



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 01-123

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

a. It appears that s. VFF-EMT 1.03 (16) is in conflict with s. 16.25 (3) (b) Stats., because it provides that first responders may participate in the program. The statute provides that only volunteer fire fighters (VFFs) and emergency medical technicians (EMTs) may participate. “Emergency medical technician,” as defined in s. 146.50 (1) (e), Stats., does not include first responders.

b. It is not clear whether s. VFF-EMT 1.07 (2), which allows a fully vested VFF-EMT who has already received a length-of-service award upon reaching age 60 to receive additional amounts under the program, complies with the statute. Section 16.25 (3) (g), Stats., does not appear to provide for any length-of-service contributions on behalf of, or awards to, a VFF-EMT who has already received a length-of-service award upon becoming fully vested and reaching age 60. In essence, the rule provision appears to provide for the capture of federal funds for immediate payment to a VFF-EMT without applying any new vesting requirements to the new account. What statutory authority exists for this provision?

c. Section VFF-EMT 1.12 (1) appears to limit the board to contracting with only one entity to act as a program administrator. Is this the intention of the rule? If not, the rule should clearly state that the board may contract with more than one entity. It appears that the statute contemplates that the board will contract with several entities to serve as program administrators, to ensure that municipalities have several plans from which to choose. See s. 16.257 (3) (c),

Stats., which states that “the municipality may select from among the plans offered by individuals or organizations under contract with the board”

d. It appears that s. VFF-EMT 1.12 (2), which states that the board “may consider” the financial strength of a program administrator or an entity affiliated with the program administrator, does not meet the requirement, set forth in s. 16.25 (4) (a), Stats., that the board “. . . shall develop criteria of financial stability that each individual and organization must meet in order to offer the services and plans under the program.”

e. Section VFF-EMT 1.17 should be expanded to establish a process by which a VFF or EMT may appeal to the board any decision made by the department or by an individual or organization under contract with the board that affects a substantial interest of the VFF or EMT under the program, as required by s. 16.25 (5), Stats.

2. Form, Style and Placement in Administrative Code

a. Each provision of rule text in a SECTION should be preceded with the notation “VFF-EMT.”

b. The rule should be reviewed to ensure that terms are used consistently. For example, s. VFF-EMT 1.03 (1) refers to “a VFF-EMT” while s. VFF-EMT 1.03 (2) refers to “an eligible VFF-EMT,” even though it appears that both provisions are referring to the same type of person. Another example can be found in s. VFF-EMT 1.12 (1) (a) to (c), which appear to use the terms “investment products” and “investment options” interchangeably. Also, some provisions of the rule refer to the “program administrator” while other provisions refer to the “administrator.” Note that the term “program administrator” is a defined term in s. VFF-EMT 1.03 (13); this is the term that should be used.

c. In ss. VFF-EMT 1.05 and 1.07, the phrase “program administrator or designee” is used. The definition of the term “program administrator” should be amended to include the program administrator’s designee. If this action is taken, the phrase “or designee” can be deleted.

d. In s. VFF-EMT 1.05 (2) (c), “shall” should be changed to “may.”

e. In s. VFF-EMT 1.05 (3), the word “section” should be replaced by the notation “s.”

f. In s. VFF-EMT 1.06 (1) (d), the word “must” should be replaced by the word “shall.”

g. In s. VFF-EMT 1.07 (7), the phrase “in the event that” should be replaced by the word “if.”

h. The title to s. VFF-EMT 1.08 (2) does not accurately describe the contents of that subsection and should be changed. Also, the phrase “that municipality” should be replaced by the phrase “a participating municipality.”

- i. In s. VFF-EMT 1.08 (3), the word “must” should be replaced by the word “shall.”
- j. The phrase “and officially supported by the board,” in s. VFF-EMT 1.12 (1), is unnecessary and should be deleted.
- k. In s. VFF-EMT 1.12 (1) (intro.), the final phrase should read: “The program administrator awarded the contract shall comply with all of the following:”. The following paragraphs all should begin with a verb; for example, par. (a) should begin with the phrase “Have at least five years experience”
- l. Many of the items set forth in s. VFF-EMT 1.12 (1) (b) and (c) appear to be required elements of program administration and therefore should be moved to s. VFF-EMT 1.13.
- m. In s. VFF-EMT 1.14 (1), the phrase “is responsible to” should be replaced by the word “shall.”
- n. In s. VFF-EMT 1.16, “such” should be changed to “the” and “must” should be replaced by “shall.”
- o. In s. VFF-EMT 1.17 (1), the phrase “in its discretion” is unnecessary and should be deleted.

