Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry
Office of Agriculture and Environmental Sciences
Division of Pesticides and Environmental Programs

Effect of Icon as a Pesticide (LAC 7:XXIII.143)

In accordance with the Administrative Procedure Act R.S. 49:953(B) and R.S. 3:3203(A), the Commissioner of Agriculture and Forestry is exercising the emergency provisions of the Administrative Procedure Act in adopting the following rules for the implementation of regulations governing the use of the pesticide, Icon (fipronil).

Icon is an essential pesticide in the control of rice pests. Without its use the rice crop in Louisiana is in imminent danger of being damaged by pests, to the extent that a substantial reduction in rice yield will result. Failure to control rice pests, therefore, poses an imminent peril to the economy of the state of Louisiana and to the rice growing parishes of Louisiana. The cumulative effect of Icon as a pesticide, the current drought conditions, saltwater intrusion, anticipated high water temperatures, and other weather related factors pose an imminent peril to the environment and to the economy of the state of Louisiana and to the rice growing parishes of Louisiana. The application of Icon in accordance with its label and labeling, but inconsistent with the Department's rules and regulation and the potential misuse of this pesticide poses an imminent peril to the public health, safety and welfare and to the environment, especially if it gets into the waterways of this state.

The Department has, therefore, determined that these emergency rules implementing a monitoring and registration program and governing Icon applications, during the current crop year, are necessary in order to alleviate these perils. Information will be gathered to determine whether the effectiveness of this chemical outweighs any potential risk to the public or the environment.

The rule becomes effective upon signature and will remain in effect 120 days.

Title 7
AGRICULTURE AND ANIMALS
Part XXIII. Pesticide

Chapter 1. Advisory Commission on Pesticides

Subchapter I. Regulations Governing Application of Pesticides

§143. Restrictions on Application of Certain Pesticides

A. - M.2. ...

N. Persons applying Icon to rice seed and persons selling or planting Icon treated rice seed, intended to be planted in Acadia, Allen, Beauregard, Calcasieu, Cameron, Evangeline, Iberia, Jefferson Davis, Lafayette, St. Landry, St. Martin, St. Mary, and Vermillion parishes shall comply with the following.

1. Registration Requirements

a. The Commissioner hereby declares that prior to making any application of Icon to rice seed, the seed treatment owner/operator must first register such intent by notifying the Division of Pesticides and Environmental Programs (DPEP) in writing.

b. The Commissioner hereby declares that prior to selling Icon treated rice seed, the dealer must first register such intent by notifying the DPEP in writing.

c. The Commissioner hereby declares that prior to making aerial applications of Icon treated rice seed, the aerial owner-operator must first register such intent by notifying the DPEP in writing.

2. Growers of rice shall not force or coerce applicators to apply Icon treated rice, when the applicators, conforming to the Louisiana Pesticide Laws and Rules and Regulations or to the pesticide label and labeling, deem it unsafe to make such applications. Growers found to be in violation of this section shall forfeit their right to use Icon treated rice seed, subject to appeal to the Advisory Commission on Pesticides.

3. Icon Application Restriction

a. Do not apply Icon treated rice seed by ground within 25 feet, or by air within 100 feet of lakes, reservoirs, rivers, permanent streams, marshes or natural ponds, estuaries and commercial fish farm ponds.

b. Do not allow Icon treated rice seed to drift into neighboring fields, ponds, streams or estuaries with fish, shellfish, or crustaceans (including crawfish).

c. All Icon label and labeling use restrictions shall be strictly followed.

4. Monitoring of Icon

a. Rice seed treaters, registered to treat rice seed with Icon, shall report daily to the DPEP, on forms prescribed by the Commissioner, all treatments of Icon to rice seed. Information shall include but not be limited to:

i. pounds treated;
ii. treatment rate;
iii. pounds sold or distributed;
iv. purchaser and\or grower name, address, and phone number.

b. Dealers selling Icon treated rice seed shall report daily, to the DPEP, on forms prescribed by the Commissioner all sales of Icon treated rice seed. Information shall include but not be limited to:

i. pounds sold;
ii. treatment rate;
iii. acres to be planted;
iv. planting date;
v. purchaser and\or grower name, address, parish and phone number;
vi. location and parish of field to be planted;
vii. planting applicator-owner\operator (aerial or ground).

c. Aerial owner\operators planting Icon treated rice seed shall provide and maintain records daily, on forms

prescribed by the Commissioner all applications of Icon treated rice seed. Information shall include but not be limited to:

i. pounds per acre planted;
ii. acres planted;
iii. date planted;
iv. grower name, address, parish and phone number;
v. location and parish of field planted;
vi. pilot-s name and certification number.

5. Upon determination by the Commissioner that a threat or reasonable expectation of a threat to human health or to the environment exists, he may consider:

a. stop orders for use, sales, or application;
b. label changes;
c. remedial or protective orders;
d. any other relevant remedies.

Bob Odom
Commissioner

0003#054

DECLARATION OF EMERGENCY

Student Financial Assistance Commission
Office of Student Financial Assistance

Student Tuition and Revenue Trust (START Saving) Program (LAC 28:VI.307, 315)

The Louisiana Tuition Trust Authority (LATTA) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend rules of the Student Tuition Assistance and Revenue Trust (START Saving) Program (R.S. 17:3091-3099.2).

The emergency rules are necessary to allow the Louisiana Office of Student Financial Assistance and educational institutions to effectively administer these programs. A delay in promulgating rules would have an adverse impact on the financial welfare of the eligible students and the financial condition of their families. The commission has, therefore, determined that these emergency rules are necessary in order to prevent imminent financial peril to the welfare of the affected students.

This declaration of emergency is effective February 8, 2000, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

Title 28
EDUCATION
Part VI. Student Financial Assistance ℄ Higher Education Savings
Subchapter A. Student Tuition Trust Authority
Chapter 3. Education Savings Account
§307. Allocation of Tuition Assistance Grants

A. - E.4. ...

F. Frequency of Allocation of Tuition Assistance Grants to Education Assistance Accounts. Tuition assistance grants will be allocated annually and reported to account owners after July 1, following the account owners' required disclosure of their prior year's reported federal adjusted gross income.

G. - H.2. ...

3. Tuition assistance grants, although allocated to a beneficiary's account and reported on the account owner's annual statements, are assets of the state of Louisiana until expended to pay a beneficiary's tuition at an eligible Louisiana institution.

H.4. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:715 (June 1997), amended LR 24:1271 (July 1998), LR 25:1794 (October 1999), LR 26:

§315. Miscellaneous Provisions

A. Account Statements and Reports

1. The LATTA will forward to each account owner an annual statement of account which itemizes the:

a. date and amount of deposits and interest earned during the prior year;

b. total principal and interest accrued to the statement date; and

c. total tuition assistance grants and interest allocated to the account as of the statement date.

2. Tuition assistance grants shall be allocated annually and reported after July 1, following the account owners' required disclosure of their prior year's reported federal adjusted gross income.

3. The account owner must report errors on the annual statement of account to the LATTA within 60 days from the date on the account statement or the statement will be deemed correct.

