

CR 86-114

# RULES CERTIFICATE

STATE OF WISCONSIN )  
 ) SS  
DEPT. OF INDUSTRY, )  
LABOR & HUMAN RELATIONS)

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SEP 15 1986

1:14 pm  
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TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Howard S. Bellman, Secretary of the Department of Industry, Labor and Human Relations, and custodian of the official records of said department, do hereby certify that the annexed rule(s) relating to Infectious Agents - HTLV - III were duly approved and adopted by this department on 9/11/86.  
(Subject) (Date)

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 2 pm in the city of Madison, this 11<sup>th</sup> day of September, A.D. 19 86.

Howard S. Bellman  
Secretary

# ORDER OF ADOPTION

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Pursuant to authority vested in the Department of Industry, Labor and Human Relations by section(s) 101.02(1) and 101.598(1), Stats., the Department of Industry, Labor and Human Relations hereby  creates;  amends;  repeals and recreates; and  repeals and adopts rules of Wisconsin Administrative Code chapter(s):

Ind: ILHR 35 Infectious Agents  
(Number) (Title)

The attached rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to section 227.026, Stats.

Adopted at Madison, Wisconsin, this 11<sup>th</sup> day of September, A.D., 1986.

DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS

Howard S. Bellmer  
Secretary



# RULES in FINAL DRAFT FORM

**Rule:** Chapter ILHR 35

**Relating to:** Infectious Agents - HTLV-III

**Clearinghouse Rule No.:** 86-114

AN ORDER to amend Table 35.02-4; to repeal and recreate the Appendix; and to create footnote<sup>c</sup> for Table 35.02-4, relating to infectious agents for the Employees' Right to Know Law

\* \* \* \* \*

ANALYSIS OF RULES

Pursuant to s. 101.598(1), Stats., the Department of Industry, Labor and Human Relations is responsible for identifying by rule bacterial, mycoplasmal, fungal, parasitic and viral agents deemed to be infectious agents relative to the purposes of the Employees' Right to Know Law. The department promulgated a list of infectious agents in 1983 under chapter ILHR 35. Presently, the list of agents in chapter ILHR 35 does not include the human immunodeficiency viruses. This type of viruses includes the human T-cell lymphotropic virus type III commonly referred to as HTLV-III or the virus that causes AIDS, Acquired Immuno-Deficiency Syndrome. The biosafety guidelines from the Center of Disease Control indicates that HTLV-III poses a similar risk to laboratory personnel as does the hepatitis B virus, an agent currently listed in ch. ILHR 35.

The inclusion of HTLV-III into chapter ILHR 35 will serve as the trigger mechanism for the implementation of an employer's responsibilities and an employe's rights as specified in the Employees' Right to Know Law for those workplaces where HTLV-III is introduced by the employer to be used, studied or produced. Typical workplaces could be medical laboratories and medical research centers. Under the law, an employer's responsibilities include:

- Posting a notice in the workplace notifying employes of their right to request information about an infectious agent.
- Responding to requests from employes for information on an infectious agent.
- Providing training to employes who will be routinely exposed to an infectious agent.

The Employees' Right to Know Law does not require employers to identify employes or people with AIDS or HTLV-III. In fact the statutory definition for "infectious agent" excludes an agent in or on the body of a person who is present in the workplace for diagnosis or treatment.

\* \* \* \* \*

Pursuant to the authority vested in the state of Wisconsin Department of Industry, Labor and Human Relations by ss. 101.02 (1) and 101.598 (1), Stats., the department hereby creates rules interpreting s. 101.58 (2)(f), Stats., as follows:

SECTION 1. Table 35.02-4 is amended to read:

(partial table)

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TABLE 35.02-4

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VIRAL AND RICKETTSIAL AGENTS

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Herpesvirus group  
Herpesvirus hominis  
Cytomegalovirus<sup>b</sup>  
Epstein-Barr virus  
Herpesvirus simiae<sup>a</sup>  
Varicella virus  
Human immunodeficiency viruses<sup>c</sup>  
Influenza viruses

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SECTION 2. Footnote c for Table 35.02-4 is created to read:

<sup>c</sup>Includes the virus HTLV-III, the virus which causes AIDS, Acquired Immuno-Deficiency Syndrome.

SECTION 3. Appendix is repealed and recreated to read:

APPENDIX

Excerpts from the Employees' Right to Know Law ss. 101.58 to 101.599, Stats.

s. 101.58 (2) DEFINITIONS. (c) "Employee" means any person whose services are currently or were formerly engaged by an employer or an agricultural employer, or any applicant at the time an employer or agricultural employer offers to engage his or her services.

