

ORDER of the DEPARTMENT OF ADMINISTRATION

The Wisconsin Department of Administration proposes an order to repeal ss. Adm 95.03 (6m) and (16); to amend ss. Adm 95.01, 95.02, 95.03 (5), (14), and (20), 95.04 (1), (2) (Note), (3), (4), and (5) (a) to (b), 95.05 (2) (a) and (b), 95.07 (1) (a), (1) (b), (2) (b), and (2) (c), 95.08 (1), 95.09 (2) (b) and (3) (c), and 95.10 (2); to repeal and recreate s. Adm 95.07 (2) (a); and to create ss. 95.03 (4s) and (5m) and 95.07 (2) (d); relating to the Service Award Program.

Rule Analysis prepared by the Department of Administration

1. Citations to statutes interpreted:

Section 16.25, Stats.

2. Citations to statutory authority:

Sections 16.25 (2), (3) (g) to (i), and 227.11 (2) (a), Stats.

3. Explanation of the agency's statutory authority to promulgate the rule under the statutes cited:

Section 227.11 (2) (a), Stats., expressly grants authority to the Department to “promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute,” and s. 16.25 (2), Stats., charges the Department with administering the Service Award Program. The proposed rule interprets the provisions of s. 16.25, Stats., and is necessary to effectuate the purpose of s. 16.25 as amended by 2017 Wisconsin Acts 12 and 59.

Section 16.25 (3) (g) to (i), Stats., contain provisions specifically charging the Department to promulgate rules implementing the requirements of those paragraphs, including determining the manner of payment and the amounts to be paid to certain volunteers under the program. The proposed rule carries out these statutory directives.

4. Related statutes or rules:

Section 16.25, Stats., governs the Service Award Program.

Chapter Adm 95 sets forth the Department's rules governing the program.

Section 20.505 (4) (er), Stats., provides a sum sufficient appropriation for state matching funds to be paid under s. 16.25 (3) (d), Stats., not to exceed \$2,500,000 in a fiscal year.

5. Brief plain language summary of the proposed rule :

Sections 1 through 10 and **Section 19** of the proposed rule updates the terminology for certain emergency medical personnel consistent with 2017 Wisconsin Act 12. The proposed rule implements Act 12 by replacing “first responder” with “emergency medical responder” and replacing “emergency medical technician” with “emergency medical services practitioner,” throughout Ch. Adm 95. Also, the definitions in s. Adm 95.03 for “emergency medical responder” and “emergency medical services practitioner” now point directly to the statutory definitions of those terms in s. 16.25 (1) (am) and (at), Stats.

Section 10 of the proposed rule updates the contact information in s. Adm 95.04 (2) (Note) to reflect the location of the Service Award Program in the Department of Administration's Division of Intergovernmental Relations.

This section also adds the term "credit" into s. Adm 95.04 (3). This in order to clarify that, when a municipality establishes standards for a volunteer to qualify for an annual contribution, this includes setting the requirements for a volunteer to qualify for credit under the municipality's program, as provided in the definition of "credit" in s. Adm 95.03 (4).

Section 11 of the proposed rule updates s. Adm 95.05 (2) (a) to update the requirements for the state match to incorporate the new requirements of s. 16.25 (3) (d) 1., Stats., as amended by 2017 Wisconsin Act 59. The proposed rule also updates s. Adm 95.05 (2) (a) to recognize the potential for proration under s. 16.25 (3) (d) 2., Stats.

This section also amends s. Adm 95.05 (2) (b) to extend the deadline for municipalities to pay all contributions to program administrators each year, from January 31 to February 15.

Section 12 of the proposed rule updates s. Adm 95.07 (1) to reflect the new 15-years-of-service threshold for a volunteer to be fully vested. The proposed rule also clarifies that the volunteer who receives an award under subsection (1) shall receive the "full net asset value" of their account. ("Net Asset Value" is already defined in s. Adm. 95.02 in a manner consistent with what s. 16.25 (3) (g), Stats., authorizes a fully vested volunteer to receive.) The proposed rule also makes editorial changes to use the terminology "elect to receive" instead of "request to receive," for stylistic consistency with the proposed amendments to s. Adm 95.07 (2), Stats.

Sections 13 and 14 of the proposed rule amend s. Adm 95.07 (2) to establish new provisions for vesting, to implement the portion of s. 16.25 (3) (g), Stats., that delegates to the Department the task of determining the amounts payable to volunteers who are not fully vested because they meet one or both of the following criteria: (1) between the ages of 53 and 60 or (2) between 10 and 15 years of service for credit.