B. Tuition Assistance Grants. Tuition assistance grants shall be allocated annually and reported to account owners by a separate letter of notification after July 1st, following the account owners' compliance with Section 307B of these regulations.

C. Earned Interest

1. Interest earned on principal deposits during a calendar year will be credited to accounts and reported to account owners after the conclusion of the calendar year in which the interest was earned.

C.2. - R. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:718 (June 1997), amended LR 24:1274 (July 1998), LR 26:

Mark S. Riley
Assistant Executive Director

0003#009

DECLARATION OF EMERGENCY

Student Financial Assistance Commission
Office of Student Financial Assistance

Tuition Opportunity Program for Students (TOPS) Eligible Student (LAC 28:IV.301, 701)

The Louisiana Student Financial Assistance Commission (LASFAC) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend rules of the Tuition Opportunity Program for Students (R.S. 17:3042.1 and R.S. 17:3048.1).

The emergency rules are necessary to allow the Louisiana Office of Student Financial Assistance and state educational institutions to effectively administer these programs. A delay in promulgating rules would have an adverse impact on the financial welfare of the eligible students and the financial condition of their families. The commission has, therefore, determined that these emergency rules are necessary in order to prevent imminent financial peril to the welfare of the affected students.

This declaration of emergency is effective February 8, 2000, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

Title 28
EDUCATION
Part IV. Student Financial Assistance—Higher Education Scholarship and Grant Programs
Chapter 3. Definitions
§301. Definitions

* * *

Full-Time Student—

a. - d. ...

e. a student enrolled in two or more institutions of higher education when such multiple enrollment is necessary for the student to gain access to the courses required for completion of the degree in the chosen discipline and where the total number of hours earned at all institutions during the academic year is the equivalent of carrying a full-time academic workload as determined by the institution which will award the degree.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Adopted by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 17: 959 (October 1991), amended LR 22:338 (May 1996), LR 23:1645, 1648 (December 1997), promulgated LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458, 1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000), LR 26:

Chapter 7. Tuition Opportunity Program for Students (TOPS) Opportunity, Performance, and Honors Awards
§701. General Provisions

A. - D. ...

E. Award Amounts. The specific award amounts for each component of TOPS are as follows.

1. - 10. ...

11. Students enrolled and attending more than one college or university at the same time shall be awarded as follows:

a. Students attending two or more Louisiana public two or four-year colleges or universities shall receive a total amount not to exceed the amount that would be paid at the school with the highest tuition among those at which the student is simultaneously enrolled.

b. Students attending two or more regionally accredited independent colleges or universities which are members of the Louisiana Association of Independent Colleges and Universities (LAICU) shall receive a total amount not to exceed the Weighted Average Award Amount, as defined in §301.

c. Students attending a combination of Louisiana public two or four-year colleges or universities and regionally accredited independent colleges or universities which are members of the Louisiana Association of Independent Colleges and Universities (LAICU) shall receive a total amount not to exceed the amount that would be paid at the public school with the highest tuition among those at which the student is simultaneously enrolled or the Weighted Average Award Amount, whichever amount is greater.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Adopted by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 17:959 (October 1991), amended LR 22:338 (May 1996), LR 23:1645, 1648 (December 1997), repromulgated LR 24:635 (April 1998), amended LR 24:1901 (October 1998), LR 25: 256 (February 1999) LR 26:67 (January 2000), LR 26:

Melanie Amrhein
Assistant Executive Director

0003#012

DECLARATION OF EMERGENCY

Student Financial Assistance Commission
Office of Student Financial Assistance

Tuition Opportunity Program for Students (TOPS)
Establishing Eligibility (LAC 28:IV.703)

The Louisiana Student Financial Assistance Commission (LASFAC) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend rules of the Tuition Opportunity Program for Students (TOPS) (R.S. 17:3042.1 and R.S. 17:3048.1).

The emergency rules are necessary to implement changes to the TOPS rules to allow the Louisiana Office of Student Financial Assistance and state educational institutions to effectively administer these programs. A delay in promulgating rules would have an adverse impact on the financial welfare of the eligible students and the financial condition of their families. The commission has, therefore, determined that these emergency rules are necessary in order to prevent imminent financial peril to the welfare of the affected students.

This declaration of emergency is effective February 8, 2000, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

Title 28
EDUCATION
Part IV. Student Financial Assistance—Higher Education Scholarship and Grant Programs
Chapter 7. Tuition Opportunity Program for Students (TOPS) Opportunity; Performance and Honors Awards
§703. Establishing Eligibility

A. - A.5.a.i. ...

ii. for purposes of satisfying the requirements of §703.A.5.a.i., above, the following courses shall be considered equivalent to the identified core courses and may be substituted to satisfy corresponding core courses:

Core Curriculum Course	Equivalent (Substitute) Course
Physical Science	General Science
Algebra I	Algebra I, Parts 1 and 2
Applied Algebra IA and IB	Applied Mathematics I and II
Algebra I, Algebra II and Geometry	Integrated Mathematics I, II and III
Geometry, Trigonometry, Calculus, or Comparable Advanced Mathematics	Pre-Calculus, Algebra III, Probability and Statistics, Discrete Mathematics, Applied Mathematics III*
Chemistry	Chemistry Com
Fine Arts Survey	Speech Debate (2 units)
Western Civilization	European History

*Applied Mathematics III was formerly referred to as Applied Geometry

or

A.5.b. - G.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Adopted by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 17:959 (October 1991), amended LR 22:338 (May 1996), LR 23:1648, promulgated LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 25:2237 (December 1998), LR 25:257 (February 1999), LR 25:655 (April 1999), LR 25:1794 (October 1999), LR 26:64, 67 (January 2000), LR 26:

Melanie Amrhein
Assistant Executive Director

0003#011

DECLARATION OF EMERGENCY

Student Financial Assistance Commission
Office of Student Financial Assistance

Tuition Opportunity Program for Students (TOPS)
Agency Decisions Subject to Appeal (LAC 28:IV.2109)

The Louisiana Student Financial Assistance Commission (LASFAC) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend rules of the Tuition Opportunity Program for Students (R.S. 17:3042.1 and R.S. 17:3048.1).

The emergency rules are necessary to allow the Louisiana Office of Student Financial Assistance and state educational institutions to effectively administer these programs. A delay in promulgating rules would have an adverse impact on the financial welfare of the eligible students and the financial condition of their families. The commission has, therefore, determined that these emergency rules are necessary in order to prevent imminent financial peril to the welfare of the affected students.

This declaration of emergency is effective February 8, 2000, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

Title 28
EDUCATION
Part IV. Student Financial Assistance—Higher Education Scholarship and Grant Programs
Chapter 21. Miscellaneous Provisions and Exceptions
§2109. Agency Decisions Subject to Appeal

A. Right of Appeal

1. A person aggrieved by an adverse decision of LOSFA under §2103 E11(2) may appeal the decision in accordance with the procedures provided in this section.

2. Appeals are made to the Louisiana Student Financial Assistance Commission (the commission).

3. Decisions of the commission are not subject to appeal and are final actions.

B. Notice of Adverse Decision

1. Notice of an adverse decision by LOSFA under §2103 E11(2) must be transmitted in writing to the applicant or participant. The notice must state with reasonable specificity the decision and the reason for the decision, state that the decision may be appealed, and set forth the procedure for submission of an appeal.

