

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

11/8 GRoschen requested to send Hrng Cert., SR, Cert Compliance

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 10-31-83
DATE FOR REVIEW 11-9-83
DATE DUE 11-14-83

Adopted w/a hearing _____
Adopted w/o hearing ✓
Temporary rule _____

Approved 11-14-83 MC Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State _____ Revisor approved 11/3/83
disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 10.28 Date

N/A Notice of Intent to Solicit Outside Opinion

_____ Order for rulemaking
_____ date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice or rulemaking
9.26.83 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
9.26.83 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

_____ Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

_____ Agency's Findings of Fact no changes

_____ LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

N/A Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

N/A Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

MINNESOTA STATE RETIREMENT SYSTEM
529 Jackson Street
Saint Paul, Minnesota 55101

Tel. 296-2761

Office Memorandum

DATE : November 14, 1983

FROM : Paul L. Groschen
Executive Director

SUBJECT: Adopted Rules of the Minnesota Public Employees Deferred Compensation Plan

RECEIVED
NOV 14 1983
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

Ms. Judith Wehrwein
Legal Assistant
Attorney General's Office
204 Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

As you requested, here is the Statement of Compliance in the matter of the above cited rules.

Paul L. Groschen
Executive Director

PLG:mg
encl.

MINNESOTA STATE RETIREMENT SYSTEM
529 Jackson Street
Saint Paul, Minnesota 55101

Tel. 296-2761

Office Memorandum

DATE : November 9, 1983

FROM : Paul L. Groschen
Executive Director

SUBJECT: Adopted Rules of the Minnesota Public Employees Deferred Compensation Plan

Ms. Judith Wehrwein
Legal Assistant
Attorney General's Office
204 Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

RECEIVED
NOV 9 1983
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

Enclosed are two additional items you requested for approval of the Deferred Compensation Rules.

a). The Certificate of the Accuracy of the mailing list.

b). A copy of the State Register Publication.

I will have Mr. Merwin Peterson deliver the Attorney General's Certificate of Conformance to you on Monday, November 14.

Paul L. Groschen
Executive Director

PLG:mg
encl.

MINNESOTA STATE RETIREMENT SYSTEM
529 Jackson Street
Saint Paul, Minnesota 55101

Tel. 296-2761

Office Memorandum

DATE : October 31, 1983

FROM : Paul L. Groschen
Executive Director

SUBJECT: Adopted Rules of the Minnesota Public Employees Deferred Compensation Plan

Ms. Judith Wehrwein
Legal Assistant
Attorney General's Office
204 Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

RECEIVED
OCT 31 1983
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

Enclosed for your approval are:

1. The original and three copies of the Rules relating to the Minnesota Public Employees Deferred Compensation Plan, as adopted.

2. A copy of the proposed Rule and Notice, as published in the State Register on September 26, 1983 at 8 S.R. 524, pages 524 through 530.

3. The Statement of Need.

4. The Affidavit of Mailing.

5. The Order adopting the Rules.

There were no comments received relating to the Rules and no changes made to the Rules as proposed.

Paul L. Groschen

Paul L. Groschen
Executive Director

PLG:mg
encl.

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO Paul L. Groschen, Executive Director DATE: 11/14/83

Attn: MERWIN PETERSON, Special Assistant Attorney General

FROM : MARTHA J. CASSERLY MJC PHONE: 296-4347
Special Assistant
Attorney General

SUBJECT: In the Matter of the Proposed Amendments to the Rules Relating to the Minnesota Public Employees Deferred Compensation Plan

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register. This must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

Encs.
MJC/ls
cc: Ms. Kathy Burek
Mr. Duane Harves

AG copy.

Minnesota State Retirement System

Adopted Amendments to the Rules Relating to the Minnesota Public Employees Deferred Compensation Plan

Rules as Adopted

2 MCAR S 3.5001 Establishment and purpose of plan.

A. [Unchanged.]

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 separation from service, 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 S 3.5002 Definitions.

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

1.-3. [Unchanged.]

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

5. [Unchanged.]

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 Investment Fund as established by Minnesota Statutes, section 11A.17 and managed by the board.

b. "Fixed or variable annuity account" means the investment accounts of the companies approved by the board pursuant to Minnesota Statutes, section 352.96, subdivision 2.

7.-9. [Unchanged.]

10. "Includable compensation" means the compensation remaining after any deferrals through this plan and any amount of compensation excluded from federal gross income as a result of contributions made for the benefit of an employee under a tax sheltered annuity pursuant to section 403(b), mutual fund shares held in a custodial account pursuant to section 403(b)(7), or employee contributions to a retirement plan excluded under section 414(h)(2) of the Internal Revenue Code of 1954, as amended through December 31, 1982.

11. "Normal retirement age" means:

a. An age not earlier than that for attainment of eligibility by the participant to commence receiving normal, i.e. unreduced, retirement benefits from one of the retirement systems enumerated in Minnesota Statutes, section 356.20, subdivision 2, or other Minnesota public employee pension plan of which participant is a member nor later than age 70-1/2; or

b. If the participant is not a member of one of the retirement systems, not later than age 70-1/2.

12.-13. [Unchanged.]

14. "Pay date" means the date the participant receives payment of compensation.

14.-15. [Renumber as 15.-16.]

17. "Separation from 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 interrrupted); permanent layoff; expiration or nonrenewal of appointment or term of office; nonreelection; death; 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 separation from service.

18. [Unchanged.]

19. "Unforeseeable emergency" means a severe financial hardship to the participant resulting from a sudden and unexpected illness or accident of the participant or of a dependent of the participant, loss of the participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant. The circumstances that will constitute an unforeseeable emergency will depend upon the facts of each case, but in any case payment will not be made to the extent that such hardship is, or may be relieved, through reimbursement or compensation by insurance or otherwise by liquidation of the participant's assets to the extent the liquidation of such assets would not itself cause severe financial hardship or by cessation of deferrals under the plan.

B. [Unchanged.]

2 MCAR S 3.5004 Participation in plan.

A. [Unchanged.]

B. Enrollment. Any employee eligible to participate in accordance with 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 C. and D. The deferment will commence with the first pay date 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. [Unchanged.]

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

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

2. For each of three taxable years preceding the year in which he or she will attain normal retirement age, a participant

may defer an amount equal to the limits set forth in 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 for years after December 31, 1978. In no event, however, can the deferral exceed $15,000 for any taxable year.

