

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

**15th AMENDMENT TO 11 NYCRR 27
(INSURANCE REGULATION 41)
EXCESS LINE PLACEMENTS GOVERNING STANDARDS**

**10th AMENDMENT TO 11 NYCRR 60-1
(INSURANCE REGULATION 35-A)
MINIMUM PROVISIONS FOR AUTO LIABILITY INSURANCE POLICIES**

**7th AMENDMENT TO 11 NYCRR 60-2
(INSURANCE REGULATION 35-D)
SUPPLEMENTARY UNINSURED/UNDERINSURED MOTORISTS INSURANCE**

**NEW 11 NYCRR 60-3
(INSURANCE REGULATION 35-E)
TRANSPORTATION NETWORK COMPANIES: MINIMUM PROVISIONS FOR AUTO LIABILITY
POLICIES AND OTHER REQUIREMENTS**

**3rd AMENDMENT TO 11 NYCRR 65-1
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REGULATIONS IMPLEMENTING THE COMPREHENSIVE MOTOR VEHICLE INSURANCE
REPARATIONS ACT--PRESCRIBED POLICY ENDORSEMENTS**

**8th AMENDMENT TO 11 NYCRR 65-3
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**6th AMENDMENT TO 11 NYCRR 65-4
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REGULATIONS IMPLEMENTING THE COMPREHENSIVE MOTOR VEHICLE INSURANCE
REPARATIONS ACT—ARBITRATION**

**6th AMENDMENT TO 11 NYCRR 169
(INSURANCE REGULATION 100)
NONCOMMERCIAL MOTOR VEHICLE INSURANCE MERIT RATING PLANS**

**17th AMENDMENT TO 11 NYCRR 216
(INSURANCE REGULATION 64)
UNFAIR CLAIMS SETTLEMENT PRACTICES AND CLAIM COST CONTROL MEASURES**

I, Maria T. Vullo, Superintendent of Financial Services, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law, Sections 301, 2105, 2118, 2305, 2307, 2334, 2335, 2601, 3420, 3455, 5102, 5105, and 5106 and Articles 23 and 51 of the Insurance Law, Sections 1693, 1694 and 311 of the Vehicle and Traffic Law, and Part AAA of Chapter 59 of the Laws of 2017 do hereby promulgate the following

amendments to Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to take effect upon publication in the State Register, to read as follows:

(Matter in brackets is deleted; new matter is underlined.)

Section 27.5(d) is amended as follows:

(d)(1) As set forth in Part 301 (Insurance Regulation 134) of this Title:

[(1)] (i) a consolidated part A and, when required, a consolidated part C of the required affidavit may be completed and executed by the excess line broker or producing broker, on behalf of more than one member of a purchasing group, where liability insurance (as defined in section 5902 of the Insurance Law for purchasing group members) has been procured during any consecutive 30-day period prior to the filing of the affidavit(s); and

[(2)] (ii) any consolidated affidavit (part A or part C) shall specify all applicable information required for each insured member of the purchasing group.

(2) As set forth in Subpart 60-3 (Insurance Regulation 35-E) of this Title: a consolidated part A and, when required, a consolidated part C of the required affidavit may be completed and executed by the excess line broker or producing broker, on behalf of the transportation network company drivers of the transportation network company, when a group policy has been obtained by a transportation network company as the group policyholder pursuant to section 3455 of the Insurance Law, with respect to coverages provided without option by the group policyholder.

Section 27.10(a) is amended as follows:

(a) [Policies] A policy issued by an unauthorized [insurers] insurer pursuant to this Part [are] is exempt from the provisions of Part 71 (Regulation 107) and Part 73 (Regulation 121) of this Title, except for a group policy issued pursuant to section 3455 of the Insurance Law.

