

NOTICE OF INTENT

Department of Insurance Office of the Commissioner

Regulation 127—The Hurricane Property Insurance Claim Alternate Dispute Resolution Program (LAC 37:XIII.Chapter 195)

The Department of Insurance, pursuant to the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950, et seq, hereby gives notice of its intent to promulgate Regulation 127—The Hurricane Property Insurance Claim Alternate Dispute Resolution Program. Regulation 127 is being promulgated as necessary to establish rules and regulations pertaining to the hurricane mediation program, codified at R.S. 22:2651, et seq, in accordance with Act 591 of the 2022 Regular Session of the Louisiana Legislature.

Regulation 127 addresses the nature and purpose of the hurricane mediation program and identifies who is eligible to participate in the hurricane mediation program, the circumstances under which it may be used, and the manner of requesting mediation. Regulation 127 also establishes guidelines for mediation firms that elect to participate in the hurricane mediation program. Lastly, Regulation 127 creates procedures for complying with the hurricane mediation program disclosure notice requirements, including the deadline and methods for delivering the notice to insureds, all in accordance with R.S. 22:2656.

Title 37 INSURANCE

Part XIII. Regulations

Chapter 195. Regulation 127—The Hurricane Property Insurance Claim Alternate Dispute Resolution Program

§19501. Authority

A. Regulation 127 is promulgated on behalf of the Department of Insurance by the Commissioner of Insurance pursuant to the authority granted under the Louisiana Insurance Code, R.S. 22:11, and as specifically instructed in accordance with R.S. 22:2657.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:11, 22:2651, et seq, and the Administrative Procedure Act, R.S. 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR _____ (Month Year).

§19503. Purpose

A. The purpose of Regulation 127 is to establish rules and regulations pertaining to the hurricane mediation program, codified at R.S. 22:2651, et seq, in accordance with Act 591 of the 2022 Regular Session of the Louisiana Legislature.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:11, 22:2651, et seq, and the Administrative Procedure Act, R.S. 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR _____ (Month Year).

§19505. Scope and applicability

A. Regulation 127 applies to all property and casualty insurers of residential property situated in a geographical area that is included in a state of emergency declaration issued by the governor of Louisiana in response to a hurricane, named storm, or named windstorm event.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:11, 22:2651, et seq, and the Administrative Procedure Act, R.S. 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR _____ (Month Year).

§19507. Definitions

A. These terms when used in this Chapter shall have the following meanings:

Commissioner—the Louisiana Commissioner of Insurance.

Department—the Louisiana Department of Insurance.

Disclosure notice— a written notification issued by insurers to insureds disclosing the existence of the hurricane mediation program as required in R.S. 22:2656.

Governor—the governor of the state of Louisiana.

Hurricane mediation program—the “Hurricane Property Insurance Claim Alternate Dispute Resolution Program” set forth in Chapter 22 of Title 22 of the Louisiana Revised Statutes of 1950, at R.S. 22:2651, et seq.

Mediation firm—an entity or person that has elected to participate in the hurricane mediation program, complies with all requirements set forth in R.S. 22:2654, meets the qualifications set forth in R.S. 9:4106, and is listed as an approved mediation firm on the department’s website.

Parties—the insured and insurer, collectively.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:11, 22:2651, et seq, and the Administrative Procedure Act, R.S. 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR _____ (Month Year).

§19509. Nature and purpose of the hurricane mediation program

A. The hurricane mediation program was enacted in response to a demonstrated need for effective, fair, and timely handling of residential property insurance claims for residential properties damaged by a hurricane, named storm, or named windstorm event.

B. The hurricane mediation program is voluntary and provides for a non-adversarial alternative dispute resolution procedure designed to give insurers and insureds a way to resolve disputed residential property insurance claims in a timely and low-cost manner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:11, 22:2651, et seq, and the Administrative Procedure Act, R.S. 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR _____ (Month Year).

§19511. Participation in the hurricane mediation program

A. Every insured may request mediation involving a residential property insurance claim, provided such claim:

1. arises from a hurricane, named storm, or named windstorm event that results in the governor declaring a state of emergency in accordance with R.S. 29:724,

2. is for damages to residential property that is situated within a geographical area included in the governor’s state of emergency declaration, and

3. involves disputed amounts of up to \$150,000. Parties may agree to mediate and be subject to the provisions of R.S. 22:2651, et seq. for disputed amounts that exceed \$150,000.