The participant may designate and utilize this "catch-up" provision only once whether or not it is utilized in less than all of the three taxable years ending before attaining normal retirement age and whether or not the participant or former participant rejoins the plan. The participant may not utilize this "catch-up" provision if participant joins this plan after retirement from and utilization of the "catch-up" provision in another eligible plan.

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 1. and 2.

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 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 pay date following 30 days from receipt and approval of the application. Only two modifications (other than a revocation of participation as provided in 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 nondeferred basis will then be restored beginning with the first pay date 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 S 3.5005. The participant will 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 separation from service, unless the participant modifies the amount in accordance with E., or revokes the deferred compensation in accordance with F.

H. Deferral adjustments.

1.-3. [Unchanged.]

4. Maximum deduction. The employer shall attempt to ensure compliance with the maximum deferment set forth in D. If the amount deducted exceeds the maximum deferment set forth in 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. A participant is responsible for any tax consequences to the participant which may arise as a result of his or her deferrals under this plan which exceed the maximum amounts allowable.

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

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 D., E., F., and G. Each participant's account shall be credited with the amount of any compensation deferred and received less the administrative charge set forth in 4. and shall be further credited or debited, as applicable, with any increase or

decrease resulting from investments pursuant to 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 employer. The funds and assets paid into the deferred compensation account may be invested in approved investments as provided by Minnesota Statutes, section 352.96, subdivision 2, until distributed in accordance with D., E., F., and G.

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. [Unchanged.]

4. Administrative expense. One and one-half percent 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 charge 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 Minnesota Statutes, section 352.96.

B. [Unchanged.]

C. Investment of funds.

1. Any compensation deferred by employees may be invested 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 options of the income share account, the growth share account, or the fixed return account.

b. The fixed or variable annuity account shall provide the options of a fixed annuity or a variable annuity.

A participant may select a combination of these five investment account preferences by specifying on the application the amount to be deferred under each investment preference. A participant may select the account options of only one of the companies approved by the board at any one time. The amount to be deferred cannot be less than $10 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, twice 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 pay date following 30 days from receipt of the request.

4. Investment preference requests for past deferred compensation. A participant may also, twice in any taxable year, at the same time as a change is requested under 3., or in lieu of a change thereunder, change his or her investment preference request with respect to all or part of previously deferred compensation. If a partial transfer is made, a minimum of $1,000 must be transferred and a minimum balance of $1,000 must remain in the prior investment preference option. Changes are limited to a change within the fixed or variable annuity account according to the terms of the annuity contracts or within the supplemental investment account but not between the annuity accounts and the supplemental investment account, nor between companies approved by the board. 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 S 3.5004 E., F., and G. following the occurrence of one of the following events:

1. separation from service;

2. death;

3. unforeseeable emergency;

4. distribution date as provided in F.; or

5. attainment of age 70-1/2.

E. Methods of distribution. Distribution of a participant's deferred compensation account shall be made in one of the following ways, with the date of distribution determined in accordance with F. Elections by a participant as authorized herein shall be made on forms approved by the director.

1. A participant in the supplemental investment account will have deferred compensation distributed over a period of 60 months, unless at least 30 days prior to the commencement of distribution the participant elects to have distribution made 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 one of the companies approved by the board pursuant to Minnesota Statutes, section 352.96, subdivision 2 which contract shall include the availability of the options set forth in 2.

c. In monthly installments distributed over a period of months specified by the participant not to exceed 240 months, but in no event exceeding the life expectancy of the participant or beneficiary if the beneficiary is the spouse. If the beneficiary is other than the spouse, distribution shall be made over a period not exceeding 180 months from the date of death of the participant.

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, then ten shares shall be redeemed and distributed to the 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. If the value of the participant's account is $1,000 or less, distribution shall be made in a lump sum.

2. A participant in the fixed or variable annuity account will have deferred compensation distributed in the form of monthly annuity payments unless, prior to commencement of distribution, the participant elects a lump sum distribution. The annuity payments shall be based on one of the following methods, as selected by the participant at least 30 days before distribution commences:

a. The life of the participant.

b. A period certain not to exceed the life expectancy of the participant or the life expectancy of the beneficiary if the beneficiary is the participant's surviving spouse. If the beneficiary is other than the spouse, distribution shall be made over a period not exceeding 180 months from the date of death of the participant.

c. The joint lifetime of the participant and spouse.

If no election is made, the participant's deferred compensation will be paid on the basis of a five-year period certain annuity.

Notwithstanding any other rule to the contrary, if a fixed or variable annuity account is equal to or less than $1,000, the account shall be distributed in a lump sum within 60 days following the close of the taxable year during which the distribution event occurs.

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 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. Date of distribution. A participant or beneficiary may irrevocably elect, on a form approved by the director at least 30 days prior to the time any amounts become payable, to defer payment of some or all of the amounts to a fixed or determinable future time, subject to the following rules:

1. At any time prior to 30 days following the close of the taxable year in which separation from service occurs, a participant may designate a distribution date which cannot be later than the latest of:

a. sixty days after the close of the taxable year in which the participant attains or would have attained normal retirement age under the plan, or if the participant does not designate a normal retirement age, not later than 60 days after the close of the taxable year in which the participant attains age 70-1/2; or

b. sixty days after the close of the taxable year in which the participant separates from service.

Election of a date of distribution may be made only once and, once made, is irrevocable.

2. If a participant should die prior to the distribution date or date of separation from service, 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. If a participant should die after distribution has commenced, distribution will continue

under the method selected by the participant under E.

3. Once payment has commenced, the method of distribution may not be changed, except in the event of an unforeseeable emergency, subject to the restrictions of the payment option the participant or beneficiary has selected.

4. Distribution may not begin prior to separation from service or death except for unforeseeable emergency distributions as provided in G.

5. If no distribution date is elected, then payment shall commence 60 days after the close of the taxable year in which separation from service occurs.

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, unless the distribution is in the form of an annuity, shall be permitted in the event the participant is faced with an unforeseeable emergency. Deferrals under the plan shall cease as soon as possible for any participant seeking a distribution because of 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 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 or beneficiaries 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 and a new beneficiary has not been named or the designated beneficiary 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 Minnesota Statutes, section 352.96, subdivision 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 separation from service under this plan.