A new section 60-1.2(i) is added as follows:

(i) One of the following:

(1) while the motor vehicle is used by a transportation network company driver who is logged onto a transportation network company's digital network but is not engaged in a transportation network company prearranged trip;

(2) while the motor vehicle is used by a transportation network company driver while the driver provides a transportation network company prearranged trip; or

(3) while the motor vehicle is used by a transportation network company driver who is logged onto the transportation network company's digital network but is not engaged in a transportation network company prearranged trip or while the driver provides a transportation network company prearranged trip.

Section 60-1.5(e)(5)(i) is amended to read as follows:

(i) not used for transporting persons or property for hire other than when the vehicle is used as a transportation network company vehicle pursuant to article 44-B of the Vehicle and Traffic Law);

With respect to Section 60-1.5(h), Rental Vehicle Coverage Endorsement, paragraphs (c) and (e) of Definitions are amended to read as follows:

(c) “Private passenger motor vehicle” means:

(1) a motor vehicle of the private passenger or station wagon type that is owned or hired under a long-term contract by an individual or by husband and wife, and is neither used as a public or livery conveyance for passengers nor rented to others without a driver; or

(2) a motor vehicle with a pick-up body, a delivery sedan, panel truck or van, owned by an individual or by husband or wife who are residents of the same household, or by a family farm co-partnership or a family farm corporation, and not customarily used in the occupation, profession or business of the insured other than farming or ranching, whether or not used in the course of driving to or from work.

“Public or livery conveyance” as used in paragraph (1) of this definition shall not include the use of the vehicle as a transportation network company vehicle pursuant to article 44-B of the Vehicle and Traffic Law.

(e) “Rental vehicle” means a vehicle of the type described in (c) above, if:

(1) not used for transporting persons or property for hire (except if the insured does so solely as a transportation network company driver pursuant to article 44-B of the Vehicle and Traffic Law); and

(2) owned by a person engaged in the business of renting or leasing vehicles rented or leased without a driver to persons other than the owner and is registered in the name of such owner.

A new section 60-1.5(j) is added as follows:

(j) An insurer shall include the following exclusion (d) in the Rental Vehicle Coverage Endorsement form as follows:

(1) If the policy does not provide liability coverage while the motor vehicle is used by a transportation network company driver who is logged onto the transportation network company’s digital network but is not engaged in a transportation network company prearranged trip or while the driver provides a transportation network company prearranged trip:

(d) while the rental vehicle is used by a transportation network company driver who is logged onto the transportation network company’s digital network but is not engaged in a transportation network company prearranged trip or while the driver provides a transportation network company prearranged trip;

(2) If the policy does not provide liability coverage while the motor vehicle is used by a transportation network company driver who is logged onto the transportation network company's digital network but is not engaged in a transportation network company prearranged trip:

(d) while the rental vehicle is used by a transportation network company driver who is logged onto the transportation network company's digital network but is not engaged in a transportation network company prearranged trip; or

(3) If the policy does not provide liability coverage while the motor vehicle is used by a transportation network company driver who provides a transportation network company prearranged trip:

(d) while the rental vehicle is used by a transportation network company driver who provides a transportation network company prearranged trip.

New sections 60-1.7 and 60-1.8 are added as follows:

§ 60-1.7 Liability limits.

The limits of liability under an owner's policy of liability insurance shall be available in the same amount for any accident covered under the policy except that, where the policy or endorsement thereto is providing coverage in satisfaction of the financial responsibility requirements of article 44-B of the Vehicle and Traffic Law while the driver provides a prearranged trip or while the driver is logged onto a transportation network company's digital network but is not engaged in a transportation network company prearranged trip, or under both such circumstances, the policy may provide higher limits to satisfy such financial responsibility requirements for those circumstances.

§ 60-1.8 Other coverages while using a vehicle as a transportation network company vehicle.