According to s. 16.25 (3) (f), a vesting period of 10 years is the minimum requirement to receive any length of service award. Based on this provision and on the other applicable provisions of s. 16.25 (3) (g), the Department has determined that a volunteer shall be considered partially vested and may elect to receive a partial length of service award after performing a minimum of 10 years of service and reaching age 53, if the volunteer has discontinued providing eligible service. Unless and until a volunteer makes this election, the volunteer is not eligible for a partial length of service award.

As with the existing rule, the proposed rule calculates the amount payable for a partial length of service award based upon the number of years of service. The new formula adjusts the percentages to reflect the fact that a volunteer can now be fully vested with 15 years of service, rather than 20 years. However, the formula is designed so that a volunteer who has 15 or more years of service but is not yet age 60 may not receive more than 95% of the net asset value of the account. This is required by s. 16.25 (3) (g), Stats., which provides that the amount must be less than what is paid to a fully vested volunteer. The proposed rule also provides that the award will be payable in the calendar year following the date of the election.

Section 15 of the proposed rule creates s. Adm 95.07 (2) (d), which clarifies that, as an alternative to electing to receive a partial length of service award under s. Adm 95.07 (2), a volunteer who has discontinued serving after performing 15 years of service may wait until age 60 and elect to receive a full length of service award at that time, under s. Adm 95.07 (1). This clarification is important to emphasize that there is no requirement that a volunteer maintain serving continuously until age 60 in order to

become fully vested, provided that the volunteer accumulated at least 15 years of service before discontinuing serving.

Sections 16 and 17 of the proposed rule implement the statutory change in s. 16.25 (3) (j), Stats., that doubled the length of time—from 6 months to 12 months—that a volunteer may experience a break in serving without the volunteer’s account being closed.

Section 18 proposes changes to the first sentence of s. Adm 95.09 (3) (c) to harmonize the language with the vesting provisions in the proposed revisions to s. Adm. 95.07.

In summary, the purpose of the proposed rule is to ensure that Ch. Adm. 95 reflects and implements the statutory changes to s. 16.25, Stats. and effectively carries out the Department’s explicit statutory obligations to administer the program and to promulgate rules implementing the various vesting requirements.

6. Summary of, and preliminary comparison with, any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule :

There are no federal regulations directly regulating the subject matter of the proposed rule, although federal tax regulations do provide special treatment for length of service award programs in section 457 of the Internal Revenue Code, specifically 26 C.F.R. 457 (e) (11) (B). Further, s. 16.25 (2), Stats., requires the Department to “administer the program so as to treat the length-of-service awards as a tax-deferred benefit under the Internal Revenue Code.”

7. Comparison with similar rules in Illinois, Iowa, Michigan, and Minnesota:

Minnesota has a similar program; however, it allows volunteers to serve as little as 5 years to receive a partial vesting payment starting with 40% up to 20 years and 100%.

Michigan also has a service award program, but there are not specific statutory provisions that govern the program at the state level similar to Wisconsin’s program.

Illinois has a volunteer incentive program; however, it is not similar to those established in Wisconsin, Michigan, or Minnesota.

Legislation to establish a service award program has been introduced to the Iowa legislature several times, but it has not passed.

8. Summary of the factual data and analytical methodologies that the agency used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule :

The Department is proposing this rule to update existing rules and interpretations of existing statutes; therefore, the Department reviewed existing statutes and administrative rules in order to determine the necessary revisions to the administrative rules to implement the legislative directives.

9. Effect on small business:

There is no anticipated effect on small business from implementing the proposed rule.

10. Any analysis and supporting documents used in support of the agency's determination of the rule's effect on small business or in preparation of economic impact report:

The Department is proposing this rule to update existing rules and interpretations of existing statutes. There is no anticipated economic impact from implementing the proposed rule, other than incidental compliance work on the part of program administrators to update their administration of the program in light of the revised dollar amounts and vesting thresholds.

11. Email address and telephone number of agency contact person:

Dawn Vick, Division Administrator
Division of Intergovernmental Relations
Department of Administration
Dawn.Vick@wisconsin.gov
(608) 266-7043

12. Place where comments are to be submitted and deadline for submission:

Comments could be submitted at the public hearing, by regular mail, or by email to the contact information listed above.

A public hearing was held on Tuesday, February 27, 2018 from 2:00 pm to 4:00 pm at the Department of Administration building located at 101 E. Wilson Street, Madison, WI 53703.

The published deadline for submission of comments was February 27, 2018.

RULE TEXT

SECTION 1: Adm 95.01 is amended to read:

Adm 95.01 Authority. Sections 16.004 (1) and 16.25 (2), (3), (4) and (5), Stats., and 2015 Wisconsin Act 55, section 9101 (10j) (e), authorize the department to promulgate rules for establishing a length of service award program for volunteer fire fighters, ~~first~~ emergency medical responders, and emergency medical ~~technicians~~ services practitioners.

