

# Emergency Rules

## DECLARATION OF EMERGENCY

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

Use of Icon 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, when combined with 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 regulations 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 (February 19, 2001) 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 Department's 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 issue or require:

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203, R.S. 3:3242 and R.S. 3:3249.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:169 (April 1983), amended LR 10:193 (March 1984), LR 11:219 (March 1985), LR 11:942 (October 1985), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:953 (September 1992), amended LR 19:791 (September 1993), LR 21:668 (July 1993), LR 21:668 (July 1995), LR 24:281 (February 1998), LR 24:2076 (November 1998), LR 27:276.

Bob Odom  
Commissioner

0103#006

## **DECLARATION OF EMERGENCY**

**Department of Health and Hospitals  
Office of the Secretary  
Bureau of Health Services Financing**

Early and Periodic Screening, Diagnosis  
and Treatment (EPSDT)C Hearing Aids

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following emergency rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq. and shall be in effect for the maximum period allowed under the act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing provides coverage for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) hearing aid services under the Medicaid Program. The criteria for prior authorization of hearing aids was promulgated by reference in a rule that adopted the state and

federal requirements and procedures governing the determination of Medicaid eligibility as contained in the Medicaid Eligibility Manual (*Louisiana Register*, Volume 22, Number 5). As a result of a change in the policy of the Office of Public Health on providing hearing aid services, the bureau has determined that it is necessary to amend the May 20, 1996 rule by replacing the existing prior authorization criteria for hearing aids. This emergency rule is being adopted to continue the provisions contained in the November 21, 2000 rule.

### **Emergency Rule**

Effective for dates of service on or after March 22, 2001, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the May 20, 1996 rule to establish the following prior authorization criteria for hearing aids.

### **Prior Authorization Criteria**

Hearing aids and related services are only covered for EPSDT recipients up to the age of 21. Approval is granted only when there is a significant hearing loss as documented by audiometric or electrophysiologic data from a licensed audiologist and medical clearance and prescription from an ear specialist (otologist).

The audiologist must furnish a report including an audiogram, if applicable, all test results and the degree and type of hearing loss. A hearing loss greater than 20 decibels with an average hearing level in the range 250-2000 Hz is considered significant. Additional required medical and social information shall include:

- 1) the recipient's age;
- 2) expected benefit of the hearing aid;
- 3) previous and current use of a hearing aid;
- 4) additional disabilities expected to influence the use of a hearing aid; and
- 5) referrals made on the recipient's behalf to early intervention programs, special education programs or other rehabilitative services.

Hearing aid repairs, batteries, and ear molds shall no longer require prior authorization. However, ear molds must be prescribed by a physician. Limitations on the purchase of ear molds are established as follows: One ear mold will be allowed every 90 days for EPSDT recipients from birth through age 4. One ear mold per year will be allowed for EPSDT recipients from age 5 to up to 21.

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this emergency rule is available at the parish Medicaid office for review by interested parties.

David W. Hood  
Secretary

0103#016

**DECLARATION OF EMERGENCY**

**Department of Wildlife and Fisheries  
Wildlife and Fisheries Commission**

Oyster Season Extension

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. 56:433 notice is hereby given that the Secretary of the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission hereby declare:

1. The oyster season on the public oyster grounds of Vermilion, East and West Cote Blanche and Atchafalaya Bays and outside area Atchafalaya-Vermilion Bay not currently under lease will be extended and will close one-half hour after sunset on May 15, 2001.

2. The Secretary of the Department of Wildlife and Fisheries is authorized to take emergency action, if necessary, to close areas if oyster mortalities are occurring or to delay the season or close areas where significant spat catch has occurred with good probability of survival, or where it is found that there are excessive amounts of shell in seed oyster loads.

3. The Secretary is authorized to take emergency action to reopen areas previously closed if the threat to the resource has ended.

4. Notice of any opening, delaying or closing of a season will be made by public notice at least 72 hours prior to such action.

Dr. H. Jerry Stone  
Chairman

0103#008

**DECLARATION OF EMERGENCY**

**Department of Wildlife and Fisheries  
Wildlife and Fisheries Commission**

Shark Season Closure

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

the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, and the authority given to the Secretary of the Department by the Commission in its rule LAC 76:VII.357.M.2 which allows the secretary to declare a closed season when he is informed that the commercial large coastal shark seasonal quota for that species group and fishery has been met in the Gulf of Mexico, and that such closure order shall close the season until the date projected for the re-opening of that fishery in the adjacent federal waters, the secretary of the Department of Wildlife and Fisheries hereby declares:

Effective 11:30 p.m., March 24, 2001, the commercial fishery for large coastal sharks in Louisiana waters, as described in LAC 76:VII.357.B.2 (great hammerhead, scalloped hammerhead, smooth hammerhead, nurse shark, bignose shark, blacktip shark, bull shark, Caribbean reef shark, dusky shark, Galapagos shark, lemon shark, narrowtooth shark, night shark, sandbar shark, silky shark, spinner shark and tiger shark) will close through June 30, 2001. Nothing herein shall preclude the legal harvest of large coastal sharks by legally licensed recreational fishermen during the open season for recreational harvest. Effective with this closure, no person shall commercially harvest, purchase, exchange, barter, trade, sell or attempt to purchase, exchange, barter, trade or sell large coastal sharks or fins thereof. Also effective with the closure, no person shall possess large coastal sharks in excess of a daily bag limit, which may only be in possession during the open recreational season. Nothing shall prohibit the possession or sale of fish legally taken prior to the closure providing that all commercial dealers possessing large coastal sharks taken legally prior to the closure shall maintain appropriate records in accordance with R.S. 56:306.5.

The secretary has been notified by the National Marine Fisheries Service that the first semiannual subquota for large coastal sharks will be reached on or before March 24, 2001, and that the federal season closure is necessary to comply with a court order.

James H. Jenkins, Jr.  
Secretary

0103#007