payments thereon. In the event of the death of an employee who is repaying a refundment, if the spouse is not entitled to an annuity, the total amount shall be refunded to his designated beneficiary or beneficiary as provided by law. If the surviving spouse is entitled to an annuity, the director shall determine, based on the most current service and extending retroactively, the period of allowable service paid for by the partial payment made and shall credit the deceased employee with such service.

2 MCAR § 3.0009 Continuation of coverage. An employee covered by the system who for the convenience of the employer is temporarily employed in a classification other than that in which he is regularly employed, and who is on authorized leave of absence from his regular employment, shall have deductions taken from his salary for the retirement fund while thus temporarily employed.

Any employee of a "sending agency" under the provisions of Minn. Stat. §§ 15.51 through 15.59 and acts amendatory thereof, shall, if he is an employee covered by the system at the time he is detailed to a "receiving agency", as therein defined, continue to be covered by the system and deductions shall be made from his salary and deposited in the retirement fund the same as though he continued his work in the "sending agency." Employee contributions, employer contributions, and employer additional contributions, shall be made in all respects as provided in Minn. Stat. § 352.041 subd. 2 and 3.

2 MCAR § 3.0010 Military service.

A. Proof of service. Upon reinstatement from leave of absence as provided in Minn. Stat. §§ 192.261 and 192.262, and laws amendatory thereof, an employee who has been on leave of absence to serve in the military forces of the United States or of the State of Minnesota who desires to obtain credit for his period of active military service is required to supply to the executive director a certified copy of the record of his discharge or other form of release by proper authority from military service. A photocopy of either document will be accepted provided the original is submitted for comparison with the photocopy; the original will then be returned to the employee and the photocopy placed on file in the office of the retirement system.

B. Death in service. Any duly designated beneficiary of an employee covered by the system making application for refundment of the sum in the retirement fund to the credit of such employee who dies while in military service of the United States or of the State of Minnesota is required to submit official notice of death as issued by the government of the United States or of the State of Minnesota as the case may be. A photocopy of such official notice will be accepted as proof of death for the files of the system, provided the original notice is submitted for comparison with the photocopy and its authenticity duly verified.

2 MCAR § 3.0011 Payment on omitted salary deductions. If a department fails to take deductions from the salaries of employees as provided by Minn. Stat. § 352.04, or fails to provide the proper information so that deductions may be initiated, the 6 per cent payment in lieu of interest required by Minn. Stat. § 352.04 subd. 8, and laws amendatory thereof, shall not be charged if the period such deductions were not taken was four or less pay periods.

2 MCAR § 3.0012 Verification of date of birth. Verification of date of birth should be filed with the executive director by all employees one year prior to the date they became eligible by reason of age and service to receive a retirement annuity and by employees applying for a total and permanent disability benefit or for a refundment with interest as provided by Minn. Stat. § 352.22 subd. 2 and laws amendatory thereof. In no event shall any annuity or benefit be paid until acceptable verification of date of birth is on file in the office of the system.

2 MCAR § 3.0013 Change of beneficiary. Employees covered by this system who desire to make a change in the beneficiary they have designated shall make such change in writing and in the form and manner prescribed by the executive director.

2 MCAR § 3.0014 Absence of proof of service. In cases where employees covered by the system believe they are entitled to credit for periods of service of which departments have no records, the burden of proof is upon the employee, and in the absence of such proof, the employee is not entitled to credit therefor.

2 MCAR § 3.5001 Establishment and purpose of plan.

See AR 03985T →

A. Establishment of plan. This plan shall be known as the Minnesota Public Employees' Deferred Compensation Plan ("plan") and is hereby created in accordance with Minn. Stat. § 352.96. This plan shall constitute a continuation of the Minnesota Deferred Compensation Plan, approved by the Attorney General and filed with the Secretary of State and the Commissioner of Administration, November 24, 1975.

B. Purpose of plan. The purpose of this plan is to allow employees to designate a portion of their compensation to be withheld each pay period by the employer and invested at the discretion of and in a manner approved by the director for the employer until termination of employment, financial hardship or death of the employee. Any compensation deferred by employees may be invested by the director, for the employer, but there is no requirement for the director or employer to do so. Participation in this plan shall not be construed to establish or create an employment contract between the employee and the employer.

