Assessment of Public Comments for the Third Amendment to 11 NYCRR 74 (Insurance Regulation 159)

The Department of Financial Services ("DFS") received comments on the proposed third amendment to 11 NYCRR 74 (Insurance Regulation 159) from a trade association representing insurance agents and brokers ("producer trade") and a trade association representing insurers in New York ("insurer trade"). The producer trade's letter was supportive and stated that it believes the proposal strikes a balance between establishing a more uniform hurricane deductible trigger and allowing consumers the choice to secure a policy that suits their risk tolerance. The insurer trade submitted the following comments:

Comment: Section 74.0(a)(3) states that "[a]s 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." The insurer trade commented that this language is separate from the requirements contained in the statute, and that there is also a question about the meaning of the term "relative merits" as it is not defined in the context of homeowners or dwelling fire personal lines insurance. The insurer trade recommended omitting this language.

Response: The justification section of the memorandum in support of Chapter 460 of the Laws of 2024 states in relevant part that "[u]niform standards for and notice explaining the operation of catastrophic wind-storm deductibles are necessary to promote easier comparison between different insurers' options, and to ensure clear understanding of the extent of policyholder exposure under these options." DFS disagrees that the language set forth in section 74.0(a)(3), which sets forth an introduction to the regulation, is somehow separate from the requirements contained in the statute. The purpose of Chapter 460 is to ensure that consumers understand the coverage they purchased and are able to make comparisons among the policies offered by different insurers. As for the meaning of "relative merits", that phrase has a common meaning, and the fact that it is not defined somewhere in the context of homeowners or dwelling fire personal lines insurance is irrelevant for an introductory section to the regulation. Therefore, DFS did not make any changes in response to this comment.

Comment: The insurer trade commented that section 74.4(a) states that "insureds" may apply a hurricane deductible if "there is sufficient exposure to a hurricane risk to warrant the application of a hurricane deductible", and that the new hurricane deductible could potentially be applied statewide if there is demonstration of "sufficient exposure" to a hurricane risk. The insurer trade stated that while it encourages DFS to allow carriers to apply triggers to policies in any county deemed to have "sufficient exposure" in the State, the insurer trade requested that triggers not be required of carriers.

Response: Section 74.4(a) states that "[a] policy issued or delivered in this State covering property located in this State ***may*** include a hurricane deductible ***if the insurer*** demonstrates to the superintendent that there is sufficient exposure to a hurricane risk to warrant the application of a hurricane deductible." (Emphasis added.) Thus, this section permits an insurer to apply a hurricane deductible in a policy if the insurer demonstrates there is a sufficient exposure to a hurricane risk. DFS assumes that the reference to an "insured" in the comment is a typographical error and that the insurer trade meant an "insurer." However, nothing in Section 74.4(a) requires an insurer to apply a hurricane deductible statewide. Therefore, DFS did not make any changes in response to this comment.

Comment: The insurer trade commented that section 74.4(b)(1) indicates that a deductible is triggered when a hurricane makes landfall "in this State." However, the insurer trade stated, a hurricane that makes landfall in a neighboring state can still have detrimental impacts in New York. Additionally, New York is a large state and landfall in one area may not affect an area that is hundreds of miles away. It is therefore more appropriate for a deductible to be triggered by a hurricane watch or warning issued, instead of a specific landfall. A watch or warning is a more focused and localized set of conditions and would be a more suitable trigger for a hurricane deductible to apply to a policy.

Response: DFS drafted the proposed regulation this way because the majority of insurers use landfall in New York State as a trigger for a hurricane deductible. Using a trigger that the majority of insurers currently use

is less disruptive to the insurance industry than the suggested alternative and ensures uniformity. Therefore, DFS did not make any changes in response to this comment.

Comment: The insurer trade commented that the time frame in which the deductible applies as required by section 74.4(b)(2) does not fully encapsulate the length of time in which a hurricane can cause potential losses. For more severe or slow-moving hurricanes, damage can occur well before and after those 12-hour periods. Consequently, a 24-hour timeframe before and after a hurricane is more aligned with the nature of windstorms and is already used in other states, such as Connecticut. While some insurers use the 12-hour time frame, many still apply a 24-hour period.

Response: As DFS stated in the alternatives section of the regulatory impact statement, DFS considered requiring the hurricane deductible to apply 24 hours before a hurricane makes landfall and 24 hours after the last hurricane watch or warning is cancelled, rather than 12 hours before and after. However, the Department selected the 12-hour time period rather than the 24-hour time period because the 12-hour time period is more beneficial to consumers, and most insurers use the 12-hour time period. Therefore, DFS did not make any changes in response to this comment.