

CHAPTER 7905
MINNESOTA STATE RETIREMENT SYSTEM
DEFERRED COMPENSATION PLAN

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7905.0100 DEFINITIONS.

[For text of subps 1 to 6, see M R]

Subp. 7 Deferred compensation account. "Deferred compensation account" means the account established for the investment of deferred compensation. It includes the supplemental investment account and any fixed and variable product approved by the board.

[For text of subps 8 to 22, see M R.]

Statutory Authority: *MS s 352.96*

History: *22 SR 713*

7905.0300 PURPOSE OF PLAN.

The purpose of the 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 the employee until separation from service, financial hardship, or death of the employee. Any compensation deferred by employees may be invested by the board of directors. Participation in the plan shall not be construed to establish or create an employment contract between the employee and the employer.

Statutory Authority: *MS s 352.96*

History: *22 SR 713*

7905.0600 ADMINISTRATION OF PLAN.

The board of directors has the full power and authority to administer the plan and promulgate, adopt, amend, or revoke internal management procedures which are consistent with, and necessary, to implement and maintain the plan.

Statutory Authority: *MS s 352.96*

History: *22 SR 713*

7905.1200 MAXIMUM DEFERRAL.

The total amount of deferred compensation during any taxable year shall not exceed the applicable limits established under section 457 of the Internal Revenue Code.

Statutory Authority: *MS s 352.96*

History: *22 SR 713*

7905.1600 DEFERRAL ADJUSTMENTS.

[For text of subps 1 to 3, see M R]

Subp. 4 Maximum deduction. The employer shall attempt to ensure compliance with the maximum deferral in part 7905 1200. If the amount deducted exceeds the maximum deferral in part 7905 1200, the amount of subsequent deductions for the remainder of the taxable year shall be adjusted to conform to the maximum deferral allowed for the year. If it is not possible to correct the total deduction by year end, the overage shall be refunded to the employer. A participant is responsible for any tax consequences to the participant that may arise as a result of the participant's deferrals under the plan that exceed the maximum amounts allowable.

Statutory Authority: *MS s 352.96*

History: *22 SR 713*

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7905.1700 DEFERRED COMPENSATION ACCOUNTS AND VALUATION.

Subpart 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 parts 7905.2000 to 7905.2400. Each participant's account shall be credited with the amount of any compensation deferred and received, and shall be further credited or debited, as applicable, with any increase or decrease resulting from investments under part 7905.1900, credited or debited with any investment expenses, if applicable, debited for the amount of any distribution, and credited initially with the value, on December 19, 1983, of any bookkeeping account maintained under the prior plan. All amounts in a participant's account are held in trust for the exclusive benefit of the participant.

Subp 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 according to parts 7905.2000 to 7905.2400.

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

Subp 3 **Account and fund valuation.** The supplemental investment account is to be valued by the board as of each accounting date according to Minnesota Statutes, section 11A.17. Any withdrawals or distributions shall be based upon the account's value as of the accounting date, except if withdrawn under part 7905.2300, subpart 3.

The fixed and variable annuity account is to be valued at current market value as of each accounting date on a reasonable and consistent basis and according to the terms of the contract as approved by the board under Minnesota Statutes, section 352.96.

[For text of subp 4, see M.R.]

Statutory Authority: *MS s 352.96*

History: 22 SR 713

7905.1800 PROTECTION OF ASSETS.

All amounts contributed to the plan and all earnings on those amounts will be held for the exclusive benefit of the plan participants and beneficiaries. These amounts are not subject to the claims of the employer's general creditors and are held in trust, in custodial accounts, qualifying annuity contracts, or other investment accounts authorized by federal law.

Statutory Authority: *MS s 352.96*

History: 22 SR 713

7905.1900 INVESTMENT OF FUNDS.

Subpart 1 **Investment allowed.** Any compensation deferred by employees may be invested by the director for the participant.