(a) If an owner's policy of liability insurance provides liability coverage while the motor vehicle is used by a transportation network company driver who is logged onto the transportation network company's digital network but is not engaged in a transportation network company prearranged trip or while the driver provides a transportation network company prearranged trip, then the insurer shall also provide, with respect to such period, uninsured motorist coverage, coverage pursuant to article 51 of the Insurance Law, rental vehicle coverage pursuant to section 3440 of the Insurance Law, and any other coverage that is required to be provided; and shall offer supplementary uninsured/underinsured motorists and such other coverage that is required to be offered.

(b) An insurer may not provide any of the coverages as specified in subdivision (a) of this section while the motor vehicle is used by a transportation network company driver who is logged onto the transportation network company's digital network but is not engaged in a transportation network company prearranged trip or while the driver provides a transportation network company prearranged trip unless, with respect to such period, all the required coverages are provided.

Section 60-2.0(a) is amended and a new subdivision (d) is added as follows:

(a) This Subpart implements Insurance Law section 3420(f)(2), which requires motor vehicle liability insurers to provide, at the option of the insured, supplementary uninsured/underinsured motorists (SUM)

insurance coverage to all policyholders in New York State and Vehicle and Traffic Law section 1693(3), which requires minimum SUM coverage on all policies satisfying the financial responsibility requirements of that subsection.

(d) As used in this Subpart, the terms *digital network, transportation network company driver, TNC driver, transportation network company, TNC prearranged trip, and TNC* shall have the meanings set forth in Vehicle and Traffic Law section 1691.

A new section 60-2.1(f) is added as follows:

(f) Notwithstanding subdivision (e) of this section, an insurer providing coverage in satisfaction of the financial responsibility requirements of Vehicle and Traffic Law article 44-B:

(1) shall provide SUM coverage, in the amount of \$1,250,000 because of bodily injury to or death of one or more persons in any one accident, while the TNC driver is engaged in a TNC prearranged trip if the policy provides liability coverage as required by Vehicle and Traffic Law section 1693(3);

(2) shall offer SUM coverage as provided in subdivision (e)(1) and (2) of this section, while the driver is logged onto the TNC's digital network but is not engaged in a TNC prearranged trip if the policy provides liability coverage as required by Vehicle and Traffic Law section 1693(2); and

(3) may offer SUM limits that exceed the limits specified in this subdivision but shall not offer SUM limits in an amount that exceeds the liability limits offered by the insurer under the policy. Nothing in this section shall be construed to require an insurer to offer any particular minimum or maximum amount of third-party bodily injury liability limits.

Section 60-2.2(a) is amended as follows:

(a)(1) Every insurer writing motor vehicle liability insurance that satisfies the requirements of article 6 or 8 of the Vehicle and Traffic Law shall, with respect to all new and renewal policies, provide a written notice in concise language that shall include:

[~~(1)~~](i) a statement that SUM coverage is available, including the SUM limits being offered for purchase;

[~~(2)~~](ii) the provisions set forth in section 60-2.1(a), (b) and (c) of this Subpart and an explanation of the difference between uninsured motorists (UM) coverage and SUM coverage; and

[~~(3)~~](iii) the examples about SUM coverage set forth in subdivision (b) of this section.

(2)(i) Every insurer writing motor vehicle liability insurance providing liability insurance coverage in satisfaction of the financial responsibility requirements of Vehicle and Traffic Law article 44-B shall, with respect to all new and renewal policies, or new endorsements providing such coverage added to an existing policy, provide a written notice in concise language that shall include:

(a) if the policy provides liability coverage as required by Vehicle and Traffic Law section 1693(3), a statement that SUM coverage is being provided while the driver provides a prearranged trip;

(b) if the policy provides liability coverage as required by Vehicle and Traffic Law section 1693(2), a statement that SUM coverage is available while the driver is logged onto a transportation network company's digital network but is not engaged in a transportation network company prearranged trip, including the SUM limits being offered for purchase;

(c) the provisions set forth in section 60-2.1(a), (b) and (c) of this Subpart and an explanation of the difference between UM coverage and SUM coverage; and

(d) the examples about SUM coverage set forth in subdivision (b) of this section.