C. Petition of Appeal

1. A petition of appeal must be in writing and filed within 30 days of the date of the notice of the decision.

2. The petition of appeal must include:

a. a sworn affidavit from the petitioner setting forth the basis of the appeal, including the specific reasons that LOSFA's decision is incorrect, and all facts supporting the appeal;

b. copies of all documents, including written statements by others, if any, that support the appeal;

c. official transcripts from the school/colleges attended during the periods in question; and

d. if the petitioner desires to make an oral presentation and/or argument, the petitioner must include in the petition for appeal:

i. a request to make oral presentation and/or argument;

ii. the name of each person who will speak and a brief summary of what each person will say; and

iii. the reasons why presentation of the appeal in writing is not sufficient and that an oral presentation and/or argument is justified.

3. The petitioner is not required to include documents in the petition of appeal which were forwarded with previous correspondence regarding the appeal.

4. The petition of appeal must be addressed to the Louisiana Student Financial Assistance Commission, in care of the Executive Director, Office of Student Financial Assistance and sent to Box 91202, Baton Rouge, LA 70821-9202, or hand delivered to 1885 Wooddale Boulevard, Wooddale Tower, Room 335, Baton Rouge, Louisiana.

5. Oral Presentations and/or Arguments

a. the commission may allow presentations and/or arguments when the commission determines that such extraordinary procedures are justified based on information submitted by the petitioner;

b. LOSFA shall have the right to question the appellant and each person making an oral presentation on behalf of the appellant;

c. the commission's chairman may limit the time available to the appellant to make an oral presentation.

D. Appellate Procedure

1. After receipt of the Petition of Appeal, LOSFA will review the petition of appeal and determine whether the matters included in it are sufficient to change LOSFA's adverse decision. If, based upon new information submitted, LOSFA reverses its decision and approves the appeal, the

petitioner will be notified in writing and no further action will be taken on the petition.

2. If LOSFA's decision remains adverse, LOSFA will prepare and forward the appellate's file (including the petition of appeal, the original request for reinstatement, LOSFA records relating to the appeal, and a written statement of LOSFA's position regarding the appeal to the ad hoc rules committee of the commission.

3. If the petition of appeal contains the appellant's request to make an oral presentation or argument, LOSFA shall notify the appellant in sufficient time to permit the appellant to be present when the appeal is scheduled to be heard by the ad hoc rules committee and the commission.

4. Pending a final decision by the commission, no further action will be taken in the matter by LOSFA.

5. The ad hoc rules committee will review the appellate file and make one of the following recommendations to the commission:

a. recommend that LOSFA's decision be upheld; or

b. recommend that LOSFA's decision be reversed; or

c. remand the appellate file to LOSFA for further specified action(s); or

d. remand the appellate file to the commission without recommendation.

6. The ad hoc rules committee will forward the appellate file and its recommendation to the commission. The commission will review the recommendations of the committee and the appellate file.

7. The commission may adopt the recommendations of the committee or make a contrary decision approving or reversing LOSFA's decision, or remanding the matter to LOSFA for further specified actions.

8. Remanded matters will be expeditiously processed by LOSFA and returned to the commission for a final decision.

9. A decision of the commission to approve or reverse LOSFA's decision is final and is not subject to further review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Adopted by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 17:959 (October 1991), amended LR 22:338 (May 1996), promulgated LR 24:647 (April 1998), amended LR 24:1916 (October 1998), LR 26:

Melanie Amrhein
Assistant Executive Director

0003#010

DECLARATION OF EMERGENCY

Department of Environmental Quality
Office of Environmental Assessment
Environmental Planning Division

Privately Owned Sewage Treatments
(LAC 33:IX.2331, 2381, 2383, 2385, 2769 and 2801-2809)(WP035E2)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and under authority of R.S. 30:2011, the Secretary of the Department of Environmental Quality declares that an emergency action is necessary as a result of Act 399 of the 1999 Legislative Session, which required all privately-owned sewage treatment facilities, regulated by the Public Service Commission, to obtain financial security prior to receiving discharge authorization. This Act applies to any issuance, renewal, modification, or transfer of such permits after July 1, 1999, and mandates that the Department establish by rule the acceptable forms of financial security and the amount of financial security required for the various types and sizes of facilities. Therefore, after July 1, 1999, and until the necessary rule is in effect, the Department would be required to withhold all new discharge permits, renewal of existing, modification of existing, and transfers of existing discharge permits to all privately-owned, for-profit community sewage treatment facilities.

This is a renewal of Emergency Rule WP035E2, effective, October 29, 1999, and published in the *Louisiana Register* on November 20, 1999. The text of the October 29, 1999 rule remains the same with the exception of a revision to §2805. The original emergency rule WPO35E was effective July 1, 1999.

The delays inherent in the normal rulemaking process would imperil public health, safety, and welfare by precluding the legal operation of some sewage treatment facilities subject to Act 399. The legal operation of those sewage treatment facilities is essential for the proper treatment of sewage, necessary to reduce disease-causing microorganisms and pollutants that are harmful to fish and other aquatic life. The cessation of operation of such a treatment facility, as would be required by law, would necessitate either bypassing the treatment facility (resulting in the discharge of untreated sewage) or blocking all flow of sewage through the collection system (rendering uninhabitable every building served by that system). The Department cannot ensure protection of public health, welfare, and the environment without the issuance of discharge permits with proper effluent limitations and monitoring requirements.

The immediate impact of this rule is to give effect to the terms and conditions of Act 399, thus allowing the Department to continue regulating treated sanitary discharges from private treatment facilities which serve large segments of Louisiana's population.

This emergency rule is effective February 26, 2000, and shall remain in effect for a maximum of 120 days or until a final rule is promulgated, whichever comes first. For more information concerning WP035E2, you may contact the Regulation Development Section at (225) 765-0399. Adopted this 25th day of February, 2000.

Title 33
ENVIRONMENTAL QUALITY
Part IX. Water Quality Regulations
Chapter 23. The Louisiana Pollutant Discharge Elimination System (LPDES) Program
Subchapter B. Permit Application and Special LPDES Program Requirements
§2331. Application for a Permit

* * *

[See Prior Text in A - O. Editorial Note]

P. Additional Requirements for Privately-Owned Sewage Treatment Facilities Regulated by the Public Service Commission. Privately-owned sewage treatment facilities regulated by the Public Service Commission must also comply with the financial security requirements in LAC 33:IX.Chapter 23.Subchapter W. Following receipt of the permit application the administrative authority shall calculate and subsequently notify the applicant of the "waste discharge capacity per day" for the facility. The applicant will use this figure to determine the amount of the financial security required by LAC 33:IX.Chapter 23.Subchapter W. The applicant shall subsequently obtain and supply the department with the financial security document in accordance with LAC 33:IX.Chapter 23.Subchapter W. No permit shall be issued after July 1, 1999, without the required financial security.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Sections 2074(B)(3) and(4) and 2075.2.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:723 (June 1997), amended by the Office of the Secretary, LR 25:661 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

