

Report from Agency

**DEPARTMENT OF ADMINISTRATION
REPORT TO LEGISLATURE**

**Ch. Adm 95, Wis. Admin. Code
Relating to the Service Award Program**

Clearinghouse Rule 18-011

I. PROPOSED RULE AND SUMMARY:

The proposed rule, including analysis and text, are attached.

II. REFERENCE TO APPLICABLE FORMS:

There are no references to new forms.

III. FISCAL ESTIMATE AND ECONOMIC IMPACT STATEMENT:

The fiscal estimate and economic impact analysis are attached. 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. Nor will the proposed rule have an anticipated economic impact on small businesses.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

The Service Award Program was originally created by 1999 Wisconsin Act 105 and is codified at s. 16.25, Stats. Administered by the Department of Administration in partnership with private vendors, the Service Award Program assists local entities with recruiting and retaining volunteer firefighters, first responders, and emergency medical personnel by providing monetary awards to volunteers based upon their age and length of service. Municipal contributions to a volunteer's account are annually matched by state contributions appropriated by the legislature under s. 20.505 (4) (er), Stats. Upon meeting the applicable vesting requirements, a volunteer can receive payments out of his or her account. Accounts are administered by private vendors pursuant to contracts with the State under s. 16.25 (4), Stats.

Chapter Adm 95 contains the Department's administrative rules for the program. The primary purpose of the propose rule is to update Ch. Adm 95 to reflect the statutory changes in 2017 Wisconsin Acts 12 and 59. The proposed rule implements Act 12 by

updating the terminology used to refer to emergency medical personnel to be consistent with new terminology introduced in Act 12. These changes are not intended to have any substantive effect on the administration of the Service Award Program.

The proposed rule also implements 2017 Wisconsin Act 59, which made substantive changes to the Service Award Program. Most significantly, the proposed rule updates s. Adm 95.07 to align with new provisions in s. 16.25 (3) (g), Stats., for volunteers to become partially vested at age 53 after 10 years of service and fully vested at age 60 after 15 years of service. The proposed rule also updates Ch. Adm 95 to align with the amendments to s. 16.25 (3) (j), Stats., doubling the length of time a volunteer may experience a break in service without needing a formal leave of absence. More detailed information about these provisions are set forth in the Department's rule analysis.

The proposed rule also implements 2017 Wisconsin Act 59 by updating s. 95.05 (2) (a) to align with the new provisions of s. 16.25 (3) (d), Stats., which increased the amount of the state match for municipal contributions.

Finally, the proposed rule includes a small number of rule revisions within the Department's rulemaking authority that are necessary to align Ch. Adm. 95 to the statutory language as amended or otherwise improve the Department's administration of the statutes. These provisions were identified in consultation with the program administrators and are more fully explained in the Department's rule analysis and the summary of comments received, below.

Taken together, all of these changes advance the statutory goals of improving the Service Award Program and providing greater incentives and benefits for the volunteer firefighters, first responders, and emergency medical personnel who voluntarily put themselves in harm's way in the service of their local communities every day.

V. SUMMARY OF PUBLIC COMMENTS, APPEARANCES AT THE PUBLIC HEARING, AND MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:

A public hearing was held on February 27, 2018, at the Department of Administration building in Madison. John Hamer and Michelle Strauss, representatives of the Horton Group, attended the hearing for informational purposes, but neither testified or submitted written comments. No other members of the public attended the hearing.

The only comments received were those provided in writing by program administrators. The Department adopted the changes requested by some of these comments, and did not adopt others, as described below. Most of the comments were submitted by representatives of Penflex, Inc. One comment was also received from a representative of VFIS, another program administrator. No comments were received from any other program administrators or other members of the public.

The changes to the proposed rule that were adopted by the Department of Administration in response to comments are as follows:

1. In its comments, Penflex noted that the insertion of the term “service for credit” in multiple places throughout the proposed rule (in place of similar terms such as “creditable service”) could have inconsistent effects. In response, the proposed rule was revised so as to leave the existing terms unchanged wherever possible.
2. Other comments from Penflex about the usage of the terms “service” and “credit” were addressed by adding the term “credit” to s. Adm 95.04 (3), to clarify that it is each municipality’s responsibility to set the terms upon which volunteers earn credit for service. This is not intended to be a substantive change in policy; instead, it further clarifies what s. Adm 95.04 (3) already means in practice. That is, in order for a municipality to set the standards by which a volunteer becomes eligible for a contribution, the municipality must also determine when a volunteer earns “credit” for his or her service as defined in s. Adm 95.04 (3).
3. Penflex commented that the provisions of s. Adm 95.04 (5) (b) should be clarified to state that a “VFF-EMT may have only one open account for each [entity] to which the VFF-EMT provides service.” This change was adopted.
4. Penflex commented that the deadline for municipal contributions under s. Adm 95 should be extended, given the difficulty that some municipalities have in meeting the existing January 31 deadline. This change was adopted by extending the deadline to February 15 of each year.
5. Penflex commented that, by repealing s. Adm 95.07 (1) (c) and moving its provisions to s. Adm 95.07 (3), the proposed rule would have allowed a partially vested volunteer who received less than 100% of his or her account to also continue serving and receive the full 100% of each contribution made in subsequent years. In response to this comment, the proposed rule was revised to retain the existing provisions of s. Adm 95.07 (1) (c) and also to retain the existing requirement in s. Adm 95.07 (2) (a) that a volunteer must discontinue serving in order to be eligible for a partial length of service award. This ensures that the proposed rule complies with s. 16.25 (3) (g), Stats., which requires that a partially vested volunteer must receive less than a fully vested volunteer would receive.