J. Separation from service by independent contractors. An independent contractor is considered separated from service with the employer upon the expiration of the contract (or in the case of more than one contract, all contracts) under which services are performed for the employer, if the expiration constitutes a good faith and complete termination of the contractual relationship. An expiration will not constitute a good faith and complete termination of the contractual relationship if the employer anticipates a renewal of a contractual relationship or the independent contractor becoming an employee. For this purpose, an employer is considered to anticipate the renewal of the contractual relationship with an independent contractor if

it intends to again contract for the services provided under the expired contract, and neither the employer nor the independent contractor has eliminated the independent contractor as a possible provider of services under any such new contract. Further, an employer is considered to intend to again contract for the services provided under an expired contract, if the employer's doing so is conditioned only upon the employer incurring a need for the services, or the availability of funds, or both.

No amount shall be paid to the participant before a date at least 12 months after the day on which the contract expires under which services are performed for the employer (or, in the case of more than one contract, all such contracts expire), and no amount payable to the participant on that date shall be paid to the participant if, after the expiration of the contract (or contracts) and before that date, the participant performs services for the employer as an independent contractor or an employee.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
NOV 15 1983
Joan Anderson Growe
Secretary of State

2:05 PM

APPROVED AS TO FORM AND LEGALITY
November 14 1983
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY Martha J. Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA

EXECUTIVE DIRECTOR
of the
MINNESOTA STATE RETIREMENT SYSTEM

In the Matter of the Proposed Amendments to the Rules Relating to the Minnesota Public Employees Deferred Compensation Plan

ORDER ADOPTING RULES

Notice of the Executive Director's intent to adopt the above-entitled rules without a public hearing was published in the State Register on September 26, 1983 at 8 S.R. 524, pages 524 through 530 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes section 15.0412, subdivision 4 on September 26, 1983. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving no requests for a public hearing within the 30-day comment period, nor comments, and determining the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as Rules Relating to the Minnesota Public Employees Deferred Compensation Plan are adopted this 28th day of October, 1983 pursuant to authority vested in me by Minnesota Statutes section 352.96, subd. 4.

STATE OF MINNESOTA

Paul L. Groschen

Paul L. Groschen
Executive Director
Minnesota State Retirement System

Minnesota State Retirement System

Proposed Amendments to the Rules relating to the Minnesota Public Employees Deferred Compensation Plan

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Executive Director proposes to adopt amendments to the above-entitled rules without a public hearing. The Executive Director has determined that the proposed adoption of these amendments will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. §§14.21 to 14.28. The amendments to the rules are needed to implement the provisions of the U.S. Revenue Act of 1978 as amended through December 31, 1982 and Internal Revenue Code 457.

Persons interested in these rules shall have until 30 days after publication in the State Register to submit comments on the proposed amendments. The proposed amendments may be modified if the modifications are supported by the data and views submitted to the Executive Director and do not result in a substantial change to the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the comment period, a public hearing will not be held. In the event a public hearing is required, the office will proceed according to the provisions of Minn. Stat. §§ 14.13 to 14.20.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or requests to :

Paul L. Groschen, Executive Director
Minnesota State Retirement System
529 Jackson Street at Tenth
St. Paul, Minnesota 55101
Telephone Number 612-296-2761

Authority for the adoption of these rules is contained in Minn. Stat. §352.96, subdivision 4. A statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed amendments and which identifies the data and information relied upon to support the proposed amendments has been prepared and is available from the Executive Director upon request.

Upon adoption of the final rules without a public hearing, the proposed amendments, this notice, the statement of need and reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General or who wish to receive a copy of the final rules as proposed for adoption should submit a written statement of such request to the Executive Director.

A copy of the proposed rules is attached to this notice.

Paul L. Groschen

Paul L. Groschen
Executive Director

Rules as Proposed

2 MCAR S 3.5001 Establishment and purpose of plan.

A. [Unchanged.]

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~~ separation from service, 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 S 3.5002 Definitions.

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

1.-3. [Unchanged.]

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

5. [Unchanged.]

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 Minnesota Statutes, section 11A.17 and managed by the board.

b. "Fixed ~~and~~ or variable annuity account" means the investment accounts of the companies approved by the board pursuant to Minnesota Statutes, section 352.96, ~~subd.~~ subdivision 2.

7.-9. [Unchanged.]

APPROVED IN THE REVISOR OF STATUTES OFFICE BY: PER

10. "Includable compensation" means the compensation remaining after any deferrals through this plan ~~and/or~~ and any amount of compensation excluded from ~~taxable~~ federal gross income as a result of contributions made for the benefit of an employee under a tax sheltered annuity ~~or~~ pursuant to section 403(b), mutual fund shares held in a custodial account pursuant to section 403(b)(7), or employee contributions to a retirement plan excluded under section 414(h)(2) of the Internal Revenue Code of 1954, as amended through December 31, 1982.

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

a. An age not earlier than that for attainment of eligibility by the participant to commence receiving normal, i.e. unreduced, retirement benefits from one of the retirement systems enumerated in Minnesota Statutes, section 356.20, ~~subd.~~ subdivision 2, or other Minnesota public employee pension plan of which participant is a member, nor later than age 70-1/2; or

b. ~~Age 65~~ If the participant is not a member of one of the retirement systems, not later than age 70-1/2.

12.-13. [Unchanged.]

14. "Pay date" means the date the participant receives payment of compensation.

14.-15. [Renumber as 15.-16.]

~~16. "Projected Retirement date" means a date established to allow deferral of underutilized amounts according to the provisions of 2 MCAR S 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~~ Separation from 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 interrrupted); permanent layoff; expiration or nonrenewal of appointment or term of office; nonreelection; death; or such other form of permanent severance as may be provided by

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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~~ separation from service.

18. [Unchanged.]

19. "Unforeseeable emergency" means a severe financial hardship to the participant resulting from a sudden and unexpected illness or accident of the participant or of a dependent of the participant, loss of the participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant. The circumstances that will constitute an unforeseeable emergency will depend upon the facts of each case, but in any case payment will not be made to the extent that such hardship is, or may be relieved, through reimbursement or compensation by insurance or otherwise by liquidation of the participant's assets to the extent the liquidation of such assets would not itself cause severe financial hardship or by cessation of deferrals under the plan.

