



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 01-141

AN ORDER to repeal ER-MRS 30.03; to amend ER-MRS 30.05 (1) and (2), 30.06 (3), 30.10 (3) and 30.99 (1) and (2); and to repeal and recreate ER-MRS 30.08 and 30.105, relating to certification for employment consideration, probationary periods, transfers of career executive employees and various technical changes to bring the rules into consistency with the statutes and compensation plan.

Submitted by **DEPARTMENT OF EMPLOYMENT RELATIONS**

12-03-01 RECEIVED BY LEGISLATIVE COUNCIL.

12-21-01 REPORT SENT TO AGENCY.

RS:PGC:jal;rv

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



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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.]

2. Form, Style and Placement in Administrative Code

- a. SECTION 2 of the rule should be split into the following two sections:

SECTION 2. ER-MRS 30.05 (1) is renumbered ER-MRS 30.5 and, as renumbered, is amended to read:

(Insert the amended text.)

SECTION 3. ER-MRS 30.05 (2) is repealed.

Also, in the amended provision, the phrase “according to s. 230.25, Stats.” should be inserted after the stricken-through material beginning with the word “limited” and ending with the word “register.” Finally, in accordance with current text, the word “the” should be inserted before the second occurrence of the number “10.”

- b. The title “ER-MRS 30.08 Career executive transfer.” should be in bold type.
- c. In s. ER-MRS 30.08, the phrase “such rules” should be replaced with the reference “ch. ER-MRS 15.” A similar comment applies to s. ER-MRS 30.105.
- d. In SECTION 5, the text should begin with the notation “ER-MRS 30.10 (3).”

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

In the analysis, the final statutory citation should be to “s. 230.24 (1).”

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

a. The first sentence in ER-MRS 30.08 should be deleted because “transfer” is already defined in s. ER-MRS 1.02 (33) for purposes of chs. ER-MRS 1 to 34.

b. The first sentence in s. ER-MRS 30.105 should be deleted because “layoff” is already defined in s. ER-MRS 1.02 (11) for purposes of chs. ER-MRS 1 to 34. Therefore, no cross-reference is needed.

PROPOSED ORDER OF THE ADMINISTRATOR
OF MERIT RECRUITMENT AND SELECTION
ADOPTING RULES

To ⁽²⁾ amend ER-MRS 30.05 (1) and (2), ER-MRS 30.06(3), ER-MRS 30.10(3), and ER-MRS 30.99 (1) and (2), to ~~repeal~~ ER-MRS 30.03, and to ~~repeal and recreate~~ ER-MRS 30.08 and 30.105, relating to certification for employment consideration, probationary periods, transfers of career executive employees and various technical changes to bring the rules into consistency with the statutes and compensation plan.

ANALYSIS PREPARED BY THE DIVISION OF MERIT RECRUITMENT AND SELECTION

On June 9, 1999, the Joint Committee on Employment Relations (JCOER) approved the consolidation of certain positions assigned to former pay range 17 and all positions in former pay range 18 and 19 into compensation broadband 81-02 for non-represented positions in these ranges. Before this consolidation many non-represented pay range 18 positions were granted career executive status along with positions in the compensation broadband 81-01. Positions in pay range 17 were not eligible to be included in the career executive program under the provisions of the Wisconsin Administrative Code. Prior to March 12, 2000, there were approximate 900 positions in the career executive program. These positions performed general management duties. With the consolidation of broadband 81-02, the number of career executive positions expanded to 1500 including management positions responsible for highly technical programs and positions requiring various professional certifications or expertise.

When the pool of career executive employees was smaller and their expertise was always of a general administrative nature, rules were developed to treat this pool as one, and separate from other employees, for purposes of certification for employment consideration, probationary periods, transfers and layoff consideration.

These rule changes make certification for employment consideration, probation and transfer for career executive employees consistent with non-career executive employees. For layoff consideration, career executive employees are to be grouped with employees in the same area of expertise and pay range instead of with all career executive employees. The amendment to ER-MRS 30.99 removes the option of incumbents of positions placed within the career executive programs to remain outside the program. This provision was established when the career executive program was new and many existing positions were being placed in it. No position has been placed in the career executive program in years, without the incumbent opting in.

- OK 1. S. 230.05(5), Stats., grants the Administrator of the Division of Merit Recruitment and Selection authority to promulgate rules on all matters relating to Subchapter II of Chapter 230, Stats., for administration of the civil service.
2. S. 230.24⁽⁴⁾, Stats., grants the Administrator authority to create rules to accomplish the purposes of a career executive program.

