

Consolidated Regulatory Impact Statement for the 15th amendment to 11 NYCRR 27 (Insurance Regulation 41); 10th amendment to 11 NYCRR 60-1 (Insurance Regulation 35-A); 7th amendment to 11 NYCRR 60-2 (Insurance Regulation 35-D); new 11 NYCRR 60-3 (Insurance Regulation 35-e); 2nd amendment to 11 NYCRR 65-1 (Insurance Regulation 68-A); 7th amendment to 11 NYCRR 65-3 (Insurance Regulation 68-C); 6th amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D); 6th amendment to 11 NYCRR 169 (Insurance Regulation 100); and 17th amendment to 11 NYCRR 216 (Insurance Regulation 64).

1. Statutory authority: The Superintendent’s authority to promulgate these amendments and the new Part derives from sections 202 and 302 of the Financial Services Law (“FSL”), sections 301, 2115, 2118, 2305, 2307, 2334, 2335, 2601, 3420, 3455, 5102, 5105, and 5406 and Articles 23 and 51 of the Insurance Law (“IL”), sections 1693, 1694 and 311 of the Vehicle and Traffic Law (VTL), and Part AAA of Chapter 59 of the Laws of 2017 (Part AAA).

FSL section 202 establishes the office of the Superintendent and designates the Superintendent as the head of the Department of Financial Services (“Department”).

FSL section 302 and Insurance Law section 301 authorize the Superintendent to effectuate any power accorded to the Superintendent by the Insurance Law, the Banking Law, the Financial Services Law, or any other law of this state and to prescribe regulations interpreting the Insurance Law, among other things.

Part AAA established a new Article 44-B of the VTL (Article 44-B ), which was signed into law on April 10, 2017 and will be effective as of June 29, 2017, regarding transportation network companies and amended or added other laws to implement new Article 44-B.

IL §§ 2105 and 2118 govern excess line brokers and excess line placements.

IL Article 23 applies generally to property/casualty insurance rates and forms. Sections 2305 and 2307 apply to prior approval of certain rates and policy forms. Rates for insurance coverage afforded under VTL Article 44-B are subject to prior approval. IL §§ 2334 and 2335 govern merit rating plans for non-commercial

private passenger automobile insurance and surcharges on motor vehicle liability insurance rates with respect to certain accidents and traffic infractions.

IL § 2601 prohibits unfair claim settlement practices in this State.

IL § 3420 establishes the minimum provisions for liability policies in this state and governs uninsured and supplementary uninsured/underinsured motorist coverage.

IL § 3455 governs policies providing coverage to a transportation network company (TNC) and its drivers.

IL Article 51 governs no-fault. Sections 5102, 5105, and 5106 implement provisions regarding no-fault as they apply to use of motor vehicles through a transportation network company.

VTL § 311 establishes minimum financial responsibility requirements for motor vehicles used or operated in this State. Pursuant to § 311, the Superintendent is authorized to promulgate a regulation that establishes the minimum provisions for an owner's policy of liability insurance (11 NYCRR 60-1 (Insurance Regulation 35-A)). VTL §§ 1693 and 1694 similarly establish minimum requirements when a motor vehicle is used as a TNC vehicle and authorizes the Superintendent to promulgate regulations governing the minimum provisions for policies satisfying such requirements.

2. Legislative objectives: A TNC is a company that uses a digital network, such as an application on a phone, to connect people seeking rides with drivers who are interested in providing those rides. Although TNCs have several different models, the most typical model utilizes drivers that are not professional livery drivers and who use their own personal automobiles to provide those prearranged rides.

Part AAA now authorizes the TNC model to operate in New York outside of New York City subject to certain conditions and requirements, effective June 29, 2017. As stated in Section 1 of Part AAA, the Legislature's purpose in enacting the law was "to ensure the safety, reliability and cost-effectiveness of transportation network company (TNC) services within the state of New York and to preserve and enhance

access to these important transportation options for residents and visitors to the state.” TNCs must register with the Department of Motor Vehicles and, among other things, have financial responsibility insurance in place. A TNC vehicle is not considered to be livery and a TNC driver is not deemed to be in the business of carrying or transporting passengers under VTL Article 8, if the individual does so solely as a TNC driver. A TNC vehicle may not, however, initiate rides in New York City or any city or county that has enacted a local law or ordinance.