Subchapter D. Transfer, Modification, Revocation and Reissuance, and Termination

§2381. Transfer of Permits

* * *

[See Prior Text in A - B.1]

2. the notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them;

3. the state administrative authority does not notify the existing permittee and the proposed new permittee of his or her intent to modify or revoke and reissue the permit. A modification under this Subsection may also be a minor modification under LAC 33:IX.2385. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in LAC 33:IX.2381.B.2; and

4. additional requirements are met for privately-owned sewage treatment facilities regulated by the Public Service Commission when transferred after July 1, 1999. The new permittee shall comply with the financial security requirements in LAC 33:IX.Chapter 23.Subchapter W.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Sections 2074(B)(3) and(4) and 2075.2.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

§2383. Modification or Revocation and Reissuance of Permits

* * *

[See Prior Text in A - B.2]

C. Upon modification or revocation and reissuance of a permit for a privately-owned sewage treatment facility regulated by the Public Service Commission, the permittee shall comply with the financial security requirements in LAC 33:IX.Chapter 23.Subchapter W.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Sections 2074(B)(3) and(4) and 2075.2.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:724 (June 1997), LR 23:1524 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

§2385. Minor Modifications of Permits

A. Upon the consent of the permittee, the state administrative authority may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this Section, without following the procedures of LAC 33:IX.Chapter 23.Subchapters E-G. Any permit modification not processed as a minor modification under this Section must be made for cause and with LAC 33:IX.Chapter 23.Subchapters E-G draft permit and public notice as required in LAC 33:IX.2383. Minor modifications may only:

1. correct typographical errors;

2. require more frequent monitoring or reporting by the permittee;

3. change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; or

4. allow for a change in ownership or operational control of a facility where the state administrative authority determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the state administrative authority. The new permittee of a privately-owned sewage treatment facility regulated by the Public Service Commission must additionally comply with the financial security requirements in LAC 33:IX.Chapter 23.Subchapter W.

* * *

[See Prior Text in A. 5 - 7]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Sections 2074(B)(3) and(4) and 2075.2.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

Subchapter V. Additional Requirements Applicable to the LPDES Program

§2769. Additional Requirements for Permit Renewal and Termination

A. The following are causes, in addition to those found in LAC 33:IX.2387, for terminating a permit during its term or for denying a permit renewal:

* * *

[See Prior Text in A.1]

2. due consideration of the facility's history of violations and compliance;

3. change of ownership or operational control (see LAC 33:IX.2381); and/or

4. failure to provide or maintain financial security in accordance with LAC 33:IX.Chapter 23.Subchapter W.

* * *

[See Prior Text in B - D]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Sections 2074(B)(3) and(4) and 2075.2.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:726 (June 1997), amended by the Office of the Secretary, LR 25:662 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:

Subchapter W. Financial Security

§2801. Applicability

A. This Subsection shall be applicable to the following actions, for privately-owned sewage treatment facilities regulated by the Public Service Commission, when taken after July 1, 1999:

1. issuance of a new discharge permit;
2. renewal of an existing discharge permit;
3. modification of an existing discharge permit; and
4. transfer of an existing discharge permit to a different permittee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Sections 2074(B)(3) and(4) and 2075.2.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

§2803. Acceptable Form of Financial Security

A. Financial security required by R.S. 30:2075.2 may be established by any one or a combination of the following mechanisms.

1. Surety Bond. The requirements of this Section may be satisfied by obtaining a surety bond that conforms to the following requirements:

a. the bond must be submitted to the department at the following address: Department of Environmental Quality, Office of Management and Finance, Financial Services, Box 82231, Baton Rouge, LA 70884-2231;

b. the bond must be executed by the permittee and a corporate surety licensed to do business in Louisiana. The surety must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury and be approved by the administrative authority;

c. under the terms of the bond, the surety will become liable on the bond obligation when the permit holder fails to perform as guaranteed by the bond;

d. under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the permit holder and to the administrative authority at the address indicated in Subsection A.1.a of this Section. Cancellation may not occur, however, before 120 days have elapsed, beginning on the date that both the permit holder and the administrative authority receive the notice of cancellation, as evidenced by the return receipts; and

e. the wording of the surety bond must be identical to the following, except that material in brackets is to be replaced with the relevant information and the brackets deleted:

PERFORMANCE BOND

Date bond was executed:_____

Effective date:_____

Principal: [legal name and business address of permit holder or applicant]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation:_____

Surety: [name(s) and business address(es)]

[Site identification number, site name, facility name, facility permit number, facility address, amount for each facility guaranteed by this bond]

Total penal sum of bond: $_____

Surety's bond number: _____

Know All Persons By These Presents That we, the Principal and Surety hereto, are firmly bound to the Louisiana Department of Environmental Quality in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, provided that, where Sureties are corporations acting as cosureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us and, for all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, said Principal is required, under the Louisiana Environmental Quality Act, La. R.S. 30:2001, et seq., to have a permit in order to discharge wastewater from the facility identified above; and

WHEREAS, the Principal is required by law to provide financial assurance for the conditions specified in LAC 33:IX.Chapter 23.Subchapter W, as a condition of the permit; and

THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully perform, in a timely manner, the requirements of LAC 33:IX applicable to the facility for which this bond guarantees the requirements of LAC 33:IX, in accordance with the other requirements of the permit as such permit may be amended and pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended;

OR, if the Principal shall provide other financial assurance as specified in LAC 33:IX.Chapter 23.Subchapter W and obtain written approval of the administrative authority of such assurance within 90 days after the date of notice of cancellation of this bond is received by both the Principal and the administrative authority, then this obligation shall be null and void; otherwise, it is to remain in full force and effect.

The Surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described hereinabove.

Upon notification by the administrative authority that the Principal has been found in violation of the requirements of LAC 33:IX or of its permit, for the facility for which this bond guarantees performances of the requirements of LAC 33:IX.Chapter 23.Subchapter W, the Surety shall either perform the requirements of LAC 33:IX.Chapter 23.Subchapter W, or place the closure amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

The Surety hereby waives notification of amendments to permit, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety hereunder exceed the amount of the penal sum.

The Surety may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the administrative authority. Cancellation shall not occur before 120 days have lapsed, beginning on the date that both the Principal and the administrative authority received the notice of cancellation as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety and to the administrative authority, provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond by the administrative authority.

The Principal and Surety hereby agree that no portion of the penal sum may be expended without prior written approval of the administrative authority.

IN WITNESS WHEREOF, the Principal and the Surety have executed this PERFORMANCE BOND on the date set forth above.

Those persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety, that each Surety hereto is authorized to do business in the state of Louisiana, and that the wording of this surety bond is identical to the wording specified in LAC 33:IX.2803.A.1, effective on the date this bond was executed.