FISCAL EFFECT

Flexible certification for career executive vacancies will simplify and speed the hiring process for vacant positions and so save time for state agencies. Revised layoff rules for career executives will result in retaining for the state service its most effective and efficient personnel. Allowing permissible transfers of career executives between agencies will speed staffing vacant positions as well as increase opportunities for career executive incumbents. Increasing the trial or probationary period from three months to six months on a career executive move between agencies will give hiring officials the extra time needed to

evaluate the performance of employees in these critically important jobs. Eliminating the career executive opt in/out provision upon placement of a position in the career executive program will eliminate wasted administrative effort which currently adds no value. These changes will have no direct fiscal effect other than administrative efficiency.

TEXT OF PROPOSED RULE

Section 1. ER-MRS 30.03 (3) is repealed:

Section 2. ER-MRS 30.05 (1) and (2) are amended to read:

ER-MRS 30.05 Certification. ~~(1) The highest ranking candidates shall be determined through a comparison of their qualifications, including technical or professional qualifications, where applicable, with the qualifications requirements for the position as determined through position analysis. All such candidates shall meet the standard for the position as established by the administrator. Except as provided in ss. ER-MRS 30.07, 30.08, and 30.11(2), certification for appointment to a vacant career executive position shall be according to s. 230.25, Stats limited to no more than the 10 highest ranking candidates on the internal register and no more than 10 highest ranking candidates on the external register.~~ ^{the}

~~(2) Certification from the external register when such a register is established, may occur simultaneously with the certification from the internal register. Certification from the external register may also be provided at any time after candidates from the internal register have been certified, but prior to the time an appointment is made. No candidate from the external register who has earned a score lower than the candidate with the lowest score certified from the internal register shall be certified, except when the latter register contains fewer than 10 candidates.~~

Section 3. ER-MRS 30.06(3) is amended to read:

ER-MRS 30.06(3) At the discretion of the appointing authority in the receiving agency, a career executive employe may be required to serve up to a 3 6 month trial period upon movement between agencies. ~~Upon agreement with the sending agency and notification to the employe, the appointing authority in the receiving agency may extend such trial period for 3 additional months. At any time, during the trial period, the receiving agency may terminate the employe. Upon termination, the employe shall be returned to the sending agency and be restored to the employment status that existed at the time of movement to the receiving agency.~~

SECTION 4. ER-MRS 30.08 is repealed and recreated to read:

~~ER-MRS 30.08 Career executive transfer. (For purposes of this chapter, "transfer" has the same meaning as defined in s. ER-MRS 1.02(33). Transfer of career executive employees shall be in accordance with ch. ER-MRS 15, except that where such rules conflict with this chapter, the provisions of this chapter shall apply. Career executive employment reinstatement and restoration shall be in accordance with s. ER-MRS 30.11.~~

*delete
Add
ROWEN
to transfer
already done*

1.02(33) (no cross reference)

Section 5. ER-MRS 30.10(3) is amended to read:

ER-MRS 30.10(3) Removal of an employe with permanent status in the career executive program from the career executive program which results in the placement of the employe in a position allocated to a classification assigned to a lower non-career executive pay range 17 or below is defined as a demotion, and may be appealed.

Section 6. ER-MRS 30.105 is repealed and recreated to read:

ER-MRS 30.105 Layoff of career executive employees. (For purposes of this chapter) "layoff" has the same meaning as defined in s. ER-MRS 1.02(11). Layoff of career executive employees shall be in accordance with ch. ER-MRS 22, except that where such rules conflict with this chapter, the provisions of this chapter shall apply. Restoration from layoffs shall be in accordance with s. ER-MRS 22.10.

- same content as above

Section 7. ER-MRS 30.99 (1) and (2) are amended to read:

ER-MRS 30.99 Incumbents of positions placed in the career executive program. (1) Each incumbent ~~shall be given the option of being whose position is placed in the career executive program without certification, in accordance with s. ER-MRS 30.05, or of remaining in his or her existing position~~ shall immediately come under the noncareer career executive employment provisions. This option shall remain in effect for one year after the incumbent's position is placed in the program. Any subsequent entrance by the employee to the program shall require voluntary movement to a different career executive position under the provisions of s. ER-MRS 30.01(3) and other applicable provisions.

(2) Incumbents who exercise their option to be whose positions are placed in the career executive program shall earn permanent status immediately upon entering the program. However, incumbents serving a probationary period at the time of entry shall not earn permanent status until they successfully complete the probationary period specified in the appointment letter.

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.

Dated: 12-02-01 Agency:

Michael Soehner
Assistant Administrator,
Division of Merit Recruitment and Selection