B. [Unchanged.]

2 MCAR S 3.5004 Participation in ~~the~~ plan.

A. [Unchanged.]

B. Enrollment. Any employee eligible to participate in accordance with ~~2 MCAR S 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 S 3.5004~~ C. and D. The deferment will commence with the first ~~full~~ pay ~~period~~ date 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. [Unchanged.]

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

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1. 33-1/3% percent 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 the year in which he or she will attain normal retirement age, a participant may defer an amount equal to the limits set forth in ~~2 MCAR S 3.5004 B.~~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 for years after December 31, 1978. In no event, however, can the deferral exceed $15,000 for any taxable year.

The participant may designate and utilize this "catch-up" provision only once whether or not it is utilized in less than all of the three taxable years ending before attaining normal retirement age and whether or not the participant or former participant rejoins the plan. The participant may not utilize this "catch-up" provision if participant joins this plan after retirement from and utilization of the "catch-up" provision in another eligible plan.

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 ~~B.~~1. and ~~B.~~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 S 3.5004~~ D. may be increased or decreased only by proper application to the employer or to the director acting

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for employer. The change shall take effect the first ~~full~~ pay ~~period~~ date following 30 days from receipt and approval of the application. Only two modifications (other than a revocation of participation as provided in ~~2 MCAR S 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 nondeferred basis will then be restored beginning with the first ~~full~~ pay ~~period~~ date 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 S 3.5005. The participant ~~may~~ will 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~~ separation from service, unless the participant modifies the amount in accordance with ~~2 MCAR S 3.5004~~ E., or revokes the deferred compensation in accordance with ~~2 MCAR S 3.5004~~ F.

H. Deferral adjustments.

1.-3. [Unchanged.]

4. Maximum deduction. The employer shall attempt to ensure compliance with the maximum deferment set forth in ~~2 MCAR S 3.5004~~ D. If the amount deducted exceeds the maximum deferment set forth in ~~2 MCAR S 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. A participant is responsible for any tax consequences to the participant which may arise as a result of his or her deferrals under this plan which exceed the maximum amounts allowable.

2 MCAR S 3.5005 Participants' accounts, investments, and

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distributions.

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-S 3.5005~~ D., E., F., and G. 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-S 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-S-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 Minnesota Statutes, section 352.96, ~~subd.~~ subdivision 2, until distributed in accordance with ~~2-MCAR-S-3.5005~~ D., E. ~~and~~, F., and G.

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. [Unchanged.]

4. Administrative expense. ~~Two~~ One and one-half 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 charge by the legislative auditor.

Administrative costs for the fixed and variable annuity account shall be established by the contract as approved by the

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board pursuant to Minnesota Statutes, section 352.96.

B. [Unchanged.]

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: of the income share account, the growth share account ~~and~~, or the fixed return account.

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

A participant may select ~~any~~ a combination of these five ~~(5)~~ investment account preferences by specifying on the application the amount to be deferred under each investment preference. A participant may select the account options of only one of the companies approved by the board at any one time. 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~~ twice 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~~ date following 30 days from receipt of the request.

4. Investment preference requests for past deferred compensation. A participant may also, ~~once~~ twice in any taxable

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year, at the same time as a change is requested under ~~2 MCAR S~~ 3.5005 ~~C.~~3., or in lieu of a change thereunder, change his or her investment preference request with respect to all or part of previously deferred compensation. If a partial transfer is made, a minimum of $1,000 must be transferred and a minimum balance of $1,000 must remain in the prior investment preference option. ~~Such~~ Changes are limited to a change within the fixed ~~and~~ or variable annuity account according to the terms of the annuity contracts or within the supplemental investment account but not between the ~~accounts and are also limited to transfers to fixed accounts only~~ annuity accounts and the supplemental investment account, nor between companies approved by the board. 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 S 3.5004 E. ~~and~~, F., and G. ~~the month~~ following the ~~day on which~~ occurrence of one of the following events ~~occurs~~:

1. ~~Termination of~~ separation from service~~,~~;

2. death~~,~~;

3. unforeseeable emergency~~,~~;

4. ~~Delayed~~ distribution date as provided in ~~2 MCAR S~~ 3.5005 F.; or

5. attainment of age 70-1/2.

E. Methods of distribution. Distribution of a participant's deferred compensation account shall be made in one of the following ways, with the ~~method~~ date of distribution determined in accordance with ~~2 MCAR S~~ 3.5005 F. Elections by a participant as authorized herein shall be made on forms approved by the director.

1. A participant in the supplemental investment account ~~may~~ will have deferred compensation distributed over a period of 60 months, unless at least 30 days prior to the commencement of distribution the participant elects to have distribution made in one of the following methods:

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a. In a lump sum.

b. In a lump sum purchase by the director of a fixed or variable annuity contract with one of the companies approved by the board pursuant to Minnesota Statutes, section 352.96, ~~subd.~~ subdivision 2 which contract shall include the availability of the options set forth in ~~2-MCAR-S-3.5005-E.2.~~

c. In monthly installments distributed over a period of months specified by the participant not to exceed 240 months, but in no event exceeding the life expectancy of the participant or beneficiary if the beneficiary is the spouse. If the beneficiary is other than the spouse, distribution shall be made over a period not exceeding 180 months from the date of death of the participant.

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~~ the 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. If the value of the participant's account is $1,000 or less, distribution shall be made in a lump sum.

2. A participant in the fixed ~~and~~ or variable annuity account ~~may~~ will have deferred compensation distributed in the form of monthly annuity payments unless, prior to commencement of distribution, the participant elects a lump sum distribution. The annuity payments shall be based on one of the following methods, as selected by the participant at least 30 days before distribution commences:

a. The life of the participant.

b. ~~The life of the participant or a period certain,~~

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~~whichever-is-greater~~ A period certain not to exceed the life expectancy of the participant or the life expectancy of the beneficiary if the beneficiary is the participant's surviving spouse. If the beneficiary is other than the spouse, distribution shall be made over a period not exceeding 180 months from the date of death of the participant.

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

If no election is made, the participant's deferred compensation will be paid on the basis of a five-year period certain annuity.

Notwithstanding any other rule to the contrary, if a fixed ~~and~~ or variable annuity account is equal to or less than $1,000, the account shall be distributed in a lump sum ~~the-month~~ within 60 days following ~~a-delayed-distribution-date-not-exceeding-one year-from-the-date-the-participant-was-first-entitled-to-begin distributions~~ the close of the taxable year during which the distribution event occurs.