PRINCIPAL

[Signature(s)]
[Name(s)]
[Title(s)]

CORPORATE SURETY

[Name and address]
State of incorporation:_____
Liability limit: $_____
[Signature(s)]
[Name(s) and title(s)]
[For every cosurety, provide signature(s) and other information in the same manner as for Surety above.]
Bond premium: $_____

2. Letter of Credit. The requirements of this Section may be satisfied by obtaining a Letter of Credit that conforms to the following requirements:

a. the letter of credit must be submitted to the department at the following address: Louisiana Department of Environmental Quality, Office of Management and Finance, Financial Services, Box 82231, Baton Rouge, LA 70884-2231;

b. the issuing institution must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency;

c. the letter of credit must be irrevocable and issued for a period of at least one year, unless at least 120 days before the current expiration date, the issuing institution notifies both the permit holder and the administrative authority at the address indicated in Subsection A.2.a of this Section by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the permit holder and the administrative authority receive the notice, as evidenced by the return receipts; and

d. the wording of the letter of credit shall be identical to the wording that follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE LETTER OF CREDIT

Secretary
Louisiana Department of Environmental Quality
Financial Services
Post Office Box 82231
Baton Rouge, Louisiana 70884-2231
Dear Sir:

We hereby establish our Irrevocable Standby Letter of Credit No. _____ in favor of the Department of Environmental Quality of the state of Louisiana at the request and for the account of [permit holder's or applicant's name and address] for the conditions specified in LAC 33:IX.Chapter 23.Subchapter W for its [list site identification number, site name, facility name, facility permit number] at [location], Louisiana, for any sum or sums up to the aggregate amount of U.S. dollars $_____ upon presentation of:

(1). A sight draft, bearing reference to the Letter of Credit No._____ drawn by the administrative authority, together with;

(2). A statement, signed by the administrative authority, declaring that the amount of the draft is payable pursuant to the Louisiana Environmental Quality Act, R.S. 30:2001, et seq.

The Letter of Credit is effective as of [date] and will expire on [date], but such expiration date will be automatically extended for a period of at least one year on the above expiration date [date] and on each successive expiration date thereafter, unless, at least 120 days before the then-current expiration date, we notify both the administrative authority and [name of permit holder or applicant] by certified mail that we have decided not to extend this Letter of Credit beyond the then-current expiration date. In the event that we give such notification, any unused portion of this Letter of Credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both the Department of Environmental Quality and [name of permit holder or applicant] as shown on the signed return receipts.

Whenever this Letter of Credit is drawn under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft in accordance with the administrative authority's instructions.

Except to the extent otherwise expressly agreed to, the Uniform Customs and Practice for Documentary Letters of Credit (1983), International Chamber of Commerce Publication No. 400, shall apply to this Letter of Credit.

We certify that the wording of this Letter of Credit is identical to the wording specified in LAC 33:IX.2803.A.2, effective on the date shown immediately below.

[Signature(s) and title(s) of
official(s) of issuing
institution(s)]
[date]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Sections 2074(B)(3) and(4) and 2075.2.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

§2805. Amount of Required Financial Security

A. The amount of the financial security must be equal to or greater than $1 per gallon of wastewater discharge per day from the facility, as determined by the administrative authority, up to a maximum of $25,000.

B. The secretary may, in his discretion, allow a single financial security instrument to satisfy the requirements of this Subchapter for up to four permits held by the same permittee, if the amount of financial security provided by that instrument is large enough to satisfy the requirements of Subsection A of this Section for the facility with the greatest amount of wastewater discharge per day.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Sections 2074(B)(3) and(4) and 2075.2.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

§2807. Conditions for Forfeiture

A. The secretary or his designee may enter an order requiring forfeiture of all or part of the financial security, if he determines that:

1. the continued operation or lack of operation and maintenance of the facility covered by this Subsection represents a threat to public health, welfare, or the environment because the permittee is unable or unwilling to adequately operate and maintain the facility or the facility has been actually or effectively abandoned by the permittee. Evidence justifying such determination includes, but is not limited to:

a. the discharge of pollutants exceeding limitations imposed by applicable permits;

b. failure to utilize or maintain adequate disinfection facilities;

c. failure to correct overflows or backups from the collection system;

d. a declaration of a public health emergency by the state health officer; and

e. a determination by the Public Service Commission that the permittee is financially unable to properly operate or maintain the system;

2. reasonable and practical efforts under the circumstances have been made to obtain corrective actions from the permittee; and

3. it does not appear that corrective actions can or will be taken within an appropriate time as determined by the secretary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Sections 2074(B)(3) and(4) and 2075.2 and 3.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

§2809. Use of Proceeds

The proceeds of any forfeiture shall be used by the secretary, or by any receiver appointed by a court under R.S. 30:2075.3, to address or correct the deficiencies at the facility or to maintain and operate the system, as deemed necessary by the secretary under LAC 33:IX.2807.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Sections 2074(B)(3) and(4) and 2075.2 and 3.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

J. Dale Givens
Secretary

0003#006

DECLARATION OF EMERGENCY

Department of Environmental Quality
Office of the Secretary

Beneficial Environmental Projects (BEPs)
(LAC 33:I.2501-2505)(OS037E)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and under authority of R.S. 30:2011, the Secretary of the Department of Environmental Quality (DEQ) declares that an emergency action is necessary to ensure efficient enforcement of the environmental laws of this state. Beneficial environmental projects (BEPs) have been proposed which will substantially benefit neighboring communities and reduce the load of pollutants discharged into the environment.

This rule will serve to facilitate the settlement of environmental actions and promote the use of BEPs. Without this rule, projects that are otherwise advantageous to the state may be delayed, withdrawn, or not performed.

This emergency rule is effective on March 10, 2000, and shall remain in effect for the maximum of 120 days or until a final rule is promulgated, whichever occurs first. For more information concerning OS037E, you may contact DEQ's Regulation Development Section at (225) 765-0399. Adopted this 10th day of March, 2000.

Title 33
ENVIRONMENTAL QUALITY
Part I. Office of the Secretary
Subpart 1. Department Administrative Procedures
Chapter 25. Beneficial Environmental Projects

§2501. Applicability

These regulations apply when the department has decided to enter into a settlement in which a beneficial environmental project (BEP) is utilized. The department reserves the right to settle for the amount of cash penalty, if any, it deems appropriate in considering all of the circumstances relating to the case in which the settlement is perfected. The decision to enter into a settlement that includes a BEP is solely within the discretion of the department. Nothing in these regulations requires that the department enter into a settlement or that the settlement include BEPs. Any BEP may be accepted if it meets the terms of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1), 2031, and 2050.7(E).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

§2503. Definitions

Beneficial Environmental Project (BEP)—a project that provides for environmental mitigation which the defendant/respondent is not otherwise legally required to perform, but which the defendant/respondent agrees to undertake as a component of a settlement of a violation(s) or penalty assessment.

Environmental Mitigation—that which tends to lead in any way to the protection from, reduction of, or general awareness of potential risks or harm to public health and the environment. Environmental mitigation includes any and all projects that conform to the requirements set forth in LAC 33:I.2505.

Not Otherwise Legally Required to Perform—the approved project is not required of the defendant/respondent by any federal, state, or local law, regulation, or permit (except that early compliance may be allowed) or actions which the defendant/respondent may be required to perform as injunctive relief in the instant case or as part of a settlement or order in another action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1), 2031 and 2050.7(E).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

§2505. Project Categories

A. A BEP must be within one or more of the following categories:

1. Public Health. A public health project provides diagnostic, preventative, and/or remedial components of human health care that is related to the actual or potential damage to human health caused by a violation of environmental law or mismanagement of substances containing constituents detrimental to human health. This may include, but is not limited to, epidemiological data collection and analysis, medical examinations of potentially affected persons, collection and analysis of blood/fluid/tissue samples, medical treatment, and rehabilitation therapy.