(ii) With respect to a group policy issued in satisfaction of the financial responsibility requirements of Vehicle and Traffic Law article 44-B, the insurer shall provide the notice to the transportation network company. If the group policy is issued on an excess line basis, the excess line broker shall provide the notice at time of placement to the transportation network company. If an authorized insurer makes SUM coverage available optionally to the group members, then the insurer also shall provide the notice to the group members.

With respect to Section 60-2.3(f), Insuring Agreements, III. SUM Coverage Period and Territory, provisions of Exclusions and Conditions and footnotes thereto are amended as follows:

INSURING AGREEMENTS

III. SUM Coverage Period and Territory:

This SUM coverage applies only to accidents that occur:

1. during the policy period shown in the Declarations; and
2. in the United States, its territories or possessions, or Canada.²

EXCLUSIONS

This SUM coverage does not apply to:

1. bodily injury to an insured, including care or loss of services recoverable by an insured, if such insured, such insured's legal representatives or any person entitled to payment under this coverage, without our written consent, settles any lawsuit against any person or organization that may be legally liable for such injury, care or loss of services, however this provision shall be subject to Condition 9.

2. bodily injury to an insured incurred while occupying a motor vehicle owned by that insured, if such motor vehicle is not insured for SUM coverage by the policy under which a claim is made or is not a newly acquired or replacement motor vehicle covered under the terms of this policy; [or]

3. non-economic loss resulting from bodily injury to an insured arising from an accident in New York State, unless the insured has sustained serious injury as defined in Section 5102(d) of the New York Insurance Law [.]
or

4. bodily injury to an insured incurred while the insured motor vehicle is used by a transportation network company driver who is logged onto a transportation network company's digital network but is not engaged in a transportation network company prearranged trip or while the driver provides a transportation network company prearranged trip pursuant to article 44-B of the Vehicle and Traffic Law.³

CONDITIONS

1. Policy Provisions: None of the Insuring Agreements, Exclusions or Conditions of the policy shall apply to this SUM coverage except: "Duties After an Accident or Loss"; "Fraud"; and "Termination" if applicable.^{[2] 4}

2. Notice and Proof of Claim: As soon as practicable, the insured or other person making claim shall give us written notice of claim under this SUM coverage.

(i) As soon as practicable after our written request, the insured or other person making claim shall give us written proof of claim, under oath if required, including full particulars of the nature and extent of the injuries, treatment, and other details we need to determine the SUM amount payable.

(ii) The insured and every other person making claim hereunder shall, as may reasonably be required, submit to examinations under oath by any person we name and subscribe the same. Proof of claim shall be made upon forms we furnish unless we fail to furnish such forms within 15 calendar days after receiving notice of claim.

3. Medical Reports: The insured shall submit to physical examinations by physicians we select when and as often as we may reasonably require. The insured, or in the event of the insured's incapacity, the insured's legal representative (or in the event of the insured's death, the insured's legal representative or the person or persons entitled to sue [therefore] therefor), shall upon each request from us authorize us to obtain copies of relevant medical reports and records.

4. Notice of Legal Action: If the insured or such insured's legal representative brings any lawsuit against any person or organization legally responsible for the use of a motor vehicle involved in the accident, a copy of the summons and complaint or other process served in connection with the lawsuit shall be forwarded immediately to us by the insured or the insured's legal representative.

5. SUM Limits and Maximum Payments:

(a) The SUM limits payable under this endorsement shall be determined as follows:

(1) if an accident results in bodily injury excluding death to one or more persons, then we will provide the SUM limits stated in the Declarations; or

(2) if an accident results in the death of one or more persons, then we will provide the greater of the SUM limits stated in the Declarations or \$50,000 for such bodily injury resulting in death sustained by one person as the result of any one accident and, subject to this per person limit, \$100,000 for such bodily injury resulting in death sustained by two or more persons as the result of any one accident; or

(3) if an accident results in both bodily injury to one or more persons and the death of one or more persons, then we will provide the greater of the SUM limits stated in the Declarations or the limits required by the mandatory uninsured motorists (UM) coverage as follows:

- \$25,000 per injured person and, subject to this per person limit,
- \$50,000 to two or more persons injured as the result of any one accident; and
- \$50,000 per person for bodily injury resulting in death and, subject to this per person limit,
- \$100,000 to two or more persons for bodily injury resulting in death as the result of any one accident.