(d) "Employee representative" means an individual or organization to whom an employee gives written authorization to exercise his or her rights to request information under s. 101.583, 101.585, or 101.586, a parent of a minor employee or a recognized or certified collective bargaining agent.

(e) "Employer" means any person, except an agricultural employer, with control or custody of any employment or workplace who engages the services of any employee. "Employer" includes the state and its political subdivisions. If any employee is present at the workplace of an employer under an agreement between that employer and another employer or agricultural employer, "employer" means the employer with control or custody of a toxic substance or infectious agent. An employer who engages some employees to perform agricultural labor and other employees for other purposes is only considered an employer with respect to the employees engaged for other purposes.

(f) "Infectious agent" means a bacterial, mycoplasmal, fungal, parasitic or viral agent identified by the department by rule as causing illness in humans or human fetuses or both, which is introduced by an employer to be used, studied or produced in the workplace. "Infectious agent" does not include such an agent in or on the body of a person who is present in the workplace for diagnosis or treatment.

(h) "Overexposure" means any chronic or acute exposure to a toxic substance or infectious agent which results in illness or injury.

(k) "Workplace" means any location where an employee performs a work-related duty in the course of his or her employment, except a personal residence.

101.581 NOTICE REQUIREMENTS. (1) EMPLOYER. An employer who uses, studies or produces a toxic substance, infectious agent or pesticide shall post in every workplace at the location where notices to employes are usually posted a sign which informs employes that the employer is required, upon request, to provide an employe or employe representative with all of the following:

(a) The identity of any toxic substance or infectious agent which an employe works with or is likely to be exposed to.

(b) A description of any hazardous effect of the toxic substance or infectious agent.

(c) Information regarding precautions to be taken when handling the toxic substance or infectious agent.

(d) Information regarding procedures for emergency treatment in the event of overexposure to the toxic substance or infectious agent.

(e) Access to the information contained on the label of any pesticide with which the employe works or to which the employe is likely to be exposed.

101.585 INFECTIOUS AGENT INFORMATION REQUIREMENTS: EMPLOYER TO EMPLOYEE. (1) Except as provided in s. 101.589 (1) and (3), within 72 hours after a written request by an employe or employe representative, exclusive of weekends and legal holidays, an employer shall provide in writing to the employe or employe representative the following information regarding any infectious agent which the employe works with or is likely to be exposed to if the infectious agent is present in the workplace when the request is made or at any time during the 30 days immediately preceding the request:

(a) The name and any commonly used synonym of the infectious agent.

(b) Any method or route of transmission of the infectious agent.

(c) Any symptom or effect of infection, emergency and first aid procedures and a telephone number to be called in an emergency.

(d) Any personal protective equipment to be worn or used and special precautions to be taken when handling or coming into contact with the infectious agent.

(e) Procedures for handling, cleanup and disposal of infectious agents leaked or spilled.

(2) An employer is not required to provide information regarding an infectious agent under sub. (1) if the employe or employe representative making the request has requested information about the infectious agent under sub. (1) within the preceding 12 months, unless the employe's job assignment has changed or there is new information available concerning any of the subjects about which information is required to be provided.

History: 1981 c. 364.

101.589 EXTENDED TIME PERIODS; EXCEPTIONS. (1) If an employer has not obtained the information required to be provided under ss. 101.583 (2) (a) and 101.585 (1) at the time of a request made under s. 101.583 (2) (a) or 101.585 (1), the employer shall provide the information within 30 days after the request, exclusive of weekends and legal holidays.

(2) If a toxic substance was present in the workplace at any time on or after December 1, 1982, but is not present in the workplace when a request is made under s. 101.583 (2) (a), the employer shall provide the information within 30 days after the request, exclusive of weekends and legal holidays.

(3) An employer who has requested from the manufacturer or supplier of a toxic substance or from the supplier of an infectious agent any information required to be provided under s. 101.583 (2) (a) or 101.585 (1), but who has not received and does not already have that information, is not required to provide the information but shall notify any requesting employe or employe representative that the employer has requested, has not received and does not otherwise have the information.

History: 1981 c. 364; 1981 c. 391 s. 210.

101.59 MANUFACTURER, SUPPLIER; REQUIREMENTS. Within 15 days, exclusive of weekends and legal holidays, after receipt of a request from an employer, any manufacturer or supplier of a toxic substance transported or sold for use in this state, or any supplier of an infectious agent transported or sold for use in this state, shall provide to that employer the information the employer is required to provide employes under s. 101.583 (2) (a) or 101.585 (1).