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-S-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~~ Date of distribution. ~~At-any time-prior-to-the-date-distributions-are-to-commence-(except-for unforeseeable-emergency-distributions-as-provided-in-2-MCAR-S 3.5005-G.)-a-participant-may-elect-a-delayed-distribution-date or-elect-the-method-by-which-the-deferred-compensation-account~~

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~~shall be distributed~~ A participant or beneficiary may irrevocably elect, on a form approved by the director at least 30 days prior to the time any amounts become payable, to defer payment of some or all of the amounts to a fixed or determinable future time, 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.~~ At any time prior to 30 days following the close of the taxable year in which separation from service occurs, a participant may designate a distribution date which cannot be later than the latest of:

a. sixty days after the close of the taxable year in which the participant attains or would have attained normal retirement age under the plan, or if the participant does not designate a normal retirement age, not later than 60 days after the close of the taxable year in which the participant attains age 70-1/2; or

b. sixty days after the close of the taxable year in which the participant separates from service.

Election of a date of distribution may be made only once and, once made, is irrevocable.

2. If a participant should die prior to the ~~delayed~~ distribution date or date of separation from service, 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. If a participant should die after distribution has commenced, distribution will continue under the method selected by the participant under E.

~~2.~~ 3. ~~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~~

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~~from-the-participant~~ in the event of an unforeseeable emergency, subject to the restrictions of the payment option the participant or beneficiary has selected.

~~3.~~ 4. Distribution may not begin prior to ~~termination-of~~ separation from service or death except for unforeseeable emergency distributions as provided in ~~2-MCAR-S-3.5005~~ G.

~~4.~~ 5. 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~~ commence 60 days after the close of the taxable year in which separation from service occurs.

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, unless the distribution is in the form of an annuity, shall be permitted in the event the participant is faced with an unforeseeable emergency. Deferrals under the plan shall cease as soon as possible for any participant seeking a distribution because of 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-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

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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 S 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 or beneficiaries 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~~ and a new beneficiary has not been named or the designated beneficiary 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 Minnesota Statutes, section 352.96, ~~subd.~~ subdivision 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

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~~termination of~~ separation from service under this plan.

J. Separation from service by independent contractors. An independent contractor is considered separated from service with the employer upon the expiration of the contract (or in the case of more than one contract, all contracts) under which services are performed for the employer, if the expiration constitutes a good faith and complete termination of the contractual relationship. An expiration will not constitute a good faith and complete termination of the contractual relationship if the employer anticipates a renewal of a contractual relationship or the independent contractor becoming an employee. For this purpose, an employer is considered to anticipate the renewal of the contractual relationship with an independent contractor if it intends to again contract for the services provided under the expired contract, and neither the employer nor the independent contractor has eliminated the independent contractor as a possible provider of services under any such new contract. Further, an employer is considered to intend to again contract for the services provided under an expired contract, if the employer's doing so is conditioned only upon the employer incurring a need for the services, or the availability of funds, or both.

No amount shall be paid to the participant before a date at least 12 months after the day on which the contract expires under which services are performed for the employer (or, in the case of more than one contract, all such contracts expire), and no amount payable to the participant on that date shall be paid to the participant if, after the expiration of the contract (or contracts) and before that date, the participant performs services for the employer as an independent contractor or an employee.

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OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD398

Agency: Minnesota State Retirement System

Division:

Agency Contact: Paul Groschen 296-2761

Rule Numbers: 2 MCAR SS 3.5001, 3.5002, 3.5004, and 3.5005

Title: Public Employees Deferred Compensation Plan

Type of Rules: Permanent

Incorporations by Reference: None
Rule Number: Material Incorporated:

Duplication of Statutory Language: None
Rule Number: Statutory Section Duplicated:

The attached rules are approved as to form.

Steven C. Cross
Revisor of Statutes

Paul E. Rohde
Senior Assistant Revisor
Phone: 295-0953
Date: September 7, 1983

In the Matter of the Proposed Amendment
to the Rules Relating to the Minnesota
Public Employees Deferred Compensation Plan

AFFIDAVIT OF
MAILING

STATE OF MINNESOTA)
) SS.
COUNTY OF RAMSEY)

I, Paul L. Groschen, being first duly sworn, deposes and says:

That on the 26th day of September, 1983, at the City of St. Paul, County of Ramsey, State of Minnesota, as in he served the attached Notice of Intent to Adopt Rules Without Public Hearing by depositing in the United States mail at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Minnesota State Retirement System for the purpose of receiving notice of the proposed adoption of rules by the Agency.

Paul L. Groschen
Executive Director

Subscribed and sworn to before me
this 26th day of September, 1983.

Marlene Quinn

MARLENE QUINN
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Comm. Expires June 30, 1987

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Amendment
to the Rules Relating to the Minnesota
Public Employees Deferred Compensation Plan

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 15.0412, subd. 4, that their names be placed on file with and maintained by the Minnesota State Retirement System for the purpose of receiving notice of the proposed adoption of rules by the System is accurate and complete as of 8:00 A.M., this 26th day of September, 1983.

Executive Director

Minnesota State Retirement System

Proposed Amendments to the Rules Relating to the Minnesota Public Employees Deferred Compensation Plan

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Executive Director proposes to adopt amendments to the above-entitled rules without a public hearing. The Executive Director has determined that the proposed adoption of these amendments will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. §§ 14.21 to 14.28. The amendments to the rules are needed to implement the provisions of the U.S. Revenue Act of 1978 as amended through December 31, 1982 and Internal Revenue Code 457.

Persons interested in these rules shall have until 30 days after publication in the *State Register* to submit comments on the proposed amendments. The proposed amendments may be modified if the modifications are supported by the data and views submitted to the Executive Director and do not result in a substantial change to the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the comment period, a public hearing will not be held. In the event a public hearing is required, the office will proceed according to the provisions of Minn. Stat. § 14.13 to 14.20.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or requests to:

Paul L. Groschen, Executive Director
Minnesota State Retirement System
529 Jackson Street at Tenth
St. Paul, Minnesota 55101
Telephone Number 612-296-2761

Authority for the adoption of these rules is contained in Minn. Stat. § 352.96, subdivision 4. A statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed amendments and which identifies the data and information relied upon to support the proposed amendments has been prepared and is available from the Executive Director upon request.