2. Pollution Prevention

a. A pollution prevention project is one that reduces the generation of pollution through "source reduction," i.e., any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise being released into the environment, prior to recycling, treatment, or disposal. (After the pollutant or waste stream has been generated, pollution prevention is no longer possible and the waste must be handled by appropriate recycling, treatment, containment, or disposal methods.)

b. Source reduction may include equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, inventory control, or other operation and maintenance procedures. Pollution prevention also includes any project which protects natural resources through conservation or increased efficiency in the use of energy, water, or other materials. In-process recycling, wherein waste materials produced during a manufacturing process are returned directly to production as raw materials on site, is considered a pollution prevention project.

c. In all cases, for a project to meet the definition of pollution prevention, there must be an overall decrease in the amount and/or toxicity of pollution released to the environment, not merely a transfer of pollution among media. This decrease may be achieved directly or through increased efficiency (conservation) in the use of energy, water, or other materials.

3. Pollution Reduction. If the pollutant or waste stream already has been generated or released, a pollution reduction approach, which employs recycling, treatment, containment, or disposal techniques, may be appropriate. A pollution reduction project is one that results in a decrease in the amount and/or toxicity of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise being released into the environment by an operating business or facility by a means which does not qualify as "pollution prevention." This may include the installation of more effective end-of-process control or treatment technology, or improved containment, or safer disposal of an existing pollutant source. Pollution reduction also includes "out-of-process recycling," wherein industrial waste collected after the manufacturing process and/or consumer waste materials are used as raw materials for production off-site.

4. Environmental Restoration and Protection. An environmental restoration and protection project is one that goes beyond repairing the damage caused by the violation to enhance the condition of any ecosystem or geographic area. These projects may be used to restore or protect natural environments (including ecosystems) and man-made environments (including the removal/mitigation of contaminated materials, such as soils, asbestos, and leaded paint, from facilities and buildings). Also included is any project which protects the ecosystem from actual or potential damage resulting from violations of state environmental regulations or improves the overall environmental condition of the ecosystem or geographic area. Examples of these projects include: restoration of a wetland; purchase and management of a watershed area or environmentally sensitive area; and providing for the protection of endangered species, i.e. developing conservation programs or habitat protection and enhancement.

5. Assessments and Audits

a. The four types of assessments/audits are:

i. pollution prevention assessments;

ii. site assessments;

iii. environmental management system audits; and

iv. compliance audits.

b. These assessment or audit projects must be performed by an entity approved by the department. The defendant/respondent must agree to provide a certified copy of the assessment or audit to the department along with an implementation report to detail the action(s) taken and/or to defend the facility's decision to forego implementation of the suggested changes listed in the audit report. Settlement agreements which include assessment and/or audit projects may be constructed with stipulated penalty amounts for failure to implement suggested changes included in the report that the department deems appropriate based on an assessment of the certified implementation report provided by the facility. Assessments and audits may not include projects that are required by enforcement and/or legal requirements.

6. Environmental Compliance Promotion. An environmental compliance promotion project provides training or technical support to identify, achieve and maintain compliance with applicable statutory and regulatory requirements; avoid committing a violation with respect to such statutory and regulatory requirements; go beyond compliance by reducing the generation, release, or disposal of pollutants to a level below the legally required limits; or promote environmental education, including awareness of potential risks or harm to the public health and the environment. In all cases, the department will specify the approved party responsible for developing and providing the environmental compliance promotion project. Acceptable projects may include, but are not limited to, the production and or sponsorship of seminar(s) related to environmental obligations, regulations, and improvement techniques.

7. Emergency Planning, Preparedness, and Response. An emergency planning and preparedness project provides assistance to a responsible state or local emergency planning, preparedness, or response entity. This is to enable these organizations to further fulfill their obligations to collect information to assess the dangers of hazardous chemicals present in a response situation, to develop emergency plans and/or procedures, to train emergency response personnel, and to better respond to emergency situations. These projects may include providing computers and software, communication systems, chemical emission detection and inactivation equipment, or hazardous materials equipment or training.

8. Other Projects. Projects determined by the department to have environmental merit that do not fit within at least one of the seven categories above may be accepted if they are otherwise fully consistent with the intent of these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1), 2031 and 2050.7(E).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:

J. Dale Givens
Secretary

0003#066

DECLARATION OF EMERGENCY

Office of the Governor
Division of Administration
Board of Trustees of the State Employees Group Benefits Program

Fee Schedule

Pursuant to the authority granted by R.S. 42:871(C) and 874(B)(2), vesting the Board of Trustees with the responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, and in order to comply with R.S. 42:851.5 which requires the Board to adopt and promulgate a schedule of maximum fees for medical and surgical services and for professional services provided in hospitals, the Board of Trustees hereby invokes the Emergency Rule provisions of R.S. 49:953(B).

Failure to adopt this rule on an emergency basis will result in a financial impact adversely affecting the availability of services necessary to maintain the health and welfare of the covered employees and their dependents, which is crucial to the delivery of vital services to the citizens of the state. Accordingly, the following Emergency Rule is effective February 25, 2000, and shall remain in effect for a maximum of 120 days or until promulgation of the final Rule, whichever occurs first.

Emergency Rule

The maximum fees for medical and surgical services and for professional services provided in hospitals, when such medical, surgical, or professional services are rendered by providers who have not entered into contracts with the State Employees Group Benefits Program establishing the allowed charges for the services, shall be the 60th percentile of MDR's MediCode allowed charge. In the event that an allowed fee for the CPT code is not found in MDR's MediCode schedule, the maximum fee will be 75 percent of the provider's billed charge.

A. Kip Wall
Interim Chief Executive Officer

0003#004

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Board of Pharmacy

Drug Returns (LAC 46:LIII.3517)

The Board of Pharmacy is exercising the emergency provisions of the Administrative Procedure Act (LRS 49:953.B) to amend the rule prohibiting the return of prescription drugs (LAC 46:LIII.3517). The emergency rule is necessary to allow the Board of Pharmacy to amend the rule in such a manner as to permit the recycling of prescription drugs under limited conditions to certain pharmacies serving the indigent population of the state. A delay in promulgating the rule will continue the adverse impact on the indigent population of Louisiana caused by the restriction on recycling prescription drugs. The Board has determined that the emergency rule is necessary to prevent imminent peril to the public health, safety, and welfare. The declaration of emergency is effective March 1, 2000, and shall remain in effect for the maximum time period allowed under the Administrative Procedure Act or until adoption of the final rule, whichever occurs first.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part LIII. Pharmacists
Chapter 35. Pharmacy Prescription Drugs
§3517. Drug Returns

A. Drugs dispensed on prescription to a patient shall not be accepted for return, exchange, or re-dispensing by any pharmacist or pharmacy after such drugs have been removed from the pharmacy premises where they were dispensed except:

