

DECLARATION OF EMERGENCY

Department of Insurance Office of the Commissioner

Emergency Rule 33—Suspension of Right to Cancel or Nonrenew—Residential, Commercial Residential, or Commercial Property Insurance due to Historic Flooding (LAC 37:XI.Chapter 51)

The Department of Insurance hereby exercises the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to the authority granted by *Louisiana Revised Statutes* 22:1 et seq., adopts Emergency Rule 33 which maintains and continues in effect the provisions of Emergency Rule 28 that became effective August 12, 2016; Emergency Rule 30 that became effective October 13, 2016; and Emergency Rule 32 that became effective February 10, 2017. Emergency Rule 33 shall be effective May 11, 2017, and shall remain effective through Monday, August 14, 2017.

Emergency Rule 33 is issued pursuant to the transfer of authority to suspend provisions of regulatory statutes and implementing regulations from the Governor to the Commissioner of Insurance in Executive Order No. JBE 2016-58, signed by Governor John Bel Edwards on August 17, 2016, amended on September 12, 2016, by Executive Order No. JBE 2016-67, amended on October 11, 2016, by Executive Order No. JBE 2016-71, amended on February 6, 2017, by Executive Order No. JBE 2017-04, and subsequently amended on May 8, 2017, by Executive Order No. JBE 2017-11. The transfer of authority in Executive Order No. JBE 2016-58 is authorized in the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721 et seq., and rules promulgated by the commissioner relative to the Louisiana Insurance Code are authorized in R.S. 22:11 and are promulgated through the aforementioned Administrative Procedure Act.

On August 12, 2016, Governor John Bel Edwards declared a state of emergency within the state of Louisiana in response to historic flooding in Louisiana. This state of emergency, declared pursuant to Proclamation No. 111 JBE 2016, extended from Friday, August 12, 2016, to Monday, September 12, 2016. Louisiana citizens have suffered damage due to this historic flooding. In some places, it could be several weeks before electricity is restored. The homes of many Louisiana citizens were destroyed, precluding habitation. The damage caused by this historic flooding has resulted in the closing of businesses and financial institutions, the temporary suspension of mail service, interruption of communication services, the temporary displacement of persons from their homes, loss of personal belongings, and temporary loss of employment. This disruption has affected the ability of these citizens to timely pay their insurance premiums, access their insurance policies, and communicate with insurance agents and their respective insurance companies for insurance-related matters. This historic flooding has created a mass disruption to the normalcy previously enjoyed by Louisianans and produced an immediate threat to the public health, safety, and welfare of Louisiana citizens.

Insurers have been working diligently to adjust and pay claims. However, due to a shortage of building materials, contractors, and construction workers, many policyholders

who have received, or will soon receive, claim payments from insurers will find that they are unable to repair or reconstruct their residential, commercial residential, or commercial property within normal time frames. In many places, it could be months before residential, commercial residential, or commercial property damaged by the historic flood can be repaired or reconstructed. This inordinate time period to repair or reconstruct residential, commercial residential, or commercial property continues to affect the ability of Louisiana insureds to maintain or obtain personal residential, commercial residential, or commercial property insurance. For these reasons, Executive Order No. JBE 2016-58, amended by Executive Order No. JBE 2016-67 signed by Governor John Bel Edwards on September 12, 2016; amended by Executive Order No. JBE 2016-71, signed on October 11, 2016; amended by Executive Order No. JBE 2017-04, signed on February 6, 2017; and subsequently amended by Executive Order No. JBE 2017-11, signed on May 8, 2017, remains in effect through Monday, August 14, 2017.

The commissioner will be hindered in the proper performance of his duties and responsibilities under the Louisiana Insurance Code, as well as his duties and responsibilities regarding the referenced state of emergency, without the authority to suspend certain statutes in the Louisiana Insurance Code and the rules and regulations that implement the Louisiana Insurance Code and without the adoption of Emergency Rule 33, which relates to the cancellation and nonrenewal of all personal residential, commercial residential, or commercial property insurance subject to the Louisiana Insurance Code.

Therefore, Emergency Rule 33 is issued and shall apply to all insurers, property and casualty insurers, surplus lines insurers, and any and all other entities doing business in Louisiana and/or regulated by the Commissioner, regarding any and all types of homeowners insurance and/or residential property insurance, commercial insurance, fire and extended coverage insurance, credit property and casualty insurance, property and casualty insurance, all surplus lines insurance, and any and all other insurance regulated entities doing business in Louisiana and/or regulated by the commissioner.

Emergency Rule 33 is applicable to insureds who, as of 12:01 a.m. on August 12, 2016, had a personal residential, commercial residential, or commercial property insurance policy covering a dwelling, residential property, or commercial property located in one of the following parishes: Acadia, Ascension, Assumption, Avoyelles, Cameron, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson Davis, Lafayette, Livingston, Pointe Coupee, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Tammany, Tangipahoa, Vermilion, Washington, West Baton Rouge, and West Feliciana, and any such parishes that may receive a major disaster declaration by the President of the United States or such officer acting under his authority.

Emergency Rule 33 is available on the Internet at www.lidi.state.la.us and is available for inspection between the hours of 8 a.m. until 4:30 p.m. at the Louisiana Department of Insurance, 1702 N. Third Street, Baton Rouge, LA 70802.