A representative of VFIS also submitted a comment requesting clarification on the proposed repeal of s. Adm 95.07 (1) (c). Because the proposed rule has been revised to leave s. Adm 95.07 (1) (c) unchanged, this comment has been fully addressed.

6. Penflex commented that the proposed amendments to s. Adm 95.08 (1) included a reference to “more than 12 months in any calendar year,” which is not possible. Penflex also commented that “and” should replace “or” at a particular point in that same sentence. In response to these comments, the proposed rule has been revised to closely mirror the language in s. 16.25 (3) (j), Stats.

The Department's responses to additional comments received are as follows:

1. Penflex also requested that the proposed rule be expanded to interpret the statutory 12-month period in s. 16.25 (3) (j), Stats., to be a calendar year, and to further provide that the 12-month period means only that a volunteer must earn credit in each calendar year. Although the Department has not included this interpretation in the text of the rule, it should be emphasized that municipalities have statutory authority under s. 16.25 (3) (j), Stats., to establish their own program requirements. Such requirements could provide that a volunteer who earns credit in successive calendar years does not need a leave of absence. By changing "or" to "and" in s. Adm 95.08 (1), as described above, the rule clarifies that satisfying municipal requirements is sufficient to prevent account closure without a leave of absence.
2. Penflex commented that the proposed rule should address how to handle the accounts of a volunteer who has ceased being a member of the volunteer organization prior to age 53 or prior to electing to receive payment, but is partially vested (i.e., having between 10 and 15 years of service). No changes have been made in response to this comment, because the provisions of the proposed rule already leave room for program administrators to hold these accounts until an award is paid. For example, the proposed text of s. Adm 95.07 (2) (a) states that once a volunteer accumulates 10 years of service for credit, the volunteer "shall be partially vested" (regardless of current age) and "may elect to receive a partial length of service award under this subsection any time after reaching age 53." This was intentionally drafted to resemble the existing language in s. Adm 95.07 (1) for fully vested volunteers. And as the proposed new text of s. Adm 95.07 (2) (d) emphasizes, once a volunteer has accumulated sufficient years of service for credit, the volunteer may discontinue serving and wait until reaching the required age before electing to receive an award. Finally, the current language of s. Adm 95.08 (3) sufficiently addresses the distribution of forfeited funds and is consistent with s. 16.25 (3) (k), Stats. Therefore, no changes to these provisions in the proposed rule were made in response to the comments received.
3. Penflex also suggested that s. Adm 95.09 could be updated and clarified. However, this was determined to be beyond the scope of the current rulemaking process, and it has not been demonstrated that the existing rules are unworkable as written. Therefore, no changes were made in response to this comment.
4. Finally, Penflex requested updating and revising the use of certain terminology throughout the rule, particularly the terms "account" and "net asset value." However, it was determined that this is not necessary to implement Acts 12 and 59, which is the primary purpose of the proposed rule. Nor was it demonstrated that existing rules were unworkable as written. Therefore, in order to avoid risking unintended consequences from adjusting terminology, no changes have been made in response to these comments.

VI. CHANGES TO RULE ANALYSIS AND FISCAL ESTIMATE:

No changes to the Fiscal Estimate and Economic Impact Analysis were made.

The Rule Analysis was updated to reflect the changes made in response to some of the comments received, as described in this report.

VII. RESPONSE TO LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT:

The Legislative Council Rules Clearinghouse sent its report to the Department of Administration on February 22, 2018, containing comments and suggestions relating to “Form, Style, and Placement in Administrative Code,” “Adequacy of Reference to Related Statutes, Rules and Forms,” and “Clarity, Grammar, Punctuation, and Use of Plain Language.” The suggested changes in the report comprised only a few minor stylistic and proofreading changes.

Changes to the proposed rule were made to address and incorporate all of the recommendations in the Clearinghouse Report, except one.

The Clearinghouse Report suggested that the Department should consider amending the acronym “VFF-EMT” to reflect the new terminology adopted by 2017 Wisconsin Act 12. The Department had considered adopting a new acronym, or simply using the term “volunteer” (which the Department has used interchangeably with “VFF-EMT” in this report and the rule analysis, for ease of readability). However, it was ultimately determined that the acronym “VFF-EMT” should be retained in the text of the rule. Although Act 12 introduced a new term into the statutes (“emergency medical services practitioner”), the Act did not render the term “emergency medical technician” or the acronym “EMT” obsolete. Rather, the new term, as defined in s. 256.01 (4), Stats., is a catchall term that encompasses two types of EMTs, as well as paramedics (which had been a type of EMT prior to Act 12). Therefore, paramedics will continue to be included in the definition of “VFF-EMT” in s. Adm 95.03 (20); the proposed rule simply amends the definition to reflect the new terms. This will be sufficient to avoid confusion, without the need to risk additional confusion by creating a new acronym to replace each of the 76 instances where “VFF-EMT” is used throughout Ch. Adm 95.

VIII. ADDITIONAL INFORMATION:

No additional information is required to be submitted under s. 227.19 (3) (e) to (h), Stats., because the proposed rule will not have an effect on small business, no energy impact report was required under s. 227.117 (2), Stats., no housing report was required under s. 227.115, Stats., and the Small Business Regulatory Review Board did not prepare a report on this rule proposal under s. 227.14 (2g), Stats.