2 MCAR § 3.5002 Definitions.

See AR 03985T →

A. Definitions. Whenever used in the plan, the following terms shall have the meanings as set forth below unless otherwise expressly provided:

1. "Accounting date" means the date on which an investment fund is valued and earnings and/or losses are allocated to participants' deferred compensation accounts. There shall be an accounting date at least once a month on the last business day of the month and, if practical in the discretion of the board, more frequent accounting dates to reflect, as closely as possible, the earnings and/or losses with respect to a deferred compensation account from the time compensation is deferred and invested in various investment funds until it is eventually distributed according to the plan.

2. "Beneficiary" means the person or legal entity provided for by the plan to receive any undistributed deferred compensation which becomes payable in the event of the participant's death.

3. "Board" means the Minnesota State Board of Investment.

4. "Compensation" means any remuneration payable to an individual who performs service for the employer which is reportable as taxable income.

5. "Deferred compensation" means that portion of the participant's compensation which the participant and employer mutually agree to defer under this plan.

6. "Deferred compensation account" means the account established for the investment of deferred compensation. It shall include the supplemental investment account and the fixed and variable annuity account.

a. "Supplemental investment account" means the Minnesota Supplemental Retirement Investment Fund as established by Minn. Stat. § 11A.17 and managed by the board.

b. "Fixed and variable annuity account" means the investment accounts of the companies approved by the board pursuant to Minn. Stat. § 352.96, Subd. 2.

7. "Director" means the executive director of the Minnesota State Retirement System.

8. "Employee" means:

a. any individual receiving compensation for services from the State of Minnesota which shall include any elected official, appointed official, independent contractor, or employee of the State of Minnesota, including employees of departments, agencies and instrumentalities, wherein the state legislature has specifically held such employees to be "state employees" for any one or more specific purposes such as, but not limited to, membership in the Minnesota State Retirement System, employee group insurance program, or unemployment compensation plan for state employees, or

b. any individual receiving compensation for services performed for a political subdivision of the state and shall include any elected official, appointed official, independent contractor or employee of a political subdivision of the state, including any employee of such political subdivision or other employing unit entitled to membership in a public retirement plan, enumerated in Minn. Stat. § 356.20, Subd. 2.

9. "Employer" means:

a. the State of Minnesota, or

b. a political subdivision of the State of Minnesota, or an agency or instrumentality of the State of Minnesota or its political subdivisions.

10. "Includable compensation" means the compensation remaining after any deferrals through this plan and/or any amount of compensation excluded from taxable income as a result of contributions made for the benefit of an employee under a tax sheltered annuity or mutual fund shares held in a custodial account.

11. "Normal retirement age" means the earliest of the following:

a. attainment of eligibility by the participant to commence receiving normal retirement benefits from one of the retirement systems enumerated in Minn. Stat. § 356.20, Subd. 2, or other Minnesota public employee pension plan of which participant is a member.

b. Age 65.

12. "Participant" means any individual who has enrolled in this plan as provided in 2 MCAR § 3.5004 and has not had a complete distribution of his or her deferred compensation account.

13. "Pay period" means a regular accounting period established by the employer for measuring and paying compensation earned by employees.

14. "Plan" means the Minnesota Public Employee's Deferred Compensation Plan as set forth herein and as it may be amended from time to time.

15. "Prior plan" means the Minnesota Deferred Compensation Plan approved by the Attorney General and filed with the Secretary of State and the Commissioner of Administration November 24, 1975 and any plans established thereunder by political subdivisions of the State of Minnesota.

16. "Projected retirement date" means a date established to allow deferral of underutilized amounts according to the provisions of 2 MCAR § 3.5004 D. 2. Only one projected retirement date may be designated and is to be designated on a form approved by the director.

17. "Termination of service" means the permanent severance of the participant's employment relationship with the employer by means of: retirement; discharge (provided all appellate processes have been exhausted or tolled); resignation (provided seniority or continuous service is interrupted); permenent layoff; expiration or nonrenewal of appointment or term of office; nonreelection; or such other form of permanent severance as may be provided by appropriate law, contract or rules and regulations. For purposes of this definition, a break in employment for a period of less than 30 days shall not be considered a termination of service.

18. "Taxable year" means the calendar year, beginning January 1 and ending on December 31.

B. Gender and number. Except when otherwise indicated by the context, any masculine terminology therein shall also include the feminine and neuter and vice-versa, and the definition of any terms herein in the singular may also include the plural.