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

The supplemental investment account shall provide the options available under Minnesota Statutes, chapter 11A.

The fixed or variable annuity account shall provide the options of a fixed annuity or a variable annuity as provided in the contract approved by the board under Minnesota Statutes, section 352.96.

A participant may select a combination of the investment account preferences by specifying on the application the amount to be deferred under each investment preference. The amount to be deferred cannot be less than \$10 per pay period per product provider.

[For text of subs 3 and 4, see M.R.]

Statutory Authority: *MS s 352.96*

History: 22 SR 713

7905.2100 METHODS OF DISTRIBUTION.

[For text of subpart 1, see M.R.]

Subp 2 **Supplemental investment account.** A participant in the supplemental investment account will have deferred compensation distributed over a period of 60 months, unless the participant elects to have distribution made in one of the following methods

[For text of items A and B, see MR]

C for distribution beginning before the death of the participant, in monthly installments over a period of months specified by the participant, provided, however, that the amounts payable to the participant will be paid at times that are not later than the time determined under section 401(a)(9)(G) of the Internal Revenue Code relating to incidental death benefits as prescribed by the federal tax regulations. Any amount not distributed to the participant during the participant's lifetime will continue to the beneficiary at least as rapidly as was made to the participant before death.

The monthly installment payment from the supplemental investment account shall be specified by the participant as long as it conforms to the minimum distribution requirements as specified in the Internal Revenue Code, or shall be determined by dividing the number of shares held by the months to be paid according to the withdrawal period selected. If the computation results in a monthly payment of less than \$100, the number of shares that equal approximately \$100 shall be determined and shall be redeemed and distributed to the employee or beneficiary each month until the deferred compensation is depleted in its entirety. If the value of the participant's account is \$1,000 or less, distribution shall be made in a lump sum.

If an acceptable application for a lump sum withdrawal and the information necessary to process the withdrawal is received in the office of the system prior to the end of any month, the lump sum payment should be processed within the first ten working days of the following month. If not processed within ten working days, the participant will be paid interest at the rate set by the commissioner of revenue in accordance with Minnesota Statutes, section 270.75, subdivision 5. Interest will be calculated from the day after the tenth working day to the date payment is processed.

Subp 3 **Fixed or variable annuity account.** A participant in the fixed or variable annuity account will have deferred compensation distributed in the form of an annuity or systematic withdrawal payments unless, before distribution, the participant elects a lump sum distribution. The annuity or systematic withdrawal payments shall be based on one of the following methods, as selected by the participant

A the life of the participant;

B the joint lifetime of the participant and spouse, or

C a period certain in which the amounts payable to the participant will be paid at times not later than the time determined under section 401(a)(9)(G) of the Internal Revenue Code relating to incidental death benefits as prescribed by the federal tax regulations. Any amount not distributed to the participant during the participant's lifetime will continue to the beneficiary at least as rapidly as was made to the participant before death.

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 begun on an annuity or systematic withdrawal basis, any future payments to a beneficiary will depend on the terms of the annuity or systematic withdrawal payments agreed to by the participant and the employer. If a participant dies before the end of a period certain, any remaining distributions will be paid to the beneficiary determined under part 7905.2500. If annuity payments have begun 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.

Statutory Authority: *MS s 352.96*

History: *22 SR 713*

7905.2200 DATE OF DISTRIBUTION.

Subpart 1 Election in general. A participant may irrevocably elect, on a form approved by the director to defer payment of some or all of the amounts to a fixed or determinable future time, subject to subparts 2 to 7

Subp 2 Electing distribution date. A participant may designate a distribution date in accordance with section 457 of the Internal Revenue Code

A participant who has elected to defer benefits under subpart 1 may, subsequent to the initial election, and prior to the commencement of benefits, elect to further defer payment of benefits to a later date as allowed by the plan. A participant is only permitted to make one such election

Subp 3 Death of participant. If a participant dies before the distribution date or date of separation from service, the death will be treated as an event of distribution. If the beneficiary is the participant's surviving spouse, the beneficiary shall have the right to elect the method and time of distribution as if the beneficiary was the participant. The distribution to the surviving spouse cannot exceed the life expectancy of the surviving spouse. If the beneficiary is other than the surviving spouse, payments to the beneficiary must be distributed according to the Internal Revenue Code minimum distribution requirements.