B. Once the parties agree to mediate a damage claim in dispute through the hurricane mediation program, the insured must contact one of the participating mediation firms listed on the department’s website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:11, 22:2651, et seq, and the Administrative Procedure Act, R.S. 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR _____ (Month Year).

§19513. Mediation firm requirements for participating in the hurricane mediation program

A. Every mediation firm that elects to participate in the hurricane mediation program shall:

1. contact the department within ten calendar days regarding any change involving its official name, contact information, municipal address, electronic mail address, telephone number, and mediation qualification status,
2. give written notice to the parties within five business days after receiving the mediation assignment,
3. set the matter for mediation to occur within thirty days from the date the mediation assignment is received,
4. conduct the mediation in accordance with the standards of professional conduct for mediation adopted by the American Bar Association pursuant to R.S. 9:4107,
5. establish and describe the mediation procedures to be followed,
6. conduct in-person mediations statewide in a metropolitan statistical area and at an office or business location to be selected by the mediation firm, and
7. provide advanced notification as needed to accommodate a party's request to participate in the mediation remotely via telephone, video conference, or other similar electronic means.

B. Mediation firms may meet with the parties separately as needed to stimulate communications, promote meaningful negotiations, and to otherwise encourage settlement of the disputed claims.

C. Mediation sessions shall be conducted in accordance with the time limitations articulated in R.S. 22:2654(A)(10).

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:11, 22:2651, et seq, and the Administrative Procedure Act, R.S. 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR _____ (Month Year).

§19515. Costs associated with the hurricane mediation program

A. Once an insured has contacted a participating mediation firm that is listed on the department's website, the mediation firm shall submit its proposed mediation rate for approval to the department's Property and Casualty Division, which will examine the proposed rate to confirm that it is reasonable in accordance with the prevailing mediation rates for the location where the residential property insurance claim arises.

B. Mediation costs shall be the responsibility of the insurer in accordance with R.S. 22:2655.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:11, 22:2651, et seq, and the Administrative Procedure Act, R.S. 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR _____ (Month Year).

§19517. Notification of the hurricane mediation program

A. Whenever a hurricane, named storm, or named windstorm event results in the governor declaring a state of emergency in accordance with R.S. 29:724, an insurer shall prepare and deliver a disclosure notice to all insureds who have filed a covered residential property insurance claim for property situated within the geographical area included in the state of emergency declaration.

B. The insurer must deliver a disclosure notice to the insured prior to conducting an initial investigation of the insured's residential property insurance claim.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:11, 22:2651, et seq, and the Administrative Procedure Act, R.S. 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR _____ (Month Year).

§19519. Authorized methods of delivering a disclosure notice

A. A disclosure notice shall be delivered to the insured in a manner specified in R.S. 22:2656.A, which specifically authorizes delivery via United States mail, electronic mail, or by hand-delivery.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:11, 22:2651, et seq, and the Administrative Procedure Act, R.S. 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR _____ (Month Year).

§19521. Proof that disclosure notice was timely delivered

A. **Delivery by mail.** If a disclosure notice is sent to the insured via United States mail, proof of such mailing shall be sufficient evidence to establish delivery of the disclosure notice, provided it reflects the date of the mailing and the name of the insured.

B. **Electronic delivery.** If a disclosure notice is sent to the insured via email, the email delivery receipt or, if none, a copy of the as-sent email, shall be sufficient evidence to establish delivery of the disclosure notice, provided the delivery receipt or email reflects the date of the electronic mailing and the name of the insured.

C. **Hand-delivery.** If a disclosure notice is hand-delivered to the insured, the representative of the insurer perfecting delivery must complete and sign a certificate of hand-delivery, verifying pertinent details related to the delivery of the disclosure notice, including the date and location of the delivery, the name of the person accepting the delivery, and the name of the insured. Insurers may use the “Certificate of Hand-Delivery” form set forth in Appendix A of this Regulation, or insurers may create and use a substantially similar form to verify delivery details provided it complies with all requirements of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:11, 22:2651, et seq, and the Administrative Procedure Act, R.S. 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR _____ (Month Year).