2 MCAR § 3.5003 Responsibilities of the director. The director has the full power and authority to administer the plan and promulgate, adopt, amend or revoke internal management procedures which are consistent with, and necessary to implement and maintain, this plan.

The employer or the director on behalf of the employer shall enter into a written agreement with each participant. Such written agreement and other application forms shall be in a form and manner as prescribed by the director and shall set forth the obligations contained in this plan, the amounts of compensation to be deferred, and such other information as the director deems necessary to administer the plan.

Pamphlets describing this plan and outlining the options and opportunities available shall be prepared under the direction of the director, and made available to eligible employees. Copies of the plan will be made available upon request. Individual account statements shall be made available to each participant at least annually.

2 MCAR § 3.5004 Participation in the plan.

see ar039857 →

A. Eligibility. All employees who are receiving compensation on or after the date the plan becomes effective, and who have not revoked earlier participation pursuant to 2 MCAR § 3.5004 F. during the most recent taxable year, shall be eligible to become participants in accordance with 2 MCAR § 3.5004 B.

B. Enrollment. Any employee eligible to participate in accordance with 2 MCAR § 3.5004 A. may become a participant by agreeing with the employer in writing, on a form approved by the director, to a deferment of his or her compensation in accordance with 2 MCAR § 3.5004 C. and D. The deferment will commence with the first full pay period following 30 days from the date the application is properly completed by the employee and accepted by the employer or director acting for the employer. The application shall also specify an investment preference for the deferred compensation.

C. Minimum deferment. The minimum amount which may be deferred shall be ten dollars ($10.00) per pay period. The amounts to be deferred must be stated in whole dollars. If the application indicates any amount which includes cents, the cents will be disregarded.

D. Maximum deferment. The total amount of deferred compensation during any taxable year shall not exceed the limits provided in D. 1. and D. 2. of this rule.

1. 33-1/3% of includable compensation or $7,500 whichever is less; or

2. Each participant may designate a projected retirement date to be on or after normal retirement age which then shall be participant's normal retirement age under the plan. For each of three taxable years preceding his or her projected retirement date, a participant may defer an amount equal to the limits set forth in 2 MCAR § 3.5004 D. 1. plus an additional amount equal to the difference between the amount of compensation which could have been deferred under this plan, and the amount which was deferred. In no event, however, can the deferral exceed $15,000 for any taxable year.

If a participant also participates in or has amounts contributed by the employer for the purchase of a tax-sheltered annuity or mutual fund shares held in a custodial account, and part or all of such contributions are excludable from taxable income, the contributions reduce the maximums established in paragraphs D. 1. and D. 2. of this rule.

In no event can deferrals exceed an employee's compensation less deductions for FICA, any other taxes, pension contributions and other mandatory deductions.

E. Modifications to amount deferred. The employer shall adjust the participant's total annual compensation, on a pay period basis, by the deferred compensation amount indicated on the participant's application. That amount, subject to the limits of 2 MCAR § 3.5004 D. may be increased or decreased only by proper application to the employer or to the director acting for employer. The change shall take effect the first full pay period following 30 days from receipt and approval of the application. Only two modifications (other than a revocation of participation as provided in 2 MCAR § 3.5004 F.) may be made each taxable year.

F. Revocation of deferral. Any participant may revoke his or her election to have compensation deferred by so notifying the employer or the director acting for the employer in writing. The participant's full compensation on a non-deferred basis will then be restored beginning with the first full pay period following 30 days from the date notification was received; however, the participant's deferred compensation account shall be paid only as provided in 2 MCAR § 3.5005. The participant may not again be eligible to defer compensation until the next taxable year.

G. Duration of election to defer compensation. Once an election to have compensation deferred has been made by the participant, the election shall continue in effect until the participant's termination of service, unless the participant modifies the amount in accordance with 2 MCAR § 3.5004 E., or revokes the deferred compensation in accordance with 2 MCAR § 3.5004 F.

H. Deferral adjustments.

1. Deduction exceeds pay period salary available. If for any reason the deferred compensation deduction for any pay period exceeds the amount remaining after provision is made for retirement deductions, social security tax contributions, state and federal income taxes, and any other deductions required by law, then no deduction for the plan will be made for such participant for such pay period.

2. Missed deductions and over-deductions. If a deferred compensation deduction is missed for any reason whatsoever, no adjustment shall be made on any future pay period for such missed deduction. However, if for any reason whatsoever an amount is deducted from a pay period greater than that indicated by the participant on his application, the amount over deducted will be refunded.