History: 1981 c. 364.

101.592 CONFIDENTIAL INFORMATION. (1) A manufacturer or supplier of a toxic substance, a supplier of an infectious agent or an employer may declare that information required to be provided under s. 101.583, 101.585, 101.59 or 101.597, except information described in ss. 101.583 (2) (a) 7 to 11, 101.585 (1) (b) to (e) and 101.597 (5) (a) 2 to 7 and (b) 2



and 3, relates to a process or production technique which is unique to, or is information the disclosure of which would adversely affect the competitive position of, the manufacturer, supplier or employer. If an employer, employe or employe representative requests information under s. 101.583, 101.585 or 101.59 that is confidential, the manufacturer, supplier or employer shall inform the requester that part of the requested information is confidential, but shall provide any part of the requested information that is not confidential or that, under this subsection, may not be declared confidential. When a manufacturer, supplier or employer declares information confidential, it shall notify the department and shall state the general use of the toxic substance or infectious agent and the items of information which it did and did not provide to the requester.

(2) Notwithstanding sub. (1), a manufacturer, supplier or employer shall provide the information specified in s. 101.583 (2) (a) 1 and 2 or 101.585 (1) (a) upon a request from an employe's authorized physician stating that the information is necessary for medical treatment of the employe. No physician receiving information under this subsection may disclose it to any person without the written consent of the patient and of the manufacturer, supplier or employer.

History: 1981 c. 364; 1983 a. 392 s. 20.

101.595 EMPLOYE RIGHTS. (1) NOT TO WORK WITH TOXIC SUBSTANCE, INFECTIOUS AGENT OR PESTICIDE. Except as provided in ss. 101.589 (3) and 101.592, if an employe has requested information about a toxic substance, infectious agent or pesticide under s. 101.583, 101.585 or 101.586 and has not received the information required to be provided under s. 101.583, 101.585, 101.586 or 101.589 (1) or (2), the employe may refuse to work with or be exposed to the toxic substance, infectious agent or pesticide until such time as the employer or agricultural employer supplies the information under s. 101.583, 101.585 or 101.586 to the employe who has made the request.

(2) RETALIATION PROHIBITED. No employer or agricultural employer may discharge or otherwise discipline or discriminate against any employe because the employe has exercised any rights under ss. 101.58 to 101.599 or has testified or is about to testify in any proceeding related to those sections.

(3) WAIVER PROHIBITED. No person may request or require any employe to waive any rights under ss. 101.58 to 101.599.

History: 1981 c. 364; 1983 a. 392.

101.597 EDUCATION AND TRAINING PROGRAMS. (1) BY EMPLOYER; TOXIC SUBSTANCE, INFECTIOUS AGENT OR PESTICIDE. Except as provided in sub. (5) (b), prior to an employe's initial assignment to a workplace where the employe may be routinely exposed to any toxic substance, infectious agent or pesticide, an employer shall provide the employe with an education or training program under sub. (5) (a) or (c). The employer shall provide additional instruction whenever the employe may be routinely exposed to any additional toxic substance or infectious agent.

(2) BY AGRICULTURAL EMPLOYER; PESTICIDE. Prior to an agricultural employe's initial assignment to a workplace where the employe may be routinely exposed to a pesticide, an agricultural employer shall provide the employe with an education or training program under sub. (5) (c). The agricultural employer shall provide additional instruction whenever the employe may be routinely exposed to any additional pesticide.

(3) BY DEPARTMENT. The department shall inform manufacturers, suppliers, employers, agricultural employers and employes of their duties and rights under ss. 101.58 to 101.599. As part of this program, the department shall cooperate with the departments of development and revenue to notify any employer commencing operations on or after May 8, 1982, of that employer's duties and rights.

(4) DEFINITION. In this section, "routinely exposed to any toxic substance" means exposure of at least 30 days per year at exposure levels exceeding 50% of the permissible exposure level established by the federal occupational safety and health administration, or any exposure exceeding 100% of the permissible exposure level, regardless of the exposure period.

(5) PROGRAM CONTENTS. (a) Toxic substances and infectious agents. For each toxic substance or infectious agent to which the employe may be routinely exposed, the education or training program shall include:

1. a. For a toxic substance, the trade name, generic or chemical name and any commonly used synonym for the toxic substance and the trade name, generic or chemical name and any commonly used synonym for its major components.

b. For an infectious agent, its name and any commonly used synonym.