(b) Regardless of the number of insureds, our maximum payment under this SUM endorsement shall be the difference between:

(1) the SUM limits; and

(2) the motor vehicle bodily injury liability insurance or bond payments received by the insured or the insured's legal representative, from or on behalf of all persons that may be legally liable for the bodily injury sustained by the insured.

(c) The SUM limit shown on the Declarations is the amount of coverage for all damages due to bodily injury in any one accident. ^{[3] 5} (The SUM limit shown on the Declarations for "Each Person" is the amount of coverage for all damages due to bodily injury to one person. The SUM limit shown under "Each Accident" is, subject to the limit for each person, the total amount of coverage for all damages due to bodily injury to two or more persons in the same accident). ^{[4] 6}

6. Non-Stacking: Regardless of the number of vehicles involved, persons covered, claims made, motor vehicles or premiums shown in this policy or premium paid, the limits, whether for UM coverage or SUM coverage, shall never be added together or combined for two or more motor vehicles to determine the extent of insurance coverage available to an insured who was injured in the same accident.

7. Priority of Coverage: If an insured is entitled to UM coverage or SUM coverage under more than one policy, the maximum amount such insured may recover shall not exceed the highest limit of such coverage for any one motor vehicle under any one policy, and the following order of priority shall apply:

(a) a policy covering a motor vehicle occupied by the injured person at the time of the accident;⁷

(b) a policy covering a motor vehicle not involved in the accident under which the injured person is a named insured; and

(c) a policy covering a motor vehicle not involved in the accident under which the injured person is an insured other than a named insured.

Coverage available under a lower priority policy applies only to the extent that it exceeds the coverage of a higher priority policy.

8. Exhaustion Required: Except as provided in Condition 9, we will pay under this SUM coverage only after the limits of liability have been exhausted under all motor vehicle bodily injury liability insurance policies or bonds applicable at the time of the accident in regard to any one person who may be legally liable for the bodily injury sustained by the insured.

9. Release or Advance:

(a) In accidents involving the insured and one or more negligent parties, if such insured settles with any such party for the available limit of the motor vehicle bodily injury liability coverage of such party, a release may be executed with such party after thirty calendar days from our receipt of your written notice to us, unless within this time period we agree to advance such settlement amounts to the insured in return for the cooperation of the insured in our lawsuit on behalf of the insured.

(b) We shall have a right to the proceeds of any such lawsuit equal to the amount advanced to the insured and any additional amounts paid under this SUM coverage. Any excess above those amounts shall be paid to the insured.

(c) An insured shall not otherwise settle with any negligent party, without our written consent, such that our rights would be impaired.

10. Non-Duplication: This SUM coverage shall not duplicate any of the following:

(a) benefits payable under workers' compensation or other similar laws;

(b) non-occupational disability benefits under article nine of the Workers' Compensation Law [article nine] or other similar law;

(c) any amounts recovered or recoverable pursuant to article 51 of the New York Insurance Law [article 51] or any similar motor vehicle insurance payable without regard to fault;

(d) any valid or collectible motor vehicle medical payments insurance; or

(e) any amounts recovered as bodily injury damages from sources other than motor vehicle bodily injury liability insurance policies or bonds.

11. Arbitration:

(a) If any insured making claim under this SUM coverage and we do not agree that such insured is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle because of bodily injury sustained by the insured, or we do not agree as to the amount of payment that may be owing under this SUM coverage, then, at the option and upon written demand of such insured, the matter or matters upon which such insured and we do not agree shall be settled by arbitration, administered by the _____ (*insert name of*

designated organization), pursuant to procedures approved by the Superintendent of Financial Services for this purpose.