1. in a hospital with a permitted hospital pharmacy on site, drugs may be returned to the pharmacy in accordance with good professional practice standards;

2. in facilities licensed by the Louisiana Department of Health and Hospitals where United States Pharmacopoeia (USP) storage requirements can be assured, legend drugs, except controlled substances, dispensed in unit dose or in individually sealed doses may be transferred to a provisional permitted pharmacy for relabeling and dispensing to the indigent, free of charge, pursuant to a valid prescription order.

a. The pharmacist-in-charge (PIC) of the provisional permitted pharmacy shall be responsible to determine the suitability of the product for reuse.

i. No product where integrity cannot be assured shall be accepted for re-dispensing by the pharmacist.

ii. A re-dispensed prescription medication shall be assigned the expiration date stated on the package.

iii. No product shall be re-dispensed more than one time.

b. Pursuant to a voluntary agreement between a facility licensed by the Louisiana Department of Health and Hospitals and a pharmacy holding a provisional permit from the Louisiana Board of Pharmacy, legend drugs, except controlled substances, may be transferred from the facility to the pharmacy provided the following procedures are satisfied.

i. The physical transfer shall be accomplished by a person authorized to do so by the provisional permitted pharmacy.

ii. The patient from whom the prescription medication was obtained shall document their consent for the donation; the consent shall be maintained on file at the facility.

iii. The patient's name, prescription number, and any other identifying marks, shall be obliterated from the packaging prior to removal from the facility.

iv. The drug name, strength, and expiration date shall remain on the medication package label.

v. An inventory list of the drugs shall accompany the drugs being transferred; at a minimum, the list shall contain the medication name, strength, expiration date, and quantity.

vi. Expired drugs shall not be transferred; personnel designated by the facility shall destroy them on-site.

AUTHORITY NOTE: Promulgated in accordance with LRS 37:1182.A.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 26:

Malcolm J. Broussard, RPh
Executive Director

0003#022

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Office and Management and Finance

Medicare Rural Hospital Flexibility Program (MRHF)
Critical Access Hospitals (LAC 48:I.7601 and 7609)

The Department of Health and Hospitals, Office of Management and Finance, Division of Research and Development proposes to amend the rule in the Medicare Rural Hospital Flexibility Program (MRHF)as authorized by the Balanced Budget Act of 1997 (Public Law 105-33)and pursuant to Title XVIII of the Social Security Act. This rule is in accordance with the Medicare, Medicaid, State Children's Health Insurance Programs (SCHIP) Balanced Budget Refinement Act of 1999. This rule is in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

This emergency rule will amend the rule published in the *Louisiana Register*, Vol. 25, No. 8, pp. 1478-1480, August 20, 1999 by expanding the definition of "rural", and changing other criteria to allow additional hospitals to participate in the Medicare Rural Hospital Flexibility Program (MRHF). The Program assists rural communities in improving access to essential care through the establishment of Critical Access Hospitals (CAH) which are limited service hospitals eligible for Medicare certification and cost based reimbursement.

This action is necessary to avoid imminent peril to the public welfare served by small rural hospital facing closure due to financial problems.

Emergency Rule

Effective March 20, 2000, the Department of Health and Hospitals, Division of Research and Development, will expand the criteria for participation in the Medicare Rural Hospital Flexibility Program (MRHF) which will make additional rural hospitals eligible to participate as limited service hospitals eligible for Medicare certification and reimbursement. To qualify as a CAH, the small rural hospital must complete the following designation, licensing, and certification processes.

Title 48
PUBLIC HEALTH-GENERAL
Part I. General Administration
Subpart 3. Licensing and Certification
Chapter 76. Medicare Rural Hospital Flexibility Program (MRHF)
Subchapter A. Critical Access Hospitals
§7601. Definitions

A. ...

Rural: may be in a rural census tract in a Metropolitan Statistical Area (MSA)as determined under the Goldsmith Modification, originally published in the *Federal Register* on February 27, 1992, or

a. has no more than 60 hospital beds as of July 1, 1994, and:

(i). is located in a parish with a population of less than fifty thousand; or

(ii). is located in a municipality with a population of less than twenty thousand; or

b. meets the qualifications of a sole community hospital under 43 CRF 412.92(a); or

c. has no more than sixty hospital beds as of July 1, 1999, and is located in a parish with a population, as measured by the 1990 census, of less than 17,000.

AUTHORITY NOTE: Promulgated in accordance with the Balanced Budget Act of 1997 (PL 105-33) and Title XVIII of the Social Security Act; amended by Medicare, Medicaid, SCHIP Balanced Budget Refinement Act of 1999.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, Division of Research and Development, LR 25:1478 (August 1999), amended LR 26:

§7603. Criteria for Designation as a CAH

A. …

1. be a licensed hospital;

2. - 4.b. …

c. Provides not more than 15 acute care inpatient beds, meeting such standards as the Secretary may establish, for providing inpatient care that does not exceed, as determined on an annual, average basis, 96 hours per patient.

AUTHORITY NOTE: Promulgated in accordance with the Balanced Budget Act of 1997 (PL 105-33) and Title XVIII of the Social Security Act; amended by Medicare, Medicaid, SCHIP Balanced Budget Refinement Act of 1999.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, LR 25:1479 (August 1999), amended LR 26:

§7609. Application Submission and Review

A. - B. …

C. The supporting information to be included with the application is:

1. documentation of ownership, including names of owners and percent of ownership;

2. - 4. …

AUTHORITY NOTE: Promulgated in accordance with the Balanced Budget Act of 1997 (PL 105-33) and Title XVIII of the Social Security Act; amended by Medicare, Medicaid, SCHIP Balanced Budget Refinement Act of 1999.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, Division of Research and Development, LR 25:1479 (August 1999), amended LR 26:

Interested persons may submit written comments to Helene Robinson, Department of Health and Hospitals, Office of Management and Finance, Division of Research and Development, Post Office Box 2870, Baton Rouge, Louisiana 70821-2870.

David W. Hood
Secretary

0003#042

DECLARATION OF EMERGENCY

Department of Social Services
Office of Rehabilitation Services

Vocational Rehabilitation Policy Manual
Applicant/Client Appeal Rights
(LAC 67:VII.107)

The Department of Social Services, Louisiana Rehabilitation Services, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), to amend the following rule in §107, Vocational Rehabilitation Policy Manual: Applicant/Client Appeal Rights.

The rule governing Applicant/Client Appeal Rights outlines the due process policy for anyone who is dissatisfied with a decision made by the agency.

This emergency rule must be effective February 25, 2000. This rule is being amended as the Louisiana Rehabilitation Services' (LRS) appeals process has undergone a significant change as a result of the 1998 amendments to the Rehabilitation Act. The fourth level of review by the Director of LRS was removed. However, it is within the express authority of the Rehabilitation Act for LRS to implement this level of review. It is significant to note that although the new amendments do allow for a fourth level of review, the characteristic of this fourth level of review is that it must be conducted, at a minimum, by the DSS Secretary.

Currently, the final administrative level of appeal is the impartial hearing officers, who are required to review agency determinations and issue decisions based upon the provisions of the State Plan, the Rehabilitation Act (including regulations implementing the Act) and State regulations or policies that are consistent with the federal requirements specified in the Act.