3. Change in any period length. In the employee's application for participation in the plan, he must state the amount he wishes withheld each pay period. If for any reason the length of the period for which the employee is paid is changed from that in effect as of the date of the application, the employer or the director acting for employer shall compute and have withheld

from such employee's salary an equivalent whole dollar amount to be withheld corresponding to the new pay period length which will result in approximately the same annual amount being withheld.

4. Maximum deduction. The employer shall insure compliance with the maximum deferment set forth in 2 MCAR § 3.5004 D. If the amount deducted exceeds the maximum deferment set forth in 2 MCAR § 3.5004 D., the amount of subsequent deductions for the remainder of the taxable year shall be adjusted to conform to the maximum deferment allowed for the year. If it is not possible to correct the total deduction by year end, the overage shall be refunded.

2 MCAR § 3.5005 Participants' accounts, investments and distributions.

See ar 039857 →

A. Deferred compensation accounts and valuation.

1. Participants' accounts. An investment account shall be established for each participant which shall be the basis for any distributions payable to the participants under 2 MCAR § 3.5005 E. Each participant's account shall be credited with the amount of any compensation deferred and received less the administrative charge set forth in 2 MCAR § 3.5005 A. 4. and shall be further credited or debited, as applicable, with any increase or decrease resulting from investments pursuant to 2 MCAR § 3.5005 C., credited or debited with any investment expenses, if applicable, debited for the amount of any distribution, and credited initially with the value on the effective date of this plan of any bookkeeping account maintained under the prior plan.

2. *Financial responsibility of the employer. The funds and assets paid into the deferred compensation account may be invested in approved investments as provided by Minn. Stat. § 352.96, Subd. 2, until distributed in accordance with 2 MCAR § 3.5005 D., E. and F.*

The employer shall not be responsible for any loss due to the investment or failure of investment of funds and assets in said deferred compensation account, nor shall the employer be required to replace any loss whatsoever which may result from said investments.

3. Accounting dates and investment fund valuation. The supplemental investment account is to be valued by the board as of each accounting date in accordance with the provisions of Minn. Stat. § 11A. 17. Any withdrawals or distributions shall be made in cash. The amount paid upon such withdrawal or distribution shall be based upon the account's value as of the accounting date.

The fixed and variable annuity account is to be valued at current market value as of each accounting date on a reasonable and consistent basis and according to the terms of the contract as approved by the board pursuant to Minn. Stat. § 352.96.

4. Administrative expense. Two percent (2%) shall be deducted each

pay period from the deferred compensation invested in the supplemental investment account to pay administrative costs. The director shall review the charge levied annually and if such levy proves to be excessive or insufficient to pay all necessary costs of administration, the director shall adjust the charges accordingly after review of the necessity for the change by the Legislative Auditor.

Administrative costs for the fixed and variable annuity account shall be established by the contract as approved by the board pursuant to Minn. Stat. § 352.96.

B. Unsecured general creditor. Title to, and beneficial ownership of any assets, whether in cash or investments which the employer may earmark to pay or measure any deferred compensation hereunder, shall at all times, remain as a part of the general assets of the employer. The participant and his beneficiary shall not have any property interest whatsoever in any specific asset of the employer on account of his election to defer any compensation under this plan. To the extent that any person acquires a right to receive payments from the employer under the terms of this plan, such right shall be no greater than the right of any unsecured general creditor of the employer.

C. Investment of funds.

1. Any compensation deferred by employees may be invested by the employer or by the director for the employer but there is no requirement to do so.

2. Investment options. The participant may select an investment preference from among the options provided in the deferred compensation account.

a. The supplemental investment account shall provide the following options: the income share account, the growth share account and the fixed return account.

b. The fixed and variable annuity account shall provide the following options: a fixed annuity and a variable annuity.

A participant may select any combination of these five (5) investment account preferences by specifying on the application the amount to be deferred under each investment preference. The amount to be deferred cannot be less than ten dollars ($10.00) per pay period per account selected.

3. Investment preference requests for future compensation. A participant shall, at the time of enrollment, make an investment preference request on an application provided for that purpose. Once made, an investment request shall continue for any deferments unless later changed by the participant.

A participant may, once in any taxable year, change his or her investment preference request for future amounts of deferred compensation. A change in investment request shall be effective with respect to compensation to be deferred for the first full pay period following 30 days from receipt of the request.

