

June 5, 2008

Elizabeth Kelleher Dwyer, Esq.  
Hearing Officer  
Rhode Island Department of Business Regulation  
233 Richmond Street  
Providence, RI 02903

Re: Comments regarding Regulation 110 and Regulation 97.

Dear Hearing Officer Dwyer:

I am pleased to offer the views of the National Association of Mutual Insurance Companies (NAMIC) regarding proposed **Insurance Regulation 110 – Residential Property Insurance – Hurricanes** and proposed amendments to **Insurance Regulation 97 – Notice of Material Changes Upon Renewal of Personal Motor Vehicle, Homeowner and Residential Fire Insurance** to implement R.I. Gen. Laws § 27-5-3.7.

The implementation of R.I. Gen. Laws § 27-5-3.7 through the Department's regulations is of great concern to NAMIC members providing residential property insurance coverage to Rhode Island residents. Effective management of exposure to catastrophic risk is in the interest of insurers' policyholders and the public. Where the statute establishes certain limitations and requirements that affect insurers' ability to manage their exposure to catastrophic risk, NAMIC believes it is imperative that the implementing regulations do not exceed the scope of the statute or have the effect of imposing further limitations.

With these thoughts in mind, I offer the following specific comments:

Section 4 F of Regulation 110

Section 4 F. of Regulation 110 exceeds the scope of and potentially conflicts with the statute and gives rise to uncertainty where it states, "Hurricane deductibles shall only apply if the storm is classified as a hurricane by the National Hurricane Center *at the time it makes landfall within the State of Rhode Island*" (emphasis added).

The statute, which is quite specific regarding the applicable period, contains no such requirement regarding landfall. At § 27-5-3.7 (c) (ii), it states "The deductible shall be applicable to losses due to a hurricane during the period commencing with the issuance of a hurricane warning bulletin for any part of the state by the National Hurricane Center and concluding twenty-four (24) hours after the termination of the last hurricane warning bulletin for any part of the state."

The departure of Section 4 F. from the specific language of the statute is material because a hurricane could result in the issuance of a hurricane warning bulletin for a part of the state and thus be within the statute's stated period of applicability but no longer be classified as a hurricane at the time it makes landfall. Furthermore, a hurricane could result in a hurricane bulletin for a part of the state and thus trigger the statute's stated period of applicability yet not ever make landfall due to its track. In both of these cases, the language of the regulation exceeds and even conflicts with the language of the statute.

Additionally, it should be noted that classifications are not infrequently altered and adjusted subsequent to an event. Where the statute by using a period defined by issuance of warning bulletins provides clear and determinable boundaries for the period of applicability, the language of the regulation could give rise to uncertainty and potential complications in the claims process if a storm is reclassified.

NAMIC believes that the language exceeding and conflicting with that of the statute could materially affect an insurer's ability to manage its exposure to catastrophic loss and should be removed from the regulation.

#### Section 6 A of Regulation 110

Section 6 A of Regulation 110 exceeds the scope of the statute where it prohibits insurers from requiring any mitigation measures for properties within Rhode Island Building Code Zone 1.

The statute, at § 27-5-3.7 (e), states that "An insurer may require mitigation measures to protect against windstorm damage only after specific approval *of the substance* of such mitigation measures by the director" (emphasis added). While the statute authorizes the Department to approve the kind of mitigation measures insurers may require, it does not contemplate any kind of limitation as to the location where and insurer may require approved mitigation measures.

Where this limitation exceeds the scope of the statute and would impair an insurer's ability to utilize its judgment in managing its exposure to catastrophic risk, NAMIC believes it should be removed from the statute.

#### Section 7 A of Regulation 110

Section 7 A of Regulation 110 appropriately conditions the waiver of a hurricane deductible upon "inspection by the insurer and/or submission of satisfactory proof of installation." However, it gives rise to uncertainty where it refers to "any other mitigation measure which meets or exceeds Rhode Island Building Code standards."

The statute, at § 27-5-3.7 (c) (iv) calls for waiver of deductible only for *approved* mitigation measures, and both the statute and the internal structure of the regulation contemplate that approved measures are

those in Section 6 of the regulation. But the quoted language of Section 7 A suggests that waiver could be required for mitigation measures not so approved.

Where this departure from the statutory scheme could affect an insurer's ability to manage its exposure to catastrophic risk, NAMIC believes the reference to "any other mitigation measure which meets or exceeds Rhode Island Building Code standards" should be removed from the regulation.

#### Section 5 of Regulation 97

The proposed amendment to Section 5 Failure to Comply of Regulation 97 states in part, "If the amended language is more favorable to the insured it shall control, *however, failure to provide notice will constitute a regulatory violation*" (emphasis added).

This amendment would apparently expose insurers to penalties including fines for failure to provide notice of changes that can fit within the regulation's broad definition of "Material Change," illogically including changes that broaden coverage or are otherwise beneficial for an insured. As such, the amendment would greatly expand the scope of the regulation and likewise exceed the stated intent of the amendments, to "clarify the intent of the regulation as to notice requirements; clarify that transfer between insurers within a group triggers the notice requirements and coordinate the regulation with R.I. Gen. Laws § 27-5-3.7 and Insurance Regulation 110."

Where the italicized language would have the effect of greatly expanding insurers' exposure to penalties and fines, NAMIC believes that it should be removed from the regulation.

Thank you for the opportunity to present NAMIC's views on these important matters.

Respectfully submitted,

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State Affairs Manager, Northeast Region