Upon adoption of the final rules without a public hearing, the proposed amendments, this notice, the statement of need and reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General or who wish to receive a copy of the final rules as proposed for adoption should submit a written statement of such request to the Executive Director.

A copy of the proposed rules is attached to this notice.

Paul L. Groschen
Executive Director

Rules as Proposed

2 MCAR § 3.5001 Establishment and purpose of plan.

A. [Unchanged.]

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~~ separation from service, 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.

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

1.-3. [Unchanged.]

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

5. [Unchanged.]

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 Minnesota Statutes, section 11A.17 and managed by the board.

b. "Fixed ~~and~~ or variable annuity account" means the investment accounts of the companies approved by the board pursuant to Minnesota Statutes, section 352.96, ~~subd.~~ subdivision 2.

7.-9. [Unchanged.]

10. "Includable compensation" means the compensation remaining after any deferrals through this plan ~~and/or~~ and any amount of compensation excluded from ~~taxable~~ federal gross income as a result of contributions made for the benefit of an employee under a tax sheltered annuity ~~or~~ pursuant to section 403(b), mutual fund shares held in a custodial account pursuant to section 403(b)(7), or employee contributions to a retirement plan excluded under section 414(h)(2) of the Internal Revenue Code of 1954, as amended through December 31, 1982.

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

a. An age not earlier than that for attainment of eligibility by the participant to commence receiving normal, i.e. unreduced, retirement benefits from one of the retirement systems enumerated in Minnesota Statutes, section 356.20, ~~subd.~~ subdivision 2, or other Minnesota public employee pension plan of which participant is a member~~.~~ nor later than age 70½; or

b. ~~Age 65~~ If the participant is not a member of one of the retirement systems, not later than age 70½.

12.-13. [Unchanged.]

14. "Pay date" means the date the participant receives payment of compensation.

14.-15. [Renumber as 15.-16.]

~~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~~ Separation from 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); permanent layoff; expiration or nonrenewal of appointment or term of office; nonreelection; death; 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~~ separation from service.

18. [Unchanged.]

19. "Unforeseeable emergency" means a severe financial hardship to the participant resulting from a sudden and unexpected illness or accident of the participant or of a dependent of the participant, loss of the participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant. The circumstances that will constitute an unforeseeable emergency will depend upon the facts of each case, but in any case payment will not be made to the extent that such hardship is, or may be relieved, through reimbursement or compensation by insurance or otherwise by liquidation of the participant's assets to the extent the liquidation of such assets would not itself cause severe financial hardship or by cessation of deferrals under the plan.

B. [Unchanged.]

2 MCAR § 3.5004 Participation in the plan.

A. [Unchanged.]

B. Enrollment. Any employee eligible to participate in accordance with ~~2 MCAR § 3.5004~~ A. may become a participant by

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

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~~ date 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. [Unchanged.]

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. 33⅓% percent 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~~ the year in which he or she will attain normal retirement age, 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 for years after December 31, 1978. In no event, however, can the deferral exceed $15,000 for any taxable year.

The participant may designate and utilize this "catch-up" provision only once whether or not it is utilized in less than all of the three taxable years ending before attaining normal retirement age and whether or not the participant or former participant rejoins the plan. The participant may not utilize this "catch-up" provision if participant joins this plan after retirement from and utilization of the "catch-up" provision in another eligible plan.

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~~ date 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 nondeferred basis will then be restored beginning with the first ~~full~~ pay ~~period~~ date 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~~ will 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~~ separation from 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.-3. [Unchanged.]

4. Maximum deduction. The employer shall attempt to ensure 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. A participant is responsible for any tax consequences to the participant which may arise as a result of his or her deferrals under this plan which exceed the maximum amounts allowable.

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

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~~ D., E., F., and G. 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 Minnesota Statutes, section 352.96, ~~subd.~~ subdivision 2, until distributed in accordance with ~~2 MCAR § 3.5005~~ D., E. ~~and~~, F., and G.

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. [Unchanged.]

4. Administrative expense. ~~Two~~ One and one-half 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 charge 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 Minnesota Statutes, section 352.96.

B. [Unchanged.]

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~~ option: of the income share account, the growth share account ~~and~~, or the fixed return account.

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

A participant may select ~~any~~ a combination of these five ~~(5)~~ investment account preferences by specifying on the application the amount to be deferred under each investment preference. A participant may select the account options of only one of the companies approved by the board at any one time. 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~~ twice 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~~ date following 30 days from receipt of the request.

4. Investment preference requests for past deferred compensation. A participant may also, ~~once~~ twice 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 or part of previously deferred compensation. If a partial transfer is made, a minimum of $1,000 must be transferred and a minimum balance of $1,000 must remain in the prior investment preference option. ~~Such~~ Changes are limited to a change within the fixed ~~and~~ or variable annuity account according to the terms of the annuity contracts or within the supplemental investment account but not between the ~~accounts and are also limited to transfers to fixed accounts only~~ annuity accounts and the supplemental investment account, nor between companies approved by the board.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

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., and G. ~~the month~~ following the ~~day on which~~ occurrence of one of the following events ~~occurs~~:

1. ~~Termination of~~ separation from service~~,~~;

2. death~~,~~;

3. unforeseeable emergency~~,~~;

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

5. attainment of age 70½.

E. Methods of distribution. Distribution of a participant's deferred compensation account shall be made in one of the following ways, with the ~~method~~ date of distribution determined in accordance with ~~2 MCAR § 3.5005~~ F. Elections by a participant as authorized herein shall be made on forms approved by the director.

1. A participant in the supplemental investment account ~~may~~ will have deferred compensation distributed over a period of 60 months, unless at least 30 days prior to the commencement of distribution the participant elects to have distribution made 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 one of the companies approved by the board pursuant to Minnesota Statutes, section 352.96, ~~subd.~~ subdivision 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, but in no event exceeding the life expectancy of the participant or beneficiary if the beneficiary is the spouse. If the beneficiary is other than the spouse, distribution shall be made over a period not exceeding 180 months from the date of death of the participant.

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~~ the 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. If the value of the participant's account is $1,000 or less, distribution shall be made in a lump sum.