4. Investment preference requests for past deferred compensation. A participant may also, once in any taxable year, at the same time as a change is requested under 2 MCAR § 3.5005 C. 3., or in lieu of a change thereunder, change his or her investment preference request with respect to all previously deferred compensation. Such changes are limited to a change within the fixed and variable annuity account or within the supplemental investment account but not between the accounts and are also limited to transfers to fixed accounts only. These changes in investment preference shall be effected as soon as practical as cash flow to an account permits, but not later than six months after the requested change.

D. Distribution events. A participant's deferred compensation account may begin to be distributed in accordance with 2 MCAR § 3.5004 E. and F. the month following the day on which one of the following events occurs:

1. Termination of service,

2. Death,

3. Unforeseeable emergency,

4. Delayed distribution date as provided in 2 MCAR § 3.5005 F.

E. Methods of distribution. Distribution of a participant's deferred compensation account shall be made in one of the following ways, with the method determined in accordance with 2 MCAR § 3.5005 F.

1. A participant in the supplemental investment account may have deferred compensation distributed in one of the following methods:

a. In a lump sum.

b. *In a lump sum purchase by the director of a fixed or variable* annuity contract with the companies approved by the board pursuant to Minn. Stat. § 352.96, Subd. 2 which contract shall include the availability of the options set forth in 2 MCAR § 3.5005 E. 2.

c. In monthly installments distributed over a period of months specified by the participant not to exceed 240 months.

The monthly installment payment from the supplemental investment account shall be determined by dividing the number of shares held by the months to be paid in accordance with the withdrawal period selected. Should such computation result in a quotient of less than ten (10), then ten (10) shares shall be redeemed and distributed to such employee or beneficiary each month until the deferred compensation is depleted in its entirety. If the deferred compensation has been invested in shares of more than one investment account, shares will be redeemed in whole units proportionately to the extent possible. Fixed return investment payments shall also include payment of annual interest on the invested balance.

2. A participant in the fixed and variable annuity account may have deferred compensation distributed in the form of monthly annuity payments. The annuity payments shall be based on one of the following methods:

a. The life of the participant.

b. The life of the participant or a period certain, whichever is greater.

c. The joint lifetime of the participant and a named beneficiary.

Notwithstanding any other rule to the contrary, if a fixed and variable annuity account is equal to or less than $1,000, the account shall be distributed in a lump sum the month following a delayed distribution date not exceeding one year from the date the participant was first entitled to begin distributions.

Once payments have commenced on an annuity basis, any future payments to a beneficiary will depend on the terms of the annuity payments agreed to by the participant and the employer. If a participant dies prior to the end of a period certain, any remaining distributions will be paid to the beneficiary determined under 2 MCAR § 3.5005 H. If annuity payments have commenced on a joint and last survivor basis, any payments due after the death of the participant will be due only to the other person on which the annuity payments have been based and not any other beneficiary.

If, in fact, an annuity contract is purchased, the owner and named beneficiary shall be the employer. Any rights of participants or beneficiaries are derived solely from this plan.

F. Election of method and time of distribution. At any time prior to the date distributions are to commence (except for unforeseeable emergency distributions as provided in 2 MCAR § 3.5005 G.) a participant may elect a delayed distribution date or elect the method by which the deferred compensation account shall be distributed subject to the following rules:

1. A participant or beneficiary may elect, by filing a form provided for that purpose, to delay the commencement of distributions until after a specific future date. Such future date shall be referred to as the "delayed distribution date" for purposes of this plan.

If a participant should die prior to the delayed distribution date, the death will be treated as an event of distribution, and the beneficiary shall have the right to elect the method and time of distribution as if the beneficiary was the participant.

2. The distribution date or method of distribution may be changed at any time prior to distribution. Once payment has commenced, the distribution date or method of distribution may not be changed, except to allow a lump sum payment of the remaining balance the month following receipt of such request from the participant.

3. Distribution may not begin prior to termination of service or death except for unforeseeable emergency distributions as provided in 2 MCAR § 3.5005 G.

4. If no distribution date or method of distribution is elected, then a lump sum payment shall be made to the participant the month following his or her 70th birthday or termination of employment, whichever is later. The participant shall be given 30 days notice of the intent to make such lump sum payment.

G. Unforeseeable emergency. A distribution of all or a portion of a participant's deferred compensation account or a change in method of distribution to a participant notwithstanding the fact that distribution has commenced shall be permitted in the event the participant is faced with an unforeseeable emergency.