2. The location of the toxic substance or infectious agent.

3. Any symptom of acute or chronic effect of overexposure to the toxic substance or infectious agent.

4. For a toxic substance, the potential for flammability, explosion and reactivity.

5. Proper conditions for safe use of and exposure to the toxic substance or infectious agent.

6. Special precautions to be taken and personal protective equipment to be worn or used, if any, when handling or coming into contact with the toxic substance or infectious agent.

7. Procedures for handling, cleanup and disposal of toxic substances or infectious agents leaked or spilled.

(b) Toxic substances and infectious agents; exception.

In an area where employes usually work with a large number of toxic substances or infectious agents which are received in packages of one kilogram or less and no more than 10 kilograms of which are used or purchased per year, the employer may provide a general education or training program in lieu of the education or training program described in par. (a). The general training program shall be provided prior to an employe's initial assignment to the area and shall include:

1. The information specified in par. (a) 1 and 2.

2. The nature of the hazards posed by the toxic substances or infectious agents or both.

3. General precautions to be taken when handling or coming into contact with the toxic substances or infectious agents.

(c) Pesticides. For each pesticide to which the employe may be routinely exposed the education or training program shall include:

1. The trade name, generic or chemical name and any commonly used synonym for the pesticide and the trade name, generic or chemical name and any commonly used synonym for its major ingredients.

2. The location of the pesticide and the location where it is used.

3. Any symptom of acute or chronic effect of overexposure to the pesticide.

4. Proper conditions for safe use of and exposure to the pesticide.

5. Special precautions to be taken and personal protective equipment to be worn or used, if any, when handling or coming into contact with the pesticide.

6. Procedures for handling, cleanup and disposal of leaks or spills of the pesticide.

History: 1981 c. 364, 391; 1983 a. 392.

101.599 REMEDIES: CIVIL FORFEITURES. (1) COMPLAINT. An employe or employe representative who has not been afforded his or her rights by an employer or agricultural employer in violation of s. 101.583, 101.585, 101.586, 101.595 or 101.597 (1) or (2) may, within 30 days after the violation occurs or the employe or employe representative first obtains knowledge of the violation, whichever is later, file a complaint with the department alleging the violation. The department shall investigate the complaint and shall attempt to resolve the complaint by conference, conciliation or persuasion. If the complaint is not resolved and the department finds probable cause to believe a violation has occurred, the department shall proceed with notice and a hearing on the complaint as provided in ch. 227. The hearing shall be held within 60 days after receipt by the department of the complaint.

(2) REMEDIES. The department shall issue its decision and order within 30 days after the hearing. If the department finds that an employer or agricultural employer has violated s. 101.583, 101.585, 101.586, 101.595 or 101.597 (1) or (2), it may order the employer or agricultural employer to take such action as will remedy the effects of the violation, including instituting an education or training program, providing the requested information, reinstating an employe or providing back pay to an employe.

(3) CIVIL FORFEITURE. (a) Except as provided in par. (b), any person who violates ss. 101.58 to 101.599 or an order of the department issued under ss. 101.58 to 101.599 shall forfeit not more than \$1,000 for each violation.

(b) Any person who wilfully violates or exhibits a pattern of violation of ss. 101.58 to 101.599 or an order of the department issued under ss. 101.58 to 101.599 shall forfeit not more than \$10,000 for each violation.

History: 1981 c. 364; 1981 c. 391 ss. 101, 102; 1983 a. 392.

(END)

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Pursuant to s. 227.026 (1) (intro.), Stats., these rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register.

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(1523k)



State of Wisconsin \ Department of Industry, Labor and Human Relations

Office of the Secretary  
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September 12, 1986

Gary Poulson  
Assistant Revisor of Statutes  
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Douglas LaFollette  
Secretary of State  
Room 271, GEF-1  
201 East Washington Avenue  
Madison, Wisconsin 53702

Dear Messrs. Poulson and LaFollette:

TRANSMITTAL OF RULE ADOPTION

RECEIVED

SEP 15 1986

Revisor of Statutes  
Bureau

CLEARINGHOUSE RULE NO. 86-114

RULE NO. Chapter ILHR 35

RELATING TO Infectious Agents - HTLV-III

Pursuant to section 227.023, Stats., agencies are required to file a certified copy of every rule adopted by the agency in the offices of the Secretary of State and the Revisor of Statutes.

At this time, the following material is being submitted to you.

1. Order of Adoption.
2. Rules Certificate Form.
3. Rules in Final Draft Form.

Pursuant to section 227.016 (6), Stats., a summary of the final regulatory flexibility analysis is also included.

Respectfully submitted,

Howard S. Bellman  
Secretary

cc: Agency Contact Person