§19523. Severability clause

A. The provisions of this Subpart are severable. If any provision or item of this Subpart, or application thereof, is held invalid, such invalidity shall not affect other provisions, items, or applications of this Subpart, which are to be given effect without the invalid provision, item, or application of the Subpart.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:11, 22:2651, et seq, and the Administrative Procedure Act, R.S. 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR _____ (Month Year).

§19525. Effective date

A. Regulation 127 shall become effective upon publication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:11, 22:2651, et seq, and the Administrative Procedure Act, R.S. 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR _____ (Month Year).

§19527. Appendix A

**Certificate of Hand-Delivery
Hurricane Mediation Program Disclosure Notice**

I hereby certify that on the ____ day of _____, 20____, I appeared at:

(Physical address): _____

and personally hand-delivered a true and complete copy of the hurricane mediation program disclosure notice to:

(Name of recipient): _____.

Delivery of this disclosure notice was made in connection with the following policy of insurance:

(Policy number): _____

(Insured): _____.

(Printed name): _____

(Signature): _____ (Date signed): _____

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:11, 22:2651, et seq, and the Administrative Procedure Act, R.S. 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR _____ (Month Year).

Family Impact Statement

1. Describe the Effect of the Proposed Regulation on the Stability of the Family. The proposed regulation should have no measurable impact upon the stability of the family.
2. Describe the Effect of the Proposed Regulation on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. The proposed regulation should have no impact upon the rights and authority of parents regarding the education and supervision of their children.
3. Describe the Effect of the Proposed Regulation on the Functioning of the Family. The proposed regulation should have no direct impact upon the functioning of the family.
4. Describe the Effect of the Proposed Regulation on Family Earnings and Budget. The proposed regulation should have no direct impact upon family earnings and budget.
5. Describe the Effect of the Proposed Regulation on the Behavior and Personal Responsibility of Children. The proposed regulation should have no impact upon the behavior and personal responsibility of children.
6. Describe the Effect of the Proposed Regulation on the Ability of the Family or a Local Government to Perform the Function as Contained in the Rule. The proposed regulation should have no impact upon the ability of the family or a local governmental unit to perform the function as contained in the rule.

Poverty Impact Statement

1. Describe the Effect on Household Income, Assets, and Financial Security. The proposed regulation should have no effect on household income assets and financial security.
2. Describe the Effect on Early Childhood Development and Preschool through Postsecondary Education Development. The proposed regulation should have no effect on early childhood development and preschool through postsecondary education development.
3. Describe the Effect on Employment and Workforce Development. The proposed regulation should have no effect on employment and workforce development.
4. Describe the Effect on Taxes and Tax Credits. The proposed regulation should have no effect on taxes and tax credits.
5. Describe the Effect on Child and Dependent Care, Housing, Health Care, Nutrition, Transportation and Utilities Assistance. The proposed regulation should have no effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Small Business Analysis

The impact of the proposed regulation on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed regulation that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed regulation on small businesses.

1. Identification and Estimate of the Number of the Small Businesses Subject to the Proposed Rule. The proposed regulation should have no measurable impact upon small businesses.
2. The Projected Reporting, Record Keeping, and Other Administrative Costs Required for Compliance with the Proposed Rule, Including the Type of Professional Skills Necessary for Preparation of the Report or Record. The proposed regulation should have no measurable impact upon small businesses.
3. A Statement of the Probable Effect on Impacted Small Businesses. The proposed regulation should have no measurable impact upon small businesses.
4. Describe any Less Intrusive or Less Costly Alternative Methods of Achieving the Purpose of the Proposed Rule. The proposed regulation should have no measurable impact on small businesses; therefore, there is no less intrusive or less costly alternative method of achieving the purpose of the proposed regulation.

Provider Impact Statement

1. Describe the Effect on the Staffing Level Requirements or Qualifications Required to Provide the Same Level of Service. The proposed regulation will have no effect.
2. The Total Direct and Indirect Effect on the Cost to the Provider to Provide the Same Level of Service. The proposed regulation will have no effect.
3. The Overall Effect on the Ability of the Provider to Provide the Same Level of Service. The proposed regulation will have no effect.

Public Comments

Interested persons who wish to make comments may do so by writing to Philip Dominique, Staff Attorney, Louisiana Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214, or by faxing comments to (225) 342-1632, or electronically at regulations@ldi.la.gov. Comments will be accepted through the close of business, 4:30 p.m., March 13, 2023.

James J. Donelon
Commissioner