

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

**COMMERCIAL AUTO LIABILITY AND PHYSICAL DAMAGE COVERAGES FORM FILING
COMPLIANCE QUESTIONNAIRE**

PAGE 1 OF 4

COMPANY	Co. File No.
Company Contact:	Phone Number:
E-Mail Address:	

Instructions: All applicable items must be answered. Responses in the shaded area indicate non-compliance with Articles No. 34, 51 and Regulations 35-A (11 NYCRR 60-1), 35-D (11 NYCRR 60-2), 64(11 NYCRR 216), 68(11 NYCRR 65) and 79(11 NYCRR 67). Form, page and paragraph references that bring the submission into compliance must be included. Failure to complete all items, or responses in the shaded area, will result in this filing being returned without further review.

I. OVERVIEW

All forms must comply with §3420, §3426, §3102, Article 51, Regulations 35-A, 35-D, 68 & Vehicle and Traffic Law. Specifically regarding physical damage coverages, NYIL §2610 and Regulations 64 and 79 apply.

a. Mandatory Liability Provisions

- | | | | |
|--|------------------------------|------------------------------|-----------------------------|
| 1. Is the policy written on a “pay on behalf of” basis, rather than on an indemnification basis? | YES <input type="checkbox"/> | NO <input type="checkbox"/> | |
| 2. Is there a “bankruptcy/insolvency” provision? [NYIL §3420(a)(1)] | YES <input type="checkbox"/> | NO <input type="checkbox"/> | |
| 3. Does the policy contain a proper judgment clause? [NYIL §3420(a)(2)] | YES <input type="checkbox"/> | NO <input type="checkbox"/> | |
| 4. Does the policy contain a provision permitting notice of claim to be given to company’s agent? [NYIL §3420(a)(3)] | YES <input type="checkbox"/> | NO <input type="checkbox"/> | |
| 5. Is there a provision that failure to give timely notice shall not invalidate any claim if such notice is given as soon as reasonably possible? [NYIL §3420(a)(4)] | YES <input type="checkbox"/> | NO <input type="checkbox"/> | |
| 6. Is there a provision that failure to give timely notice shall not invalidate any claim, unless such failure has prejudiced the insurer? [NYIL §3420(a)(5)] | YES <input type="checkbox"/> | NO <input type="checkbox"/> | |
| 7. Is there a provision that, with respect to all liability claims (except property damage), if the insurer disclaims liability or denies coverage based upon the failure to provide timely notice, the injured person or other claimant may maintain an action directly against the insurer, provided the disclaimer or denial is based on such failure? [NYIL §3420(a)(6)] | YES <input type="checkbox"/> | NO <input type="checkbox"/> | |
| 8. Are there any exclusions other than those permitted? [Reg. 35-A §60-1.2 and 60-1.1(c)(3)] | | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 9. Does definition of “insured” comply with Reg. 35-A §60-1.1(c)? | YES <input type="checkbox"/> | NO <input type="checkbox"/> | |
| 10. Is there a provision insuring named insured for injury or damage caused by operation of the vehicle by any person with the permission of the named insured? [NYIL §3420(e)] | YES <input type="checkbox"/> | NO <input type="checkbox"/> | |
| 11. Minimum limits of coverage must be provided (BI-25/50 ; PD-10 ; Death-50/100) [Reg. 35-A §60-1.1(a)] | YES <input type="checkbox"/> | NO <input type="checkbox"/> | |
| 12. Mandatory Provisions for Supplementary Payments in addition to limits of coverage must be included. [Reg. 35-A §60.1.1(b)] | YES <input type="checkbox"/> | NO <input type="checkbox"/> | |
| 13. Is there a notice provision regarding newly acquired autos? [Reg. 35-A §60-1.3(i)] | YES <input type="checkbox"/> | NO <input type="checkbox"/> | |
| 14. Is there a provision for coverage required out-of-state and in Canada? [Reg. 35-A §60-1.1(e) & NYIL §5103(e)] | YES <input type="checkbox"/> | NO <input type="checkbox"/> | |
| 15. Must have required exclusionary provision regarding acts caused intentionally by or at the direction of the insured. [Reg. 35-A §60-1.1(f)] | YES <input type="checkbox"/> | NO <input type="checkbox"/> | |

NOTE: All citations in Brackets are to the applicable sections of Articles No. 34, 51 of the Insurance Law and Regulations 35-A, 35-D, 64, 68, and 79.

