

**NEW YORK STATE
INSURANCE DEPARTMENT**

**SEVENTH AMENDMENT TO REGULATION NO. 41
(11 NYCRR 27)**

EXCESS LINE PLACEMENTS GOVERNING STANDARDS

I, Gregory V. Serio, Superintendent of Insurance of the State of New York, pursuant to the authority granted by Sections 201, 301, 2101, 2104, 2105, 2110, 2116, 2117, 2118, 2121, 2122, 2130, 2344, 3103, 5907, 5909, 5911, 9102 and Chapter 587 of the Laws of 2002, do hereby promulgate the following Seventh Amendment to Regulation No. 41 (11 NYCRR 27) to take effect upon publication in the State Register, to read as follows:

(New matter is underlined; matter in brackets is deleted)

Section 27.3 (b) is amended to read as follows:

(b) Every licensee or affirming broker, in connection with the placement of each risk pursuant to this Part, shall record on the affidavit required pursuant to section [27.4] 27.5 of this Part, the information relied upon that formed the basis of such licensee's or affirming broker's reason to believe that the authorized insurer might consider writing the type of coverage or class of insurance involved.

Section 27.3 (e) (1) is amended to read as follows:

(1) Unless the licensee obtains a declination from an appropriate residual market facility, no diligent effort will be considered to have been made if the insurance is available from such residual market facility in connection with the placement of:

(i) a policy of non-commercial motor vehicle liability insurance;

(ii) medical malpractice insurance for a general hospital, as defined in [subsection (1) of section two thousand eight hundred one] section 2801(10) of the public health law, a physician or dentist; or

(iii) insurance which by law must be provided by an authorized insurer.

Section 27.5 (g) is amended to read as follows:

(g) Where the premium tax is to be allocated in accordance with section [27.8] 27.9 of this Part, the excess line broker shall also specify the bases for allocation, using a form prescribed by the superintendent that shall be attached to part A of the

affidavit and, if an alternative equitable method of allocation is utilized, additional information to substantiate such method shall be provided.

Section 27.6 is amended to read as follows:

Section 27.6 Documents to be filed with Excess Line Association.

Within 45 days after date of procurement of a policy from an unauthorized insurer, the excess line broker shall submit to the excess line association, for recording and stamping, all documents required by section 2118 of the Insurance Law, including all affidavits required by section [27.4] 27.5 of this Part.

Section 27.7 (a) (1) is amended to read as follows:

(1) monthly reports, by the 15th day of every month, including aggregate premium data, drawn from excess line brokers' affidavits and classified by type of coverage, relating to policies stamped by the excess line association during the preceding calendar month, together with affidavits, pertaining to each policy stamped, as required by section [27.4] 27.5 of this Part;

Section 27.7 (b) is amended to read as follows:

(b) The reports required by this section shall be submitted, in a format and utilizing such written or electronic media as prescribed by or satisfactory to the superintendent, to:

New York State Insurance Department
Property [and Casualty Insurance] Bureau
Attention: Excess Line Unit
25 Beaver Street
New York, NY 10004

Sections 27.13 (a) (5) and (6) are amended to read as follows:

(5) an executed copy of the trust agreement required by section [27.13] 27.14 of this Part;

(6) a certification from the unauthorized insurer that it agrees to comply with the provisions of section [27.10] 27.11 of this Part and subdivisions (h) and (j) of this section;

Section 27.13 (h) is amended to read as follows:

(h) No excess line broker shall place coverage with an unauthorized insurer, unless such insurer has filed a current listing that sets forth the following individual policy details:

(1) written premium (gross premiums, including policy fees, less return premiums plus additional premiums and premiums on policies not taken) charged on each policy covering property or risks located or resident in this State;

(2) name and address of the excess line broker and, wherever practicable, the insured;

(3) effective date of coverage and policy number;

(4) type and amount of coverage; and

(5) such other information as the superintendent may require.

The opening paragraph of Section 27.14 (j) is amended to read as follows:

(j) The trust fund shall be established pursuant to a trust agreement consistent with section [27.14] 27.15 of this Part and containing the following minimum provisions in a form satisfactory to the superintendent:

Section 27.21 (a) is amended to read as follows:

(a) For each insurance policy procured by an excess line broker pursuant to section 2118 of the Insurance Law and this Part, the excess line broker shall retain, for a period of no less than five years after policy expiration, copies of all affidavits required by section [27.4] 27.5 of this Part and a complete and separate record showing:

(1) the exact amount of each kind of insurance procured;

(2) the gross premiums for each kind of insurance;

(3) the amount of premiums returned to the insured for each kind of insurance;

(4) the name of the unauthorized insurer or insurers that issued the policy and, in the case of a placement with Lloyd's, the names and the separate participation and proportionate premium of each such underwriter;

(5) the effective date of the policy;

(6) the material terms of the policy or a complete copy of any policy required by section [27.9 (b)] 27.10 (b) of this Part;

(7) the basis for premium tax allocation, if any;

(8) a copy of the notice required in section [27.16 (e)] 27.17 (e) of this Part;

(9) the cities and villages within this State in which the insured risks are located or resident; and

(10) in the case of fire insurance coverage, the name of the city, village, fire district or fire protection district in which the insured property is located.

Section 27.23 (a) is deleted and section 27.23 (b) is amended to read as follows:

[(b)] An unauthorized insurer not meeting the trust fund requirements contained in sections 27.14 and 27.15 of this Part, but which met the trust fund requirements in effect prior to the promulgation of this amendment, may continue to meet such requirements, except for the requirements contained in section 27.15(e) of this Part, and shall comply with the new trust fund requirements of this Part no later than January 1, 2000.

I, Gregory V. Serio, Superintendent of Insurance, do hereby certify that the foregoing is the Seventh Amendment to Regulation No. 41 (11 NYCRR 27), promulgated by me on January 30, 2003 pursuant to the authority granted by Sections 201, 301, 2101, 2104, 2105, 2110, 2116, 2117, 2118, 2121, 2122, 2130, 2344, 3103, 5907, 5909, 5911, 9102 and Chapter 587 of the Laws of 2002, to take effect upon publication in the State Register.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed amendment was published in the State Register on November 27, 2002. No other publication or prior notice is required by statute.

Gregory V. Serio
Superintendent of Insurance

January 30, 2003