

**NEW YORK STATE
INSURANCE DEPARTMENT**

**PROPOSED
SECOND AMENDMENT TO REGULATION 159
(11 NYCRR 74)**

**[HOMEOWNERS INSURANCE] WINDSTORM AND HURRICANE DEDUCTIBLE
REQUIREMENTS AND DISCLOSURE INFORMATION AND OTHER NOTICES**

I, James J. Wrynn, Superintendent of Insurance of the State of New York, pursuant to the authority granted by Sections 201, 301, 3425, 3445, 5403 and Articles 23 and 34 of the Insurance Law, do hereby promulgate the following Second Amendment to Part 74 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation 159) to take effect upon 90 days after publication in the State Register, to read as follows:

(Matter in bracket is deleted; new matter is underlined)

Section 74.0(a) is amended to read as follows:

(a)(1) Chapter 44 of the Laws of 1998 enacted a new section 3445 of the Insurance Law, requiring the superintendent to establish by regulation disclosure requirements with respect to the operation of any deductible in a homeowners insurance policy or dwelling fire personal lines policy that applies as the result of a windstorm. Further, section 3445 requires such regulation to prescribe the form of a notice to be provided by an insurer to an insured and provides that the notice shall explain in clear and plain language the amount of the deductible, the circumstances under which the deductible applies and any other matters [which] that the superintendent, in his or her discretion, shall deem necessary or appropriate.

(2) Some insurers apply a windstorm deductible to a homeowners' or dwelling fire personal lines insurance policy for any damage caused by wind. Insurers also apply hurricane deductibles to these policies, which currently vary considerably among insurers. As a result, consumers may have difficulty determining the scope and applicability of the coverage purchased, and evaluating the relative merits of various policies offered by different insurers. Further, there is significantly less catastrophic exposure for insurers for losses resulting from non-hurricane winds as compared with hurricane winds. Insurers offer minimal or de minimus premium credit for such non-hurricane wind deductibles relative to the significant additional exposure borne by the policyholder. Accordingly, the use of such a deductible is not warranted and this Part prohibits an insurer from applying a non-hurricane wind deductible to homeowners' and dwelling fire personal lines insurance policies.

(3) This Part sets standards for the uniform use of hurricane deductibles and the uniform display of [windstorm] hurricane deductibles [, which consist of hurricane and non-hurricane deductibles,] in the policy declarations [; and]. This Part also provides the minimum provisions to be contained in the policyholder disclosure notice, which will explain the purpose and

operation of the hurricane deductible, and must accompany new and renewal policies containing such [deductibles] a deductible.

Sections 74.1, 74.2 and 74.3 are renumbered as new Sections 74.4, 74.5 and 74.6, respectively.

New Section 74.1 is added to read as follows:

Section 74.1 Definitions.

For the purposes of this Part:

(a) *Dwelling fire personal lines insurance* means a contract of insurance insuring against the contingencies described in subparagraphs (A) and (B) or (B), but not subparagraph (C), of Insurance Law section 3425(a)(2) and which is a "covered policy" of personal lines insurance as defined in such section; provided, however, that the coverages provided under such subparagraph (B) shall not apply where the natural person does not have an insurable interest in the real property, or a portion thereof, or the residential unit in which the person resides;

(b) *Homeowners' insurance* has the meaning set forth in Insurance Law section 2351;

(c) *Hurricane deductible* means the amount of loss that a policyholder shall be responsible for before the insurer will pay, up to the limits of a policy, in the event of a covered loss resulting from a hurricane;

(d) *Windstorm deductible* means the amount of loss that a policyholder shall be responsible for before the insurer will pay, up to the limits of a policy, in the event of a covered loss resulting from wind, including a tornado, cyclone, or high winds; and

(e) *NWS* means the National Weather Service.

New Section 74.2 is added to read as follows:

Section 74.2 Windstorm deductibles.

No dwelling fire personal lines insurance policy or homeowners' insurance policy issued or delivered in this State covering property located in this State shall contain a windstorm deductible, except as part of a deductible that applies in the same manner as it applies to all other perils insured against under the policy.

New Section 74.3 is added to read as follows:

Section 74.3 Minimum standards for the use of hurricane deductibles in a dwelling fire personal lines insurance policy or homeowners' insurance policy.

(a) A dwelling fire personal lines insurance policy or a homeowners' insurance policy issued or delivered in this State covering property located in this State may include a hurricane deductible

only where the insurer has demonstrated to the superintendent that there is sufficient exposure to a hurricane risk to warrant the application of a hurricane deductible.