2. A participant in the fixed ~~and~~ or variable annuity account ~~may~~ will have deferred compensation distributed in the form of monthly annuity payments unless, prior to commencement of distribution, the participant elects a lump sum distribution. The annuity payments shall be based on one of the following methods, as selected by the participant at least 30 days before distribution commences:

a. The life of the participant.

b. ~~The life of the participant or a period certain, whichever is greater~~ A period certain not to exceed the life expectancy of the participant or the life expectancy of the beneficiary if the beneficiary is the participant's surviving spouse. If the beneficiary is other than the spouse, distribution shall be made over a period not exceeding 180 months from the date of death of the participant.

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

If no election is made, the participant's deferred compensation will be paid on the basis of a five-year period certain annuity.

Notwithstanding any other rule to the contrary, if a fixed ~~and~~ or variable annuity account is equal to or less than $1,000, the account shall be distributed in a lump sum ~~the month~~ within 60 days following ~~a delayed distribution date not exceeding one year from the date the participant was first entitled to begin distributions~~ the close of the taxable year during which the distribution event occurs.

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~~ Date 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~~ A participant or beneficiary may irrevocably elect, on a form approved by the director at least 30 days prior to the time any amounts become payable, to defer payment of some or all of the amounts to a fixed or determinable future time, 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.~~ At any time prior to 30 days following the close of the taxable year in which separation from service occurs, a participant may designate a distribution date which cannot be later than the latest of:

a. sixty days after the close of the taxable year in which the participant attains or would have attained normal retirement age under the plan, or if the participant does not designate a normal retirement age, not later than 60 days after the close of the taxable year in which the participant attains age 70½; or

b. sixty days after the close of the taxable year in which the participant separates from service.

Election of a date of distribution may be made only once and, once made, is irrevocable.

2. If a participant should die prior to the ~~delayed~~ distribution date or date of separation from service, 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. If a participant should die after distribution has commenced, distribution will continue under the method selected by the participant under E.

~~2.~~ 3. ~~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~~ in the event of an unforeseeable emergency, subject to the restrictions of the payment option the participant or beneficiary has selected.

~~3.~~ 4. Distribution may not begin prior to ~~termination of~~ separation from service or death except for unforeseeable emergency distributions as provided in ~~2 MCAR § 3.5005~~ G.

~~4.~~ 5. 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~~ commence 60 days after the close of the taxable year in which separation from service occurs.

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, unless the distribution is in the form of an annuity, shall be permitted in the event the participant is faced with an unforeseeable emergency. Deferrals under the plan shall cease as soon as possible for any participant seeking a distribution because of 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 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."~~

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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 acing 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 or beneficiaries 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~~ and a new beneficiary has not been named or the designated beneficiary 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 Minnesota Statutes, section 352.96, ~~subd.~~ subdivision 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~~ separation from service under this plan.

J. Separation from service by independent contractors. An independent contractor is considered separated from service with the employer upon the expiration of the contract (or in the case of more than one contract, all contracts) under which services are performed for the employer, if the expiration constitutes a good faith and complete termination of the contractual relationship. An expiration will not constitute a good faith and complete termination of the contractual relationship if the employer anticipates a renewal of a contractual relationship or the independent contractor becoming an employee. For this purpose, an employer is considered to anticipate the renewal of the contractual relationship with an independent contractor if it intends to again contract for the services provided under the expired contract, and neither the employer nor the independent contractor has eliminated the independent contractor as a possible provider of services under any such new contract. Further, an employer is considered to intend to again contract for the services provided under an expired contract, if the employer's doing so is conditioned only upon the employer incurring a need for the services, or the availability of funds, or both.

No amount shall be paid to the participant before a date at least 12 months after the day on which the contract expires under which services are performed for the employer (or, in the case of more than one contract, all such contracts expire), and no amount payable to the participant on that date shall be paid to the participant if, after the expiration of the contract (or contracts) and before that date, the participant performs services for the employer as an independent contractor or an employee.

STATE OF MINNESOTA

MINNESOTA STATE RETIREMENT SYSTEM

EXECUTIVE DIRECTOR

In the matter of the Proposed Amendment
and Adoption of Revised Rules Relating
to the Minnesota Public Employees
Deferred Compensation Plan

STATEMENT OF NEED

The above captioned rules are amendments to existing rules of the Minnesota State Retirement System Deferred Compensation Plan. The last time the rules were amended was December 4, 1980.

A revision of the rules is necessary to implement the provisions of Section 457 of the Internal Revenue Code of 1954 as amended by the Internal Revenue Act of 1978 and final Internal Revenue Service regulations on State and Local Government Deferred Compensation Plans 47FR42335. The Executive Director's specific statutory authority to adopt such rules is set forth in Minnesota Statutes Section 352.96, subdivision 4 (1982).

The Executive Director is charged by Minnesota Statutes Section 352.96 (1982) to establish rules and procedures in such a manner as will qualify the amounts deferred under the plan for benefits afforded under Federal and State tax laws, regulations and rulings. Section 457 of the Internal Revenue Code of 1954, as amended by the Internal Revenue Act of 1978 and final Internal Revenue Service regulations 47FR42335 on State and Local Government Deferred Compensation plans set forth certain conditions and requirements in order for a plan to be an eligible plan, and therefore, afforded favorable tax treatment. The following amendments to the Minnesota State Retirement System Deferred Compensation Plan rules are reasonable and necessary to bring the plan into conformance with the above cited laws, code, and regulations. Without the indicated changes, that plan would not be considered an eligible plan, and therefore, monies deferred by participants may become presently taxable. Additionally, some minor administrative changes are made.

The need for each specific change to the rules is as follows:

2 MCAR S 3.5001. Establishment and purpose of plan

B. Purpose of Plan

Change in language to conform with the terminology used in the Internal Revenue Service code and regulations. No substantive change.

2 MCAR S 3.5002. Definitions

A. Definitions.

4. Change in language to conform with the terminology used in the Internal Revenue Service code and regulations. No substantive change.

6. a. Change to conform to proper name of fund as cited in Minnesota Statutes Chapter 11 A (1982). No substantive change.

6. b. To clarify that there are two investment account options available; a fixed or a variable account, one providing a fixed annuity and the other a variable annuity.

10. Change in language to conform with terminology of Internal Revenue Service code and regulations and to specifically point out the sections of the Internal Revenue Service code which limit the compensation used in determining the maximum amount a participant may defer.

