

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulations  
Maryland Insurance Administration  
(DLS Control No. 16-191)**

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**Overview and Legal and Fiscal Impact**

The regulations update existing provisions regarding percentage deductibles used for residential property damaged by hurricanes.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

**Regulations of COMAR Affected**

**Maryland Insurance Administration:**

Property and Casualty Insurance: Application of a Percentage Deductible in the Case of a Hurricane or Other Storm: COMAR 31.08.13.03, .04, and .06

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**Legal Analysis**

**Summary of Regulations**

The regulations make several changes to existing provisions on the use of percentage deductibles for hurricanes or other storms in response to statutory changes made by Chapter 491 of 2016. In particular, Regulation .04 provides for the application of a percentage deductible when a hurricane warning has been issued anywhere in the State, not only the part of the State where the insured residential property is located.

The regulations repeal existing Regulation .06, which provided the required text for an annual disclosure to policyholders, because Chapter 491 enacted statutory text that governs the disclosure. Finally, the change to existing Regulation .03 removes the definition of “other storm” because the term is no longer used in the statute.

**Legal Issues**

The regulations present no legal issues of concern.

## **Statutory Authority and Legislative Intent**

The Maryland Insurance Administration cites §§ 2-109 and 19-209 of the Insurance Article as statutory authority for the regulations. Section 2-109 is the administration's general authority to adopt regulations, and § 19-209 is the original provision governing percentage deductibles.

While correct, the cited authority is incomplete. Chapter 491 also enacted § 19-209.1 of the Insurance Article, which includes model language for the mandatory annual disclosure to policyholders. This provision should also be cited as authority for the regulations.

## **Technical Corrections and Special Notes**

The administration has been advised to add § 19-209.1 of the Insurance Article to the statutory authority line, and has agreed to do so. Similarly, the phrase "or [o]ther [s]torm" in the title of COMAR Chapter 31.08.13 is obsolete, and will be repealed.

It is a matter of concern that the repeal of existing Regulation .06, without replacing it with any other disclosure language or explicit reference to the new statute, leaves the COMAR reader with no guidance as to what to look for in a percentage deductible disclosure. Although the newly enacted disclosure statute, § 19-209.1 of the Insurance Article, does include language directing the contents of an annual disclosure to the policyholder, it is unusual that these regulations repeal the disclosure language from COMAR instead of updating the COMAR language to reflect the statute's requirements. More commonly, COMAR provisions repeat or substantially restate the requirements contained in statute, particularly where the statute allows some leeway, as this provision does.

The administration responded to this concern by electronic mail, stating substantially that the statute is precise enough that no duplication of the text in regulation is required.

## **Fiscal Analysis**

There is no fiscal impact on State or local agencies.

### **Agency Estimate of Projected Fiscal Impact**

The regulations implement Chapter 491 of 2016 (House Bill 557), which expressly authorizes homeowner's insurers in the State to issue a policy that includes a percentage-based deductible and makes related changes concerning deductibles during hurricanes. The administration advises that the regulations have no impact on State or local governments. The Department of Legislative Services concurs and notes that any fiscal impact is accounted for in the fiscal and policy note for that bill.

### **Impact on Budget**

There is no impact on the State operating or capital budget.

## **Agency Estimate of Projected Small Business Impact**

The administration advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

### **Contact Information**

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