(b) If the maximum amount of SUM coverage provided by this endorsement equals the amount of coverage required to be provided by section 3420(f)(1) of the New York Insurance Law [section 3420(f)(1)] and article 6 or 8 of the New York Vehicle and Traffic Law [article 6 or 8], then such disagreement shall be settled by such arbitration procedures upon written demand of either the insured or us. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof, and any such insured and we each agree to be bound by any award made by the arbitrator as to this SUM coverage. For purposes of this Condition, the term “insured” includes any person authorized to act on behalf of the insured.⁸

12. Subrogation: If we make a payment under this SUM coverage, we have the right to recover the amount of this payment from any person legally responsible for the bodily injury or loss of the person to whom, or for whose benefit, such payment was made to the extent of the payment. The insured or any person acting on behalf of the insured must do whatever is necessary to transfer this right of recovery to us. Except as permitted by Condition 9, such person shall do nothing to prejudice this right.

13. Payment of Loss by Company: We shall pay any amount due under this SUM coverage to the insured or, at our option, to a person authorized by law to receive such payment or to a person legally entitled to recover the damages which the payment represents.

14. Action Against Company: No lawsuit shall lie against us unless the insured or the insured's legal representative has first fully complied with all the terms of this SUM coverage.

15. Survivor Rights: If you or your spouse, if a resident of the same household, dies, this SUM coverage shall cover:

(1) the survivor as named insured;

(2) the decedent's legal representative as named insured, but only while acting within the scope of such representative's duties as such; and

(3) any relative who was an insured at the time of such death.

² An insurer, with respect to a policy issued in satisfaction of the financial responsibility requirements of article 44-B of the Vehicle and Traffic Law, shall substitute one of the following provisions for section III as follows:

If the Company provides liability coverage pursuant to section 1693(3) of the Vehicle and Traffic Law:

III. SUM Coverage Period and Territory:

This SUM coverage applies only to accidents that occur:

1. during the policy period shown in the Declarations while, pursuant to article 44-B of the Vehicle and Traffic Law, a transportation network company driver provides a transportation network company prearranged trip; and

2. in the United States, its territories or possessions, or Canada; or

If the Company provides liability coverage pursuant to section 1693(2) of the Vehicle and Traffic Law:

III. SUM Coverage Period and Territory:

This SUM coverage applies only to accidents that occur:

1. during the policy period shown in the Declarations while, pursuant to article 44-B of the Vehicle and Traffic Law, the motor vehicle is used by a transportation network company driver who is logged onto a transportation network company's digital network but is not providing a transportation network company prearranged trip; and

2. in the United States, its territories or possessions, or Canada; or

If the Company provides liability coverage pursuant to section 1693(2) and (3) of the Vehicle and Traffic Law:

III. SUM Coverage Period and Territory:

This SUM coverage applies only to accidents that occur:

1. during the policy period shown in the Declarations while, pursuant to article 44-B of the Vehicle and Traffic Law, the motor vehicle is used by a transportation network company driver who is logged onto a transportation network company's digital network but is not providing a transportation network company prearranged trip or while the driver provides a transportation network company prearranged trip; and

2. in the United States, its territories or possessions, or Canada.

³ This exclusion may be deleted by the Company and the Company may use one of the following alternative exclusions; provided, however, if the Company provides liability coverage pursuant to section 1693(3) of the Vehicle and Traffic Law, then the Company may not use the second alternative exclusion; and, if the Company provides liability coverage pursuant to section 1693(2) of the Vehicle and Traffic Law, then the Company may not use the first alternative exclusion when the insured purchases SUM coverage:

to bodily injury to an insured incurred while, pursuant to article 44-B of the Vehicle and Traffic Law, the insured motor vehicle is used by a transportation network company driver who is logged onto a transportation network company's digital network but is not engaged in a prearranged trip; or

to bodily injury to an insured incurred while, pursuant to article 44-B of the Vehicle and Traffic Law, the insured motor vehicle is used by a transportation network company driver while the driver provides a transportation network company prearranged trip.