4. Adequacy of References to Related Statutes, Rules and Forms

- a. Section VFF-EMT 1.03, which should be renumbered as s. VFF-EMT 1.01, should list s. 16.25 (5), Stats., as a source of statutory authority for promulgation of the rule.
- b. Section VFF-EMT 1.04 (2) refers to a form. The requirements of s. 227.14 (3), Stats., should be met.
- c. In s. VFF-EMT 1.07 (5), the correct rule citation is s. VFF-EMT 1.06 (1) (a).
- d. In s. VFF-EMT 1.09 (4) (b), the reference “s. VFF-EMT 1.09 (3) (c)” should be replaced by a reference to “sub. (3) (c).”
- e. The citation in s. VFF-EMT 1.12 (1) (a) should be changed to “section 457 of the internal revenue code.”
- f. The citations in ss. VFF-EMT 1.13 (1) (b) and 1.14 (3) are incorrect and should be changed.

5. Clarity, Grammar, Punctuation and Use of Plain Language

- a. In s. VFF-EMT 1.02, it appears that the phrase “participants, which provides” should be replaced by the phrase “participants who provide.”

- b. In s. VFF-EMT 1.04 (4), “jointly” should be inserted before “authorize.”
- c. Should s. VFF-EMT 1.06 specify that the number of years of prior service for which a participating municipality may contribute may not exceed the number of years of service provided by the VFF-EMT to that municipality prior to the time that the municipality began participation in the program?
- d. In s. VFF-EMT 1.06 (1) (c), it appears that the first occurrence of the word “in” should be replaced by the word “on.”
- e. Section VFF-EMT 1.06 (1) (e) refers to “the schedule of payments required under its agreement with a program administrator.” It does not appear that the rule requires a municipality and program administrator to establish a schedule of payments for contributions made for prior service.
- f. Section VFF-EMT 1.07 (1) uses the term “credited service.” It is unclear what is meant by this term, since it is not defined.
- g. In s. VFF-EMT 1.07 (3) (b), it appears that the word “section” in the last sentence should be replaced by the word “subsection.” In sub. (3) (c), the word “that” should be replaced by the word “who.”
- h. Section VFF-EMT 1.07 (7) is unclear. Does it mean that a VFF-EMT who has met all requirements for one year of service for two different municipalities in the same year may receive a year of credit from only one of those municipalities? If so, what is the statutory basis for this limitation? This point should be clarified.
- i. Is there any limitation on the length of a leave of absence under s. VFF-EMT 1.09 (2) (a)?
- j. In s. VFF-EMT 1.09 (3) (b), the notation “par.” should be replaced by the notation “s.”
- k. Section VFF-EMT 1.09 (3) (c) should state the conditions under which the administrator of a frozen account must make payments from a frozen account.
- l. In s. VFF-EMT 1.10 (1), “immediately” is unnecessary and should be deleted.
- m. In s. VFF-EMT 1.10 (2), “held by the VFF-EMT” should be inserted after “account.”
- n. What is the “site” referred to in s. VFF-EMT 1.11 (2)?
- o. The rule should specify what is to be done with accounts held by a program administrator that ceases to provide administrative services for any reason.
- p. Section VFF-EMT 1.12 should set forth timelines for the requests for proposal process.

- q. To whom must the opinions referred to in s. VFF-EMT 1.13 (1) (k) be provided?
- r. Section VFF-EMT 1.15 should clarify what it means to “amend a program.”
- s. The reference to s. VFF-EMT 1.06 (1) (e), in s. VFF-EMT 1.16, provides meager guidance for a participating municipality that terminates a program. Section VFF-EMT 1.16 should set forth in detail the steps which must be followed by the municipality that terminates a program.
- t. Section VFF-EMT 1.17 provides that determinations are to be made “within 30 days” and “within 90 days.” The rule should clearly state the event that triggers the running of the 30- or 90-day period. Presumably, these periods begin running when the appropriate authorities receive fully documented appeals.