SECTION 2: Adm. 95.02 is amended to read:

Adm 95.02 Purpose. The purpose of this chapter is to establish a program for length of service awards to VFF-EMT participants who provide services to municipalities that operate volunteer fire departments or volunteer fire companies, or authorize emergency medical and technical services, and to ~~first~~ emergency medical responders in any municipality that authorizes ~~first~~ emergency medical responders to provide ~~first~~ emergency medical responder services, and to establish qualifications and requirements for private sector individuals and organizations eligible to provide administrative and investment services for length of service award programs.

SECTION 3: Adm 95.03 (4s) is created to read:

Adm 95.03 (4s) “Emergency medical responder” has the meaning given in s. 16.25 (1) (am), Stats.

SECTION 4: Adm 95.03 (5) is amended to read:

Adm 95.03 (5) “Emergency medical services” means medical care that is rendered to a sick, disabled, or injured individual based on signs, symptoms, or complaints, prior to the individual's hospitalization or while transporting the individual between health care facilities and that is limited to the use of the knowledge, skills, and techniques received from training required under s. 256.15, Stats., and ch. DHS 110, as a condition for being issued an emergency medical ~~technician~~ services practitioner license.

SECTION 5: Adm 95.03 (5m) is created to read:

Adm 95.03 (5m) “Emergency medical services practitioner” has the meaning given in s. 16.25 (1) (at), Stats.

SECTION 6: Adm 95.03 (6m) is repealed.

SECTION 7: Adm 95.03 (14) is amended to read:

Adm 95.03 (14) “Service” includes fire fighting services, ~~first emergency medical responder services~~, emergency medical services, or rescue services provided to a participating municipality by a ~~volunteer fire fighter, first responder, or emergency medical technician~~ VFF-EMT.

SECTION 8: Adm 95.03 (16) is repealed.

SECTION 9: Adm 95.03 (20) is amended to read:

Adm 95.03 (20) “VFF-EMT” means a volunteer fire fighter, ~~first~~ volunteer emergency medical responder, or volunteer emergency medical technician services practitioner.

SECTION 10: Adm 95.04 (1), (2) (Note), (3), (4), and (5) (a) and (b) are amended to read:

Adm. 95.04 (1) A municipality that operates a volunteer fire department or that contracts with a volunteer fire company organized under ch. 181 or 213, Stats., that authorizes ~~first emergency medical responders~~ to provide first emergency medical responder services or that authorizes volunteer emergency medical ~~technicians~~ services practitioners to provide emergency medical services, is eligible to become a participating municipality.

(2) (Note) To request approval of a form for a resolution or ordinance, contact the ~~Length of Service Award Program~~, c/o Department of Administration, ~~Office of Legal Counsel~~ Division of Intergovernmental Relations, P.O. Box ~~7864~~ 8944, Madison, Wisconsin ~~53707-7864~~ 53708 or (608) ~~266-7043~~.

(3) Each participating municipality shall develop standards for determining the service required of the volunteer fire fighters, ~~first emergency medical responders~~, and emergency medical ~~technicians~~ services practitioners it sponsors under the program in order to qualify for credit and an annual contribution.

(4) Municipalities that jointly operate or contract with a volunteer fire department or a volunteer fire company or that jointly authorize volunteer emergency medical ~~technicians~~ services practitioners, or that jointly authorize ~~first emergency medical responders~~ to provide first emergency medical responder

services, may operate as a single participating municipality under the program, and may be required to do so by the program administrator.

(5) (a) A VFF-EMT may perform service for credit toward a length of service award to more than one volunteer fire department, volunteer fire company, ~~first emergency medical~~ responder service or entity authorized to provide volunteer emergency medical services.

(5) (b) A VFF-EMT may have only one account for each volunteer fire department, volunteer fire company, ~~first emergency medical~~ responder service, or entity authorized to provide volunteer emergency medical services to which the VFF-EMT provides service.

SECTION 11: Adm 95.05 (2) (a) and (b) are amended to read:

Adm 95.05 (2) (a) On a calendar year basis, the department shall ~~match a participating municipality's annual contributions made on behalf of its VFF-EMT participants during that calendar year up to a maximum of \$250 per VFF-EMT, subject to any annual adjustment under sub. (3).~~ The department shall pay all amounts matched under ~~this section~~ s. 16.25 (3) (d) 1., Stats., directly to the program administrator, up to the maximum appropriated under s. 20.505 (4) (er), Stats., and subject to any proration required under s. 16.25 (3) (d) 2., Stats.