DSS General Counsel has strongly recommended to LRS to put the fourth level review in place immediately by emergency rule. This recommendation was necessary due to the influx of controversial rulings from impartial hearing officers, which have exposed the agency to sanctions or penalties by the United States as being contrary to the State Plan, the Rehabilitation Act (including regulations implementing the Act) and State regulations or policies that are consistent with the federal requirements specified in the Act. These unlawful rulings have not been based upon the Act's authorities (including specific guidance and directives by RSA), but have evidenced the hearing officers' subjective interpretation of the substantive law.

Because the Rehabilitation Act requires implementation of the hearing officer's decision pending a civil action for review, LRS may be mandated to comply with and/or implement a decision which violates the law and policy of the State Plan, the Rehabilitation Act (including regulations implementing the Act) and State regulations or policies that are consistent with the federal requirements specified in the Act, as well as a disregard of a specific directive of Rehabilitation Services Agency (RSA), the federal agency authorized to implement and administer the provisions of the Act. However, said compliance with the hearing officer's decision would subject Louisiana Rehabilitation Services to an audit exception by RSA and concurrent sanctions. Moreover, such unauthorized spending, when paired with the resultant sanctions/loss of federal funding, would greatly reduce the services available and imperil the public health, safety, and welfare of the State's VR population. These unlawful decisions have and will result in VR Program abuse, as numerous clients have been advised to resort to the appeals process in bad faith in order to take advantage of these beneficial rulings.

RSA has scheduled a compliance review of LRS for April 10, 2000. LRS has been informed by RSA that agency action in accord with said hearing officers' decisions constitutes "substantial compliance failure"; under the Rehabilitation Act, said failures will subject LRS to penalties and sanctions.

This emergency rule shall remain in effect for 120 days, or until the effective date of the final rule for the Vocational Rehabilitation Policy Manual, Section 107, whichever occurs first.

The LRS policy manual is referenced in LAC 67:VII. as follows.

Title 67
SOCIAL SERVICES
Part VII. Rehabilitation Services

Chapter 1. General Provisions

§107. Applicant/Client Appeal Rights

A. - B.7. …

C. Fair Hearing

1. The fair hearing process may be requested by applicants/clients to appeal disputed findings of an administrative review; at any point after a mediation session; or as a direct avenue of appeal bypassing the administrative review or the mediation process option. The fair hearing will be conducted by an Impartial Hearing Officer after receipt of the initial written request. At the time the fair hearing is

requested, the applicant/client shall be offered mediation as an option to resolve a dispute if mediation has not been exercised already.

2. An Impartial Hearing Officer shall be selected on a random basis to hear a particular case by agreement between the Louisiana Rehabilitation Services Director and the applicant/client. This officer shall be selected from among a pool of qualified persons identified jointly by Louisiana Rehabilitation Services and members of the Louisiana Rehabilitation Council. The Impartial Hearing Officer shall provide the decision reached in writing to the applicant/client and to Louisiana Rehabilitation Services as expeditiously as possible.

3. All applicants/clients must be provided adequate notification of appeal rights at the time of application, development of the Individualized Plan for Employment, and upon reduction, suspension, or cessation of vocational rehabilitation services. Services will continue during the fair hearing process unless the services being provided under the current Individualized Plan for employment were obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the client.

4. In order to insure that the applicant/client is afforded the option of availing themselves the opportunity to pursue a fair hearing, adequate notification by the counselor and/or Regional Manager must include:

a. the agency's decision (inclusive of an administrative review and/or mediation agreement, if conducted);

b. the basis for, and effective date of, that decision;

c. the specific means for appealing the decision;

d. the applicant's/client's right to submit additional evidence and information, including the client's right to representation at the fair hearing;

e. advise the applicant/client of the Client Assistance Program and how they can access the program, including the telephone number; and

f. the means through which a fair hearing may be requested, including the name and address of the regional manager.

Note: All fair hearings must be conducted in a manner which insures that the proceedings are understood by the applicant/client.

D. Review of Fair Hearing Decisions

1. The impartial review for decisions rendered by impartial hearing officers is the final level of appeal within the Department of Social Services regarding disputes arising within Louisiana Rehabilitation Services. Subsequent to a decision being reached as a result of the impartial review by the Department of Social Services, any further review of the issue by the applicant/client (or, as appropriate, the applicant/client's representative) or the Agency must be by civil action through the public court system.

2. The applicant/client or the Agency can request a review of an Impartial Hearing Officer's decision by making a written request to the Secretary of the Department of Social Services within statutory guidelines. The Secretary cannot delegate the responsibility for making this final decision to any officer or employee of Louisiana Rehabilitation Services. The applicant/client and the Agency shall be provided an opportunity to submit additional evidence and information relevant to the final decision.

3. The Department of Social Services' Secretary may not overturn or modify a decision of an Impartial Hearing Officer, or part of such a decision, that supports the position of the applicant/client unless the Secretary determines, based on clear and convincing evidence, that the decision of the Impartial Hearing Officer is clearly erroneous on the basis of being contrary to the State Plan, the Rehabilitation Act (including regulations implementing the Act) or any State regulation or policy that is consistent with the federal requirements specified in the Act.

4. The Secretary shall provide the decision reached in writing to the applicant/client and to Louisiana Rehabilitation Services. This decision shall include a full report of the findings and grounds for the decision.

E. Civil Action. Any party aggrieved by a final decision from an impartial review by the Department of Social Services may bring civil action for review of such decision. The action may be brought in any state court of competent jurisdiction or in district court of the United States of competent jurisdiction without regard to the amount in controversy. If a party brings a civil action, the final decision of the Department of Social Services shall be implemented pending review by the court. In any action brought under this subsection, the court shall:

1. receive the records relating to the hearing;

2. hear additional evidence at the request of a party to the action; and

3. base the decision of the court on the preponderance of the evidence, shall grant such relief as the court determines to be appropriate.

F. Recoupment. Louisiana Rehabilitation Services will establish a claim on any overpayment or ineligible payment made to clients of Louisiana Rehabilitation Services in cases where an appeal or judicial action is not in the favor of the client.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 17:891 (September 1991), amended LR 20:317 (March 1994), LR 21:189 (February 1995), LR 25:1266 (July 1999), LR 26:

FAMILY IMPACT STATEMENT

The Department of Social Services, Louisiana Rehabilitation Services hereby issues this Family Impact Statement: The Emergency Rule for the Vocational Rehabilitation Policy Manual, Applicant/Client Appeal Rights will have no known impact on family formation, stability, and autonomy, as set forth in R.S. 49:972.

J. Renea Austin-Duffin
Secretary

0003#007

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Extension of Oyster Season

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and 967, and

under the authority of R.S. 56:6(25)(a) and R.S. 56:433, notice is hereby given that the Wildlife and Fisheries Commission hereby declares:

The oyster season on the Public Oyster Seed Grounds and Oyster Seed Reservations east of Mississippi River and the Hackberry Bay Oyster Seed Reservation is to be extended to one-half hour after sunset April 30, 2000.

Thomas M. Gattle, Jr.
Chairman

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