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SUB-TYPE OF INSURANCE

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a. Mandatory Liability Provisions (continued)

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|---|------------------------------|-----------------------------|
| 16. Does the "Other Insurance" provision comply with Reg. 35-A §60-1.1(g)? Also note that any "two or more auto policies provision" may not apply to liability coverages (see NY Court of Appeals Ruling – Carlino et al v. Lumbermans Mutual Casualty Co. et al 74 N.Y. 2d 350 547 N.Y.S. 2d 616 (1989)) | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 17.a. The cancellation/nonrenewal provisions must be in compliance with NYIL §3426 (see separate checklist). | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 17.b If insured is an individual and Private Passenger type auto(s) is/are predominantly used for non-business purposes, the cancellation/non-renewal provision must be in compliance with NYIL §3425 (see separate checklist) and Reg. 35-A §60-1.1(h); also must comply with time limitations in §313 of Vehicle and Traffic Law. | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 18. Does policy include statement that "Defense must be provided even if claim is groundless"? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |

b. Other Liability Provisions

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|---|------------------------------|-----------------------------|
| 1. Any other provisions outside those optional provisions allowable? [Reg. 35-A §60-1.3] | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 2. If the policy contains a provision excluding injuries to, or damage to property of, a spouse, such provision may not exclude any other party. [NYIL §3420 (g)] | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 3. Does the policy (1) include coverage for spousal BI liability, or (2) have an optional endorsement which provides supplemental spousal liability coverage?
NOTE: This is not applicable to policies covering vehicles transporting passengers for hire (Article 8 / §370 of the V&T Law). [NYIL §3420 (g)(1) & (2); Reg. 35-A §60-1.6] | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 4. Full limits purchased must be available to <u>all</u> insureds; separate limits cannot apply to various insureds under the policy (Reg. 35-A) [except for garage customers while test-driving a vehicle; minimum limits may apply in this case]. | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 5. Is there coverage for any of the following? | | |
| (i) Punitive or exemplary damages | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| (ii) Intentional acts | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| (iii) Assault and battery, except for defense of person or property | YES <input type="checkbox"/> | NO <input type="checkbox"/> |

c. Required Endorsements

- | | | |
|---|------------------------------|-----------------------------|
| 1. Are prescribed Mandatory No-Fault endorsements (Mandatory Personal Injury Protection, Optional Basic Economic Loss, Additional PIP,) filed? [NYIL Article 51; Reg. 68] | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 2. If coverage is for motorcycles, is Mandatory PIP – Motorcycles endorsement filed? [NYIL Article 51; Reg. 68] | YES <input type="checkbox"/> | NO <input type="checkbox"/> |

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c. Required Endorsements (continued)

3. Are prescribed Uninsured Motorists and SUM endorsements filed? [NYIL §3420(f) & Reg. 35-D §60-2.3]; see also Circular Letter No. 15 (1995) & Amendments 1 and 2 (issued in 1996). YES NO

4. If any policies will be written covering less than 5 private passenger-type vehicles, prescribed Rental Vehicle Coverage endorsement must be filed. [Reg. 35-A §60-1.5] YES NO

d. Mandatory Physical Damage Provisions

1. Does the limit of liability provision comply with Reg. 64 §216.7, i.e. lesser of ACV, or amount to repair or replace property? YES NO

2. Does policy comply with requirements of NYIL §2610(a) and Department Circular Letter No. 14 (2003)? YES NO

3. Insurer may not condition payment upon repair of vehicle, pursuant to Reg. 64. §216.7 (b)(17) YES NO

e. Mandatory Physical Damage Provisions for Private Passenger-type vehicles

1. Are the provisions required by Reg. 79 §67.9(c)&(d) contained in the policy? YES NO

2. Does policy contain the mandatory physical damage provisions pursuant to Reg. 64 §216.8(i) and NYIL §3412(g)? YES NO

3. Company must acknowledge its use of the notice forms per Reg. 64 §216.12. YES NO

f. Other Physical Damage Provisions

1. Are collision and Comprehensive (Other than Collision) coverages defined within the policy? YES NO

2. Do any policy provisions providing reward payment or any other expenses as the result of acts or threatened acts of violence against an insured person comply with NYIL §3450? YES NO

3. If replacement cost is provided, are potential moral hazards considered in development of the coverage? YES NO

4. Is coverage for transportation / loss-of-use expenses (in the event of theft) for at least 30 days provided in the policy? [Reg. 64 §216.7 (f)] YES NO

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g. Other Requirements

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|--|------------------------------|------------------------------|-----------------------------|
| 1. Is Declarations Page filed? (see Commercial Auto Declarations Page Compliance Questionnaire) | YES <input type="checkbox"/> | NO <input type="checkbox"/> | |
| 2. Does the policy contain the name of an unlicensed company? | | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 3. Does the policy contain any provisions that are misleading or violative of public policy under NYIL §2307(b)? | | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 4. Are there any blank forms? | | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 5. Are all forms numbered? | YES <input type="checkbox"/> | NO <input type="checkbox"/> | |

h. Policy Application:

Only needs to be filed for approval if part of the policy. YES NO

II. PURCHASING GROUPS

In addition to compliance with all form and rate requirements, Notice of Intent has been filed with Excess Lines Unit of the Property Bureau YES NO

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