⁴ Appropriate terms may be substituted to conform with terms used in this policy.

[³] ⁵ Language in this sentence should be used for SUM endorsements issued with a combined single limit, in which case Condition 5 should speak throughout in terms of a singular limit, rather than plural limits.

^[4] ⁶ Language in parentheses should be used for SUM endorsements issued with split limits.

⁷ If the policy is a group policy issued in satisfaction of the financial responsibility requirements of article 44-B of the Vehicle and Traffic Law, then the Company may substitute the following for paragraph (a):

(a) a policy covering a motor vehicle occupied by the injured person at the time of the accident, provided that if other insurance provides for SUM coverage in satisfaction of the financial responsibility requirements of article 44-B of the Vehicle and Traffic Law, then coverage under that policy shall be a higher priority policy over this policy.

⁸ This paragraph shall not be included in any policy issued in satisfaction of the financial responsibility requirements of article 44-B of the Vehicle and Traffic Law. However, the following sentence shall be included:

For purposes of this Condition, the term “insured” includes any person authorized to act on behalf of the insured.

(All of the following material in Subpart 60-3 is new)

A new Subpart 60-3 is added to Part 60 as follows:

SUBPART 60-3
(Regulation 35-E)

TRANSPORTATION NETWORK COMPANIES: MINIMUM PROVISIONS FOR POLICIES AND OTHER REQUIREMENTS

Sec.	
60-3.0	Purpose
60-3.1	Definitions
60-3.2	General provisions
60-3.3	Mandatory liability provisions
60-3.4	Exclusions
60-3.5	Discretionary provisions
60-3.6	Payments to insured
60-3.7	Group policy requirements
60-3.8	Excess line policies
60-3.9	Notice by motor vehicle insurers

§ 60-3.0 Purpose.

The purpose of this Subpart is to establish the minimum policy provisions and other requirements with respect to any policy issued in satisfaction of the financial responsibility requirements of Vehicle and Traffic Law article 44-B and a group policy issued pursuant to Insurance Law section 3455.

§ 60-3.1 Definitions.

Unless otherwise stated or required in context:

(a) In this Part:

(1) *Article 44-B policy* means an insurance policy or endorsement to an owner's policy of liability insurance that provides financial responsibility coverage pursuant to Vehicle and Traffic Law article 44-B while:

(i) the TNC driver is logged onto the TNC's digital network but is not engaged in a TNC prearranged trip;

(ii) the TNC driver is engaged in a TNC prearranged trip; or

(iii) the TNC driver is logged onto the TNC's digital network but is not engaged in a TNC prearranged trip and while the TNC driver is engaged in a TNC prearranged trip.

(2) *Group policy* means an insurance policy issued pursuant to Insurance Law section 3455.

(3) *Individual Policy* means a policy or endorsement to a policy issued to a TNC driver.

(4) *Named insured* means, with respect to a group policy, a TNC or, with respect to a certificate under the group policy, the TNC driver to whom a certificate of insurance is issued under the group policy.

(b) In this Title:

(1) *Digital network* shall have the meaning set forth in Vehicle and Traffic Law section 1691(2).

(2) *Owner's policy of liability insurance* means the insurance policy required pursuant to Vehicle and Traffic Law section 311.

(3) *TNC prearranged trip* or *trip* shall have the meaning set forth in Vehicle and Traffic Law section 1691(6).

(4) *Transportation network company* or *TNC* shall have the meaning set forth in Vehicle and Traffic Law section 1691(3).