Examples of an unforeseeable emergency may include the following: impending personal bankruptcy; unexpected and unreimbursed major expenses resulting from illness, accident, or disability of the participant or any dependent thereof; major property loss or any other type of unexpected and unreimbursed personal expense of a major nature that would not normally be budgetable; and the disability of the participant. Foreseeable personal expenditures normally budgetable, such as a down payment for a home, the purchase of an automobile, college, or other educational expenses, etc., will not constitute an "unforeseeable emergency."

Any participant desiring a distribution by reason of an unforeseeable emergency must demonstrate that the circumstances being experienced were not under the participant's control and constitute a real emergency which is likely to cause the participant great financial hardship. The employer or director acting for the employer, shall have the authority to require such medical or other evidence as he may need to determine the necessity for participant's withdrawal request.

The distribution shall be limited to an amount sufficient only to meet the emergency and shall in no event exceed the amount of his or her deferred compensation account. Any remaining benefits shall be distributed in accordance with 2 MCAR § 3.5005 D., E., and F.

The allowed distribution shall be payable by a method determined by the employer or the director acting for the employer and commence as soon as possible after notice to the participant of approval.

H. Designation of beneficiary. A participant may designate a beneficiary to receive payment of the participant's deferred compensation in the event of his or her death. With respect to deferred compensation in the supplemental investment account, only a singular beneficiary may be designated. If the designated beneficiary predeceases the employee or dies before receiving payment, a lump sum payment shall be made to the participant's estate. Such beneficiary designation shall be in writing and must be filed with the director or company approved by the board pursuant to Minn. Stat. § 352.96 Subd. 2, as the case may be, prior to the death of the participant. If no designation of beneficiary is filed with the director, the beneficiary shall be the surviving spouse, or if none, a lump sum payment shall be made to the participant's estate.

I. Leave of absence. Any participant who is granted a leave of absence by the employer may continue to be a participant in this plan as long as the leave of absence is approved by the employer. If an approved leave of absence is terminated by the employer or employee without the resumption of the employment relationship, the participant shall be treated as having a termination of service under this plan.

2 MCAR § 3.5006 Miscellaneous.

A. Nonassignability. The contract entered into between the employer and a participant through this plan and the benefits, proceeds or payments thereunder cannot be sold, assigned, pledged, commuted, transferred or otherwise conveyed by any employee, participant or beneficiary. An attempt to assign or transfer shall not be recognized and shall impose no liability upon the employer.

Except as otherwise required by law, any deferred compensation monies withheld pursuant to this plan shall not be subject to attachment, garnishment, or execution, or to transfer by operation of law in the event of bankruptcy or insolvency of the participant or otherwise.

B. Headings and subheadings. The headings and subheadings in this plan are inserted for the convenience of reference only and are to be ignored in any construction of the provisions hereof.

C. Conflicts. In the event any form or other document used in administering the plan conflicts with the terms of the plan, the terms of the plan shall prevail.

2 MCAR § 3.5007 Amendment of plan.

A. Amendment of plan. The director acting for the employer shall have the authority to propose amendments to this plan from time to time consistent with the provisions of Minn. Stat. § 352.96. No amendment or modification shall adversely affect the rights of participants or their beneficiaries to the receipt of compensation deferred prior to such amendment or modification unless required by state or federal law to maintain the tax status of the plan and any compensation previously deferred.

B. Prior plan. This plan constitutes a continuation of the Minnesota Deferred Compensation Plan approved by the Attorney General and filed with the Secretary of State and the Commissioner of Administration, November 24, 1975. All participants and any compensation deferred under the prior plan are, from the effective date of this plan, governed by the terms of this plan subject to the following provisions:

1. All deferrals elected under the prior plan shall continue without further action as long as they do not exceed the limits in 2 MCAR § 3.5004 D.

2. Any investment requests made under the prior plan shall continue to apply to any deferrals made under this plan in accordance with 2 MCAR § 3.5005 C.

3. Any election of the method of distribution of benefits made under the prior plan shall be void, and a participant or beneficiary may elect the form of distribution in accordance with 2 MCAR § 3.5005 E. and F.

2 MCAR § 3.5008 Applicable law. This plan shall be construed, administered and governed in all respects under and by the laws of the State of Minnesota, Minn. Stat. § 352.96.