### 3. Needs and benefits:

Motor vehicle insurance in New York is one of the most heavily regulated kind or type of insurance and numerous laws and regulations govern these types of policies.

Since 1956, New York’s motor vehicle financial responsibility requirements have been governed by VTL Article 6 (originally Article 6-A). For livery and other for-hire vehicles, Article 8 has additional requirements. The most common method used to satisfy the financial responsibility requirements is an owner’s policy of liability insurance, which must be issued by a New York authorized insurer. Pursuant to what is now VTL § 311, the Superintendent of Insurance (now the Superintendent of Financial Services) promulgated Regulation 35 on July 25, 1956. Effective January 1, 1959, Regulation 35-A repealed and replaced Regulation 35. Regulation 35-A was codified as 11 NYCRR 60, and subsequently renumbered as 11 NYCRR 60-1. Insurance Regulation 35-A establishes the minimum requirements for an owner’s policy of liability insurance for vehicles registered in New York. Starting in 1958, with the addition of uninsured motorist coverage to IL § 167, now § 3420, New York’s minimum requirements for motor vehicle insurance have expanded, including no-fault coverage under IL Article 51, rental vehicle coverage under IL § 3440, and mandatory offers for under supplementary uninsured/underinsured motorists insurance and other requirements. These coverages together provide comprehensive protection to not only the owners and operators of New York registered motor vehicles

when used anywhere in the United States and Canada, but also any innocent third-parties who may be hurt or whose property is damaged by the use or operation of such vehicles.

While the law and regulations have allowed limited exceptions, in general, the insured would be protected by the owner's policy of liability insurance for any proper use of a vehicle would have insurance in place. In addition, while motor vehicle physical damage insurance is not required statutorily, there are numerous laws and regulations applying to these types of policies.

In recognizing TNCs in New York, Part AAA has established a new paradigm for motor vehicle financial responsibility requirements. For the first time, the permissible use of a New York motor vehicle will be subject to not just one policy, but a minimum of two and potentially more policies. While an insured's Article 6 owner's policy of financial responsibility must always be in place for the vehicle, it may exclude coverage when used as a TNC. Article 44-B has different insurance requirements during the two periods when the TNC must demonstrate that insurance is in place. Period 1 is when the driver is logged onto a transportation network company's digital network but is not engaged in a transportation network company prearranged trip. Period 2 is when the driver is engaged in a prearranged trip, which begins when the TNC driver accepts a passenger's request for a trip through the TNC's digital network and continues while the TNC transports the passenger in a TNC vehicle and ends when the last requesting passenger departs from the TNC vehicle.

When the vehicle is used or operated as a TNC vehicle, the TNC must have one or more group insurance policies in place to provide the coverage either under a primary or excess basis. It is anticipated that most underlying Article 6 insurers will exclude coverage, as permitted under the law. However, some insurers may choose to provide coverage under the driver's own Article 6 policy or as a separate policy.

The Superintendent was authorized by Article 44-B to promulgate regulations implementing the article's insurance requirements. Because of the complex layers of coverage now available, regulations are necessary to ensure that minimum insurance requirements are in place at all times with appropriate protections in order to

protect the drivers and owners of the vehicles, as well as the general public. In addition, existing regulations must be modified to address the new Article 44-B coverage. To that end, a number of existing regulations were amended and a new regulation added to recognize that insurers may exclude coverage when the vehicle is used or operated as a TNC vehicle in Period 1 or 2; while also providing that coverage is afforded when required in such periods under a policy being used to satisfy Article 44-B requirements; and to coordinate such policies to prevent any gap in coverage. In addition, while only an authorized insurer may write an owner's policy of liability insurance under Articles 6 and 8, Article 44-B specifically recognizes that an unauthorized insurer may provide the coverage under the TNC group policy when the policy is placed through a New York licensed excess line broker and the coverage is unavailable from an authorized insurer. Accordingly, the regulations address the placement of coverage in the excess line market. While excess line insurers are excepted from certain of New York's laws, since they are providing financial responsibility insurance, the regulations make certain provisions applicable with respect to TNC group policies.

4. Costs: Costs to insurers will include the costs involved in filing new policy rates and forms. No insurer is required to submit new forms. While it is not expected that there will be many group insurance policy forms and rates filed, most insurers writing motor vehicle insurance may file exclusions to their policies for TNC use and some insurers may file endorsements expressly providing the coverage. In many cases, insurers may simply make the filings at the same as other rate and form filings, and thus minimize the costs of an additional filing.