(b) Every homeowners' insurance policy and dwelling fire personal lines insurance policy containing a hurricane deductible shall display the applicable percentage amount and corresponding dollar amount of the hurricane deductible in the policy declarations. Any other deductible applicable to all other covered perils may be shown as a dollar amount only.

(c) If a homeowners' insurance policy or dwelling fire personal lines insurance policy contains a hurricane deductible, then the hurricane deductible must comply with the following minimum standards:

(1) A hurricane deductible shall be triggered only when the NWS determines that the hurricane was a category one or greater hurricane and had made landfall in this State;

(2) A hurricane deductible shall apply only to losses resulting from direct damage caused by winds within the period beginning 12 hours before a specific hurricane makes landfall in this State and ending 12 hours after the NWS cancels the last hurricane watch or hurricane warning it issued for this State, with respect to the specific hurricane;

(3) A hurricane deductible may vary by the risk's proximity to the shoreline, provided, however, that the hurricane deductible shall not exceed five percent of the stated insured amount for the dwelling as stated in the declarations page;

(4) An insurer shall aggregate all covered losses caused by the hurricane when determining whether the hurricane deductible has been reached;

(5) A hurricane deductible shall not apply to loss-of-use coverage (also referred to as "additional living expense" or "loss of rental income" insurance coverage); and

(6) If there are multiple deductibles to which a homeowners' insurance policy or dwelling fire personal lines insurance policy is subject, then the insurer shall apply only one deductible, which may be the higher deductible.

(d) Nothing herein shall be construed as requiring a homeowners' insurance policy or dwelling fire personal lines insurance policy to contain a hurricane deductible, nor shall an insurer be prohibited from providing a hurricane deductible that is triggered by a category two or higher storm.

Section 74.1 is renumbered to be section 74.4 and subdivisions (a) and (b) are amended to read as follows:

Section 74.4 Policyholder disclosure.

(a) [Every homeowner's and dwelling fire personal lines policy containing a hurricane deductible shall display the applicable percentage amount and corresponding dollar amount of the hurricane

deductible in the policy declarations. The non-hurricane deductible, as well as any deductible applicable to all other covered perils, may be shown as a dollar amount only. The hurricane deductible provisions shall be shown in close proximity to the non-hurricane deductible provisions and shall be given equal or greater prominence as the non-hurricane deductible provisions applicable to the policy.

(b)] Every homeowner's insurance and dwelling fire personal lines insurance policy containing a hurricane deductible shall be accompanied by a policyholder notice at policy issuance and renewal, to be filed with the [Insurance Department] superintendent, and which shall contain the following minimum information:

- (1) a prominent announcement that the accompanying policy is subject to a hurricane deductible;
- (2) a clear explanation that a *hurricane deductible* means the amount of loss for which [the] a policyholder [is] shall be responsible for before the insurer will pay, up to the limits of the policy, in the event of a covered loss [caused by] resulting from a hurricane;
- (3) a plain-language explanation of the coverage part or parts subject to the hurricane deductible and [of whether the hurricane deductible applies separately to each coverage part or] a statement that the hurricane deductible applies in the aggregate to total losses under all affected coverage parts;
- (4) a statement that a clear display of the actual dollar amount as well as a description of the hurricane deductible as a percentage of the insured value can be found on the declarations page;
- (5) generic examples of how sample deductible amounts would apply to some theoretical loss scenarios, including losses smaller than and greater than the deductible amount;
- (6) a clear explanation of the event [which] that shall trigger the hurricane deductible[.];
- (7) a clear explanation of the time period during which the hurricane deductible will be triggered; and
- (8) a clear explanation that, if a coverage part limit of liability or policy limit of liability is changed (for example, due to contractual inflation protection provisions, adjustments reflecting changes in replacement cost or a request by the insured), then the dollar amount of the deductible will be changed based on the amount of the new limit of liability.

[(c) This policyholder notice shall accompany all new homeowner's and dwelling fire personal lines policies subject to a hurricane deductible and first written to become effective on or after January 1, 1999; and all renewal homeowners and dwelling fire policies subject to a hurricane deductible renewed effective on or after January 1, 1999.

(d) This policyholder notice shall accompany all renewals of affected homeowner's and dwelling fire personal lines policies annually thereafter.

(e)] (b) At its option, an insurer may combine the flood insurance notice required by section 3444 of the Insurance Law with the policyholder notice required by this section.

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