[For text of subp 4, see M.R.]

Subp. 5 When distribution begins. Distribution may not begin before separation from service or death, except for unforeseeable emergency distributions as provided in part 7905.2300 or as listed in subpart 7

[For text of subp 6, see M.R.]

Subp. 7. Distribution election. If, prior to separation from service, the value of a participant's benefits under the plan does not exceed \$3,500, the participant may elect at any time to receive the value in a lump sum if

A the participant has not deferred any compensation under the plan during the two-year period ending on the date of distribution; and

B the participant has not previously received a distribution under this subpart

Statutory Authority: *MS s 352.96*

History: 22 SR 713

7905.2300 UNFORESEEABLE EMERGENCY.

[For text of subpart 1, see M.R.]

Subp 2 Showing of an 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 that is likely to cause the participant great financial hardship and qualifies under section 457 of the Internal Revenue Code. The director shall have the authority to require medical or other evidence as may be needed to determine the necessity for the participant's withdrawal request.

Subp 3 Amount and method of distribution. The distribution shall be limited to an amount sufficient only to meet the emergency and shall not exceed the amount of the deferred compensation account

The allowed distribution shall be payable by a method determined by the director and begin as soon as possible after notice to the participant of approval. An approved unforeseeable emergency payment from the supplemental investment account may be based on the values determined on the prior month's accounting date only in the case of an extreme financial emergency at the discretion of the director, and only if the application is received by the 20th of the month.

Statutory Authority: *MS s 352.96*

History: 22 SR 713

7905.2400 DESIGNATION OF BENEFICIARY.

A participant may designate a beneficiary or beneficiaries to receive payment of the participant's deferred compensation in the event of the participant's death. If the designated beneficiary predeceases the employee and a new beneficiary has not been named or the des-

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ignated beneficiary dies before receiving payment, a lump sum payment shall be made to the surviving spouse or, if none, to the participant's estate. The beneficiary designation shall be in writing and must be filed with the director or company approved by the board under Minnesota Statutes, section 352.96, subdivision 2, as the case may be, before 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.

Statutory Authority: *MS s 352.96*

History: 22 SR 713

7905.2600 NONASSIGNABILITY OF CONTRACT.

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

Except as otherwise required by law, deferred compensation money withheld under the plan shall not be subject to attachment, garnishment, or execution, or to transfer by operation of law in the event of bankruptcy or insolvency of the participant, the employer, or the state.

Statutory Authority: *MS s 352.96*

History: 22 SR 713

7905.2900 AMENDMENT OF PLAN.

The board of directors shall have the authority to propose amendments to the plan consistent with Minnesota Statutes, section 352.96.

Statutory Authority: *MS s 352.96*

History: 22 SR 713

7905.3000 PRIOR PLAN.

The plan constitutes a continuation of the Minnesota deferred compensation plan approved by the attorney general and filed with the secretary of state and the commissioner of administration, November 24, 1975. All participants and any compensation deferred under the prior plan are, after January 1, 1981, governed by the terms of the plan subject to items A to C.

A. All deferrals elected under the prior plan shall continue without further action as long as they do not exceed the limits in part 7905.1200.

B. Any investment requests made under the prior plan shall continue to apply to any deferrals made under the plan according to part 7905.1900.

C. Any election of the method of distribution of benefits made under the prior plan shall be void, and a participant or beneficiary may elect the form of distribution according to parts 7905.2100 and 7905.2200.

Statutory Authority: *MS s 352.96*

History: 22 SR 713