The regulations require that certain notices be provided to insureds. Most notably, insurers writing motor vehicle insurance must provide notices to their insureds regarding whether the policies provide coverage when the vehicles are used as TNC vehicles and, if so, to what extent. In addition, the required notices under 11 NYCRR 60-3 (Insurance Regulation 35-E) are extended to policies providing coverage under new Vehicle and

Traffic Law Article 44-B. Since these notices are to be provided when the policy is first issued and upon every renewal, it is not anticipated that these notices will add a significant cost to the insurers.

The regulations also implement the statutory requirements that they cooperate in sharing information with respect to accidents involving TNC vehicles. While there may be a cost to doing this, it should be minimal and would depend on how many times the insurer would be called on to share the information. In any event, the sharing requirement is imposed by the statute.

If an excess line broker is used to place the group policy, the broker is required to provide a written affirmation annually of the unavailability of coverage from an authorized insurer. This should present no significant additional costs to the broker since it should be communicating with the group policyholder anyway. The regulation also requires that the broker obtain certain commitments from the unauthorized insurer, but that too should not be a significant cost to the broker.

The main cost to the Department will be to review the new policy rates and forms that insurers may file to implement Part AAA of Chapter 59 of the Laws of 2017. While it is not expected that there will be many group insurance policy forms and rates filed, most insurers writing motor vehicle insurance may file exclusions to their policies for TNC use and some insurers may file endorsements expressly providing the coverage. The Department anticipates that existing personnel and line titles will handle all such filings.

These rules impose no compliance costs on any state or local governments.

5. Local government mandates: The new rules and amendments impose no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: As discussed under costs, the regulations require certain new notices to be provided to insureds. No new filings with or submissions to the Department are required.

7. Duplication: The amendments do not duplicate any existing laws or regulations.

8. Alternatives: No significant alternatives were considered.

9. Federal standards: There are no federal standards.

10. Compliance schedule: Part AAA of Chapter 59 of the Laws of 2017 takes effect on June 29, 2017.

In order to facilitate the orderly implementation of the new law, the Superintendent is promulgating these regulations on an emergency basis.

Consolidated Regulatory Flexibility Analysis for Small Businesses and Local Governments for the 15th amendment to 11 NYCRR 27 (Insurance Regulation 41); 10th amendment to 11 NYCRR 60-1 (Insurance Regulation 35-A); 7th amendment to 11 NYCRR 60-2 (Insurance Regulation 35-D); new 11 NYCRR 60-3 (Insurance Regulation 35-e); 2nd amendment to 11 NYCRR 65-1 (Insurance Regulation 68-A); 7th amendment to 11 NYCRR 65-3 (Insurance Regulation 68-C); 6th amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D); 6th amendment to 11 NYCRR 169 (Insurance Regulation 100); and 17th amendment to 11 NYCRR 216 (Insurance Regulation 64).

1. Effect of rule: These rules amend existing requirements applicable to motor vehicle insurance and adopt new rules governing policies providing coverage pursuant to Vehicle and Traffic Law (“VTL”) Article 44-B and new Insurance Law (“IL”) section 3455. These rules apply to insurers providing motor vehicle insurance in New York.

Industry has asserted in the past that certain insurers, in particular mutual insurers, subject to the rule fall within the definition of a “small business” as defined by State Administrative Procedure Act § 102(8) because in general they are independently owned and have fewer than 100 employees.

Certain provisions of the rules also apply to excess line brokers. There are approximately 1,238 business entities and 2,392 individuals licensed as excess line brokers. Many of these may be small businesses but we do not know how many may be.

Total – 3,630

2. Compliance requirements: No local government will have to undertake any reporting, recordkeeping, or other affirmative acts to comply with the rule because the rule does not apply to any local government.

For the most part, the regulations do not impose any new reporting or recordkeeping requirement. Authorized insurers that wish to write transportation network company (“TNC”) policies will have to comply with the usual filing and approval requirements under the Insurance Law for such policies. Insurers will also have



to comply with the requirements regarding sharing of information with respect to accidents involving TNC vehicles. The regulation does require that insurers writing motor vehicle insurance policies provide a notice upon issuance and renewal regarding whether and, if so, to what extent, the policies provide coverage when the vehicle is used or operated as a TNC vehicle.