(2) (b) Subject to the time period for a protest or appeal under s. Adm 95.16, a participating municipality shall pay all contributions for a calendar year to the program administrator on or before ~~January 31~~ February 15 of the following year in order to receive a matching contribution from the department.

SECTION 12: Adm 95.07 (1) (a) and (b) are amended to read:

Adm 95.07 (1) (a) A VFF-EMT ~~that~~ who has provided ~~20~~ 15 years of service for credit to a participating municipality shall be fully vested and paid a length of service award upon reaching age 60.

(1) (b) A ~~fully vested~~ VFF-EMT ~~age 60 or older shall notify~~ notifying the program administrator and the participating municipality of the VFF-EMT's request may elect to receive their length of service award under this subsection by notifying the program administrator and the participating municipality within the time period required by the program administrator or the applicable program. A VFF-EMT receiving an award under this subsection shall receive the full net asset value of their account.

SECTION 13: Adm 95.07 (2) (a) is repealed and recreated to read:

Adm 95.07 (2) (a) A VFF-EMT who has discontinued providing eligible service after performing a minimum of 10 years of service for credit shall be partially vested and may elect to receive a partial length of service award under this subsection at any time after reaching age 53, by notifying the program administrator and the participating municipality within the time period required by the program administrator or the applicable program.

Section 14: Adm 95.07 (2) (b) and (c) are amended to read:

Adm 95.07 (2) (b) ~~Upon reaching the age of 60, a~~ A VFF-EMT requesting electing to receive ~~their a~~ a partial length of service award ~~after performing 10 years, but less than 20, of service for credit under this subsection shall be entitled to receive the award in the next calendar year following the date of the election. The VFF-EMT shall receive 50% of the net asset value of their account at as of the time date of the request election for the first 10 years of service for credit is provided performed.~~ For each year of service for credit more than 10, but less than ~~20~~ 15, performed by the VFF-EMT, ~~five~~ ten percent of the

net asset value of the account ~~at~~ as of the date of the ~~request~~ election shall be added. A VFF-EMT who has reached the age of 53 but has not reached the age of 60 and who has 15 or more years of service shall receive 95% of the net asset value of the account as of the date of the election. The amounts not paid to a VFF-EMT under this subsection shall be forfeited and equally distributed among all other open VFF-EMT accounts sponsored by that municipality at the time of the forfeiture.

(2) (c) A VFF-EMT who has reached age ~~60~~ 53 but is not fully vested may continue to perform service for credit toward a length of service award.

Section 15: Adm 95.07 (2) (d) is created to read:

Adm 95.07 (2) (d) A VFF-EMT who has discontinued providing eligible service after performing a minimum of 15 years of service for credit and who has not elected to receive a partial length of service award under this subsection may instead elect to receive their length of service award under sub. (1) upon reaching age 60.

SECTION 16: Adm 95.08 (1) is amended to read:

Adm 95.08 (1) NON-VESTED FORFEITURE. The account of a VFF-EMT ~~that~~ who has performed less than 10 years of service under a program shall be closed if the VFF-EMT ceases to perform creditable service for ~~more than 6 months in any calendar year, or a period of 12 months or more~~ and fails to meet any other program requirement established by the municipality, unless a supervisor has granted the VFF-EMT a leave of absence for that period.

SECTION 17: Adm 95.09 (2) (b) is amended to read:

Adm 95.09 (2) (b) The VFF-EMT begins performing creditable service for a subsequent participating municipality within ~~6~~ 12 months of ceasing to perform creditable service for the VFF-EMT's former participating municipality.

SECTION 18: Adm 95.09 (3) (c) is amended to read:

Adm 95.09 (3) (c) Payment of a length of service award may only occur ~~upon reaching~~ after a VFF-EMT has reached age ~~60~~ 53, and must be made under the provisions of either s. Adm 95.07 (1) or (2), as the individual circumstances ~~require~~ permit. In order to receive payment of a length of service award from a frozen account, a VFF-EMT shall notify their former program administrator of any service credited by a subsequent program administrator.

SECTION 19: Adm 95.10 (2) is amended to read:

Adm 95.10 (2) DEATH. If a VFF-EMT dies while actively on the rolls of a volunteer fire department, volunteer fire company, ~~first~~ emergency medical responder service in any municipality that authorizes ~~first~~ emergency medical responders to provide ~~first~~ emergency medical responder services, or an emergency medical service that provides services to a participating municipality under a program, the VFF-EMT's designated beneficiary shall be paid an amount equal to the net asset value of each account held by the VFF-EMT designating that beneficiary. Upon request, the program administrator shall make payment as soon as administratively possible.

SECTION 21: EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro), Stats.