Title 37
INSURANCE
Part XI. Rules

Chapter 51. Emergency Rule 33—Suspension of Right to Cancel or Nonrenew Residential, Commercial Residential, or Commercial Property Insurance Due To Historic Flooding

§5101. Benefits, Entitlements, and Protections

A. The benefits, entitlements, and protections of Emergency Rule 33 shall be applicable to insureds who, as of 12:01 a.m. on August 12, 2016, had a personal residential, commercial residential, or commercial property insurance policy covering a dwelling, residential property, or commercial property located in one of the following parishes: Acadia, Ascension, Assumption, Avoyelles, Cameron, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson Davis, Lafayette, Livingston, Pointe Coupee, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Tammany, Tangipahoa, Vermilion, Washington, West Baton Rouge, and West Feliciana, and any such parishes that may receive a major disaster declaration by the President of the United States or such officer acting under his authority.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. JBE 2016-58, Executive Order No. JBE 2016-67, Executive Order No. JBE 2016-71, Executive Order No. JBE 2017-04, and Executive Order No. JBE 2017-11.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 43:

§5103. Applicability

A. Emergency Rule 33 shall apply to any and all types of personal residential, commercial residential, or commercial property insurance covering a dwelling, residential property, or commercial property located in one of the parishes set forth in Section 5101.A that sustained damage as a result of the August 2016 historic flood or its aftermath, including but not limited to, any and all types of homeowners insurance and/or residential property insurance, commercial insurance, fire and extended coverage insurance, credit property and casualty insurance, property and casualty insurance, and any and all other insurance regulated by the Commissioner that falls within the intent and purpose of Emergency Rule 33.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. JBE 2016-58, Executive Order No. JBE 2016-67, Executive Order No. JBE 2016-71, Executive Order No. JBE 2017-04, and Executive Order No. JBE 2017-11.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 43:

§5105. Cancellation or Nonrenewal Suspended

A. Any statutory or regulatory provision, or any policy provisions contained in any and all policies of insurance set forth in Section 5103.A above, that authorizes any insurer, surplus lines insurer, or any other entity regulated by the Commissioner to cancel or nonrenew, on the grounds of a material change in the risk being insured, any personal residential, commercial residential, or commercial property insurance policy covering a dwelling, residential property, or commercial property located in Louisiana that sustained damages as a result of the August 2016 historic flood or its aftermath, is suspended and unenforceable, and such cancellations or nonrenewals shall be prohibited through Monday, August 14, 2017, unless extended by the Commissioner. Any such notice of cancellation or nonrenewal issued on or after August 12, 2016, through

August 14, 2017, shall be null and void and have no force or effect. Furthermore, any such notice shall be reissued *de novo* to the insured in accordance with existing statutory requirements, and any such notice shall not be issued prior to August 15, 2017.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. JBE 2016-58, Executive Order No. JBE 2016-67, Executive Order No. JBE 2016-71, Executive Order No. JBE 2017-04, and Executive Order No. JBE 2017-11.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 43:

§5107. Insured's Obligation

A. The insured is obligated to exercise good faith with regard to undertaking the repairs or reconstruction of the dwelling or residential property.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. JBE 2016-58, Executive Order No. JBE 2016-67, Executive Order No. JBE 2016-71, Executive Order No. JBE 2017-04, and Executive Order No. JBE 2017-11.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 43:

§5109. Insurer's Obligation

A. The insurer or surplus lines insurer or any other entity regulated by the commissioner is obligated to provide the insured with sufficient time to effectuate the repairs or reconstruction to the dwelling or residential property and to recognize the inordinate conditions that exist in the state of Louisiana with regard to the ability of the insured to engage a contractor, engage construction workers, obtain materials, and otherwise undertake to accomplish the necessary repairs or reconstruction of the dwelling, residential property, or commercial property.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. JBE 2016-58, Executive Order No. JBE 2016-67, Executive Order No. JBE 2016-71, Executive Order No. JBE 2017-04, and Executive Order No. JBE 2017-11.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 43:

§5111. Exemption from Compliance

A. Notwithstanding any other provision contained herein, the commissioner may exempt any insurer from compliance with Emergency Rule 33 upon the written request by the insurer if the commissioner determines that compliance with Emergency Rule 33 may be reasonably expected to result in said insurer being subject to undue hardship, impairment, or insolvency.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. JBE 2016-58, Executive Order No. JBE 2016-67, Executive Order No. JBE 2016-71, Executive Order No. JBE 2017-04, and Executive Order No. JBE 2017-11.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 43:

§5113. Purpose and Intent

A. The provisions of Emergency Rule 33 shall be liberally construed to effectuate the intent and purposes expressed herein and to afford maximum consumer protection for the insureds of Louisiana who desire to maintain or obtain personal residential, commercial residential, or commercial property.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. JBE 2016-58, Executive Order No. JBE 2016-67, Executive Order No. JBE 2016-71, Executive Order No. JBE 2017-04, and Executive Order No. JBE 2017-11.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 43:

§5115. Authority

A. The commissioner reserves the right to amend, modify, alter, or rescind all or any portion of Emergency Rule 33. Additionally, the commissioner reserves the right to extend Emergency Rule 33.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. JBE 2016-58, Executive Order No. JBE 2016-67, Executive Order No. JBE 2016-71, Executive Order No. JBE 2017-04, and Executive Order No. JBE 2017-11.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 43:

§5117. Severability

A. If any Section or provision of Emergency Rule 33 is held invalid, such invalidity or determination shall not affect other sections or provisions or the application of Emergency Rule 33 to any persons or circumstances to which provisions can be given effect without the invalid Sections or provisions, and the application to any such person or circumstance shall be severable.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. JBE 2016-58, Executive Order No. JBE 2016-67, Executive Order No. JBE 2016-71, Executive Order No. JBE 2017-04, and Executive Order No. JBE 2017-11.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 43:

§5119. Effective Date

Emergency Rule 33 shall be effective upon adoption and shall remain effective through Monday, August 14, 2017.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. JBE 2016-58, Executive Order No. JBE 2016-67, Executive Order No. JBE 2016-71, Executive Order No. JBE 2017-04, and Executive Order No. JBE 2017-11.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 43:

James J. Donelon
Commissioner