If an excess line broker is used to place the group policy, the broker is required to provide a written affirmation annually of the unavailability of coverage from an authorized insurer. The regulation also requires that the broker obtain certain commitments from the unauthorized insurer, but that too should not be a significant cost to the broker.

3. Professional services: No local government will need professional services to comply with this rule because the rule does not apply to any local government. The Department does not anticipate that any insurer or excess line broker that is a small business affected by the rule, if any, should need to retain professional services, such as lawyers or auditors, to comply with this rule.

4. Compliance costs: While it is not expected that there will be many group insurance policy forms and rates filed, most insurers writing motor vehicle insurance may file exclusions to their policies for TNC use and some insurers may file endorsements expressly providing the coverage. In many cases, insurers may simply make the filings at the same as other rate and form filings, and thus minimize the costs of an additional filing.

Since these notices to the insureds are to be provided when the policy is first issued and upon every renewal, it is not anticipated that these notices will add a significant cost to the insurers.

While there may be a cost to the insurers having to share information, it should be minimal and would depend on how many times the insurer would be called on to share the information. In any event, the sharing requirement is imposed by the statute.

It is not anticipated that the additional notices and other requirements on excess line brokers would be a significant cost to the broker.

5. Economic and technological feasibility: This rule does not apply to any local government; therefore, no local government should experience any economic or technological impact as a result of the rule. No insurer that is a small business affected by this rule, if any, should experience any economic or technological impact as a result of the rule.

6. Minimizing adverse impact: There will not be an adverse impact on any local government because the rule does not apply to any local government. This rule should not have an adverse impact on an insurer that is a small business affected by the rule, if any, because the rule uniformly affects all insurers that are subject to the rule.

7. Small business and local government participation. In drafting the emergency regulations, the Department discussed the draft with interested parties, including those that represent small businesses. Small businesses and local governments will have a further opportunity to participate in the rule-making process when the proposed rule is published in the State Register and posted on the Department of Financial Services' website.

Statement that the 15th amendment to 11 NYCRR 27 (Insurance Regulation 41); 10th amendment to 11 NYCRR 60-1 (Insurance Regulation 35-A); 7th amendment to 11 NYCRR 60-2 (Insurance Regulation 35-D); new 11 NYCRR 60-3 (Insurance Regulation 35-e); 2nd amendment to 11 NYCRR 65-1 (Insurance Regulation 68-A); 7th amendment to 11 NYCRR 65-3 (Insurance Regulation 68-C); 6th amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D); 6th amendment to 11 NYCRR 169 (Insurance Regulation 100); and 17th amendment to 11 NYCRR 216 (Insurance Regulation 64).will not impose adverse economic impact or compliance requirements on rural areas.

The Department of Financial Services (“Department”) finds that this rule does not impose any additional burden on persons located in rural areas, and will not have any adverse impact on rural areas. This rule applies uniformly to regulated parties that do business in both rural and non-rural areas of New York State.

Rural area participation: Interested parties, including those located in rural areas, will have an opportunity to participate in the rule-making process when the proposed rule is published in the State Register and posted on the Department of Financial Services’ website.

Statement setting forth the basis for the finding that the consolidated proposed 15th amendment to 11 NYCRR 27 (Insurance Regulation 41); 10th amendment to 11 NYCRR 60-1 (Insurance Regulation 35-A); 7th amendment to 11 NYCRR 60-2 (Insurance Regulation 35-D); new 11 NYCRR 60-3 (Insurance Regulation 35-e); 2nd amendment to 11 NYCRR 65-1 (Insurance Regulation 68-A); 7th amendment to 11 NYCRR 65-3 (Insurance Regulation 68-C); 6th amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D); 6th amendment to 11 NYCRR 169 (Insurance Regulation 100); and 17th amendment to 11 NYCRR 216 (Insurance Regulation 64) will not have a substantial adverse impact on jobs and employment opportunities.

The Department of Financial Services finds that these rules should have no negative impact on jobs and employment opportunities. The rules implement Part AAA of Chapter 59 of the Laws of 2017, which recognize the operation of transportation network companies (TNC), to operate prearranged trips in New York and help ensure that the public will have appropriate insurance protection when utilizing a TNC vehicle. Part AAA should increase employment opportunities in New York as has been the case elsewhere in the country where TNCs operate.