11. To redefine normal retirement age to conform with the requirements of the Internal Revenue Service code and regulations, making clear that "normal retirement" does not mean "early retirement", and that participants may designate any age between the retirement plan's normal retirement age and age 70½ as "normal retirement age".

14. To define pay date as the day a participant receives payment of compensation to differentiate it from the pay period end date.

16. The definition of projected retirement date is deleted because the concept of a projected retirement date is not authorized under the new Internal Revenue Service code and regulations.

17. Defines separation from service for regular employment in conformance with Internal Revenue Service code and regulations. No substantive changes.

19. Defines unforeseeable emergency to conform with the definition in the Internal Revenue Service regulations.

2 MCAR S 3.5004. Participation in the plan

B. Enrollment

Pay period is changed to pay date to indicate more clearly to participants the actual day an application becomes effective.

D. Maximum deferment.

2. To delete reference to "projected retirement date" which is made obsolete by IRS regulations and to change language to conform with the Internal Revenue Service code and regulations, making clear that the "catch up" provision may be used only once whether fully utilized or not, and may be used only in the three taxable years ending before the year in which participant attains normal retirement age under the plan.

E. Modifications to amount deferred.

Pay period is changed to pay date to indicate more clearly to participant the actual day participant realizes the change requested.

F. Revocation of deferral.

Pay period is changed to pay date to indicate more clearly to participant the actual day participant realizes the change requested, and to make clear that employee cannot again defer compensation until next taxable year if he or she revokes all deferral. This is to avoid excessive administrative expense associated with frequent changes.

G. Duration of election to defer compensation language is changed to conform with the terminology used in Internal Revenue Service code and regulations. No substantive change.

H. Deferral adjustments.

4. Maximum deduction. Due to the employer's difficulty in absolutely insuring compliance with the maximum deferral, the rule is changed to insure that employer attempts to make the necessary correction, but that employee is ultimately responsible for the tax owed on salary withheld over the allowed maximum.

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

A. Deferred compensation accounts and valuation.

1. Participants' accounts. To indicate the specific sections of the rules that refer to distributions of accounts.

2. Financial responsibility of the employer. To indicate the specific sections of the rules that refer to distributions of accounts.

4. To reduce the administration charge for moneys deferred and invested in the Supplemental Investment Account from 2% to 1½%. Such change was warranted by favorable experience of the System and approved by the Legislative Auditor.

C. Investment of funds.

1. To make clear that since moneys deferred under the plan are remitted to the Executive Director by the employer, the director, not the employer, is responsible for the investments.

2. Investment options. To clarify that the fixed and the variable accounts are two separate accounts and to provide that the participant may invest with the State and/or with only one of the companies approved by the Investment Board at any one time due to significant administrative difficulties and payroll expense involved.

3. Investment preference requests for future compensation. To increase the number of times the participant may change his investment preference for future deferrals from once to twice a year.

4. Investment preference requests for past deferred compensation. To conform with above change in frequency and to establish a minimum amount which can be transferred or be a remainder. This limit is needed to avoid excessive administrative expense connected with transfers of small amounts, and also clarifies the kinds of transfers that are allowed. (See C (2), above.)

D. Distribution events.

All changes are made in order to comply with the requirements of Internal Revenue Service code 457 and the regulations, which limit the scope of authorized distributions.

E. Methods of distribution. To provide a standard form for use in making distribution elections.

1. To provide a method of distribution in the event no election is made by participant in the supplemental investment account. Under present rule if no election is made, the distribution is a lump sum, taxable in the year of distribution. Under the proposed rule, if no election is made, payment is spread out, and taxable, over a five (5) year, sixty (60) month period.

1. b. To limit the purchase of an annuity to one of the companies to curtail excessive administrative expense.

1. c. This limit in the distribution period, where no annuity is purchased, is needed to conform to Internal Revenue Service code and rules. The rule also provides a method of distribution of minimal amounts. This latter provision is needed to curtail administrative expense associated with distributions of small amounts.

2. To establish a date for making the elections and to provide a method of payment in the event no election is made by a participant in the fixed and/or variable annuity account.

2. b. To limit the period over which a period certain annuity may be paid to conform to Internal Revenue Service code and rules.

2. c. To conform to Internal Revenue Service code and rules by limiting joint annuities to spouses. Providing that if no election is made, the account will be paid out over five years to avoid having it all taxed in one year. To make specific the time when small accounts will be paid.

F. Date of distribution.

Under the present rule participants and beneficiaries have rather broad flexibility in designating and changing the time of distribution of assets. The IRS regulations greatly restrict the flexibility, and this change is made to conform to Internal Revenue Service code and rules.

1. To conform to Internal Revenue Service code and rules, this provision specifies the time periods after separation from service during which a participant must make an irrevocable election of distribution.

2. To conform to Internal Revenue Service code and rules, this provision designates the events and time period authorized for a distribution to a beneficiary.

3. To conform to Internal Revenue Service code and rules, this provision states that once payment starts, the time and method of distribution cannot be changed, except for unforeseen emergencies.

4. Language is changed to conform to Internal Revenue Service code and rules. No substantive change.

5. To conform to Internal Revenue Service code and rules, this rule states the time of distribution if the time has not been elected prior to separation from service.

G. Unforeseeable emergency.

This rule makes two clarifications as follows:

1. The insurance company annuity contracts provide that once distribution begins, only monthly payments are payable. This is now also stated in the rule so that participants will not be confused.

2. To conform to Internal Revenue Service code and rules, this rule requires that when a participant seeks an emergency distribution, his or her deferrals automatically stop.

H. Designation of beneficiary.

To clarify that as to participants with funds in the fixed or the variable annuity accounts, more than one beneficiary may be named and that a change of beneficiary is allowed.

I. Leave of absence.

Language is changed to conform with the terminology used in the Internal Revenue Service code and regulations. No substantive change.

J. Separation from service by independent contractor

Provides the conditions constituting separation from service by independent contractors in conformance with Internal Revenue Service code and regulations by adopting the language of the regulation.

In the Matter of the Proposed Amendment to the Rules Relating to the State of Minnesota Governing the Public Employees Deferred Compensation Plan

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Assistant Attorney General Merwin Peterson, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Merwin Peterson
Assistant Attorney General

Dated: Nov 14, 1983