(5) *Transportation network company driver* or *TNC driver* shall mean an individual who:

(i) Receives connections to potential passengers and related services from a transportation network company in exchange for payment of a fee to the transportation network company; and

(ii) Uses a TNC vehicle to offer or provide a TNC prearranged trip to transportation network company passengers upon connection through a digital network controlled by a transportation network company in exchange for compensation or payment of a fee.

(6) *Transportation network company vehicle* or *TNC vehicle* shall have the meaning set forth in Vehicle and Traffic Law section 1691(1).

60-3.2 General provisions.

(a)(1) In addition to the mandatory liability provisions specified in this Subpart, every article 44-B policy shall provide coverage, as required by Vehicle and Traffic Law Article 44-B, in accordance with the provisions of Insurance Law section 3420, Insurance Law article 51, Subpart 60-2 of this Part (Insurance Regulation 35-D), and Part 65 of this Part (Insurance Regulation 68) and such other requirements as may be applicable.

(2)(i) A policy issued in satisfaction of the financial responsibility requirements of Vehicle and Traffic Law section 1693(2)(a) and regulations promulgated thereunder shall provide all of the coverages as specified in paragraph (1) of this section while a TNC driver is logged onto the TNC's digital network but is not engaged in a TNC prearranged trip.

(ii) A policy issued in satisfaction of the financial responsibility requirements of Vehicle and Traffic Law section 1693(3)(a) and regulations promulgated thereunder shall provide all of the coverages as specified in paragraph (1) of this section while a TNC driver is engaged in a TNC prearranged trip.

(iii) A policy issued in satisfaction of the financial responsibility requirements of Vehicle and Traffic Law section 1693(2)(a) and (3)(a) and regulations promulgated thereunder shall provide all of the coverages as specified in paragraph (1) of this section while a TNC driver is logged onto the TNC's digital network but is not engaged in a TNC prearranged trip and while the TNC driver is engaged in a TNC prearranged trip.

(3) A policy as provided in paragraph (2)(i), (ii) or (iii) of this subdivision may also provide other coverages; provided that a group policy may only provide the coverages specified in Insurance Law section 3455(c)(2) and must provide coverage as provided in paragraphs 2(i), (ii) or (iii) of this subdivision.

(b) Except as provided in section 60-3.8 of this Subpart:

(1) no insurer may issue an article 44-B policy unless the insurer is authorized to do an insurance business in this state;

(2) all policy forms, rating classifications, and territories shall be approved by the superintendent pursuant to Insurance Law section 2307 and shall not qualify for an exemption from filing under Insurance Law section 6301; and

(3) all rates, rating plans, rating rules, or rating manuals shall be submitted to the superintendent and shall be subject to prior approval pursuant to Insurance Law section 2305.

(c)(1) An insurer shall include on the declarations page of an article 44-B policy one of the following statements as applicable:

(i) that the policy is in compliance with the financial responsibility requirements of Vehicle and Traffic Law section 1693(2)(a) and regulations promulgated thereunder but does not provide coverage as provided under Vehicle and Traffic Law section 1693(3)(a);

(ii) that the policy is in compliance with the financial responsibility requirements of Vehicle and Traffic Law section 1693(3)(a) and regulations promulgated thereunder; but does not provide coverage as provided under Vehicle and Traffic Law section 1693(2)(a); or

(iii) that the policy is in compliance with the financial responsibility requirements of Vehicle and Traffic Law section 1693(2)(a) and (3)(a) and regulations promulgated thereunder.

(2) An insurer that issues a group policy also shall include the statement as applicable on the certificates issued to the group members.

(d)(1) When facilitating the sharing of information under Vehicle and Traffic Law section 1695(6), an insurer shall comply with Insurance Law section 3420(d), Part 420 of this Title (Insurance Regulation 169), and all other applicable state and federal laws and regulations governing privacy and the release of consumer financial and health information.

(2) Unless the insurer will not dispute that the driver was logged onto the TNC's digital network or was engaged in a TNC prearranged trip at the time of the accident, within five business days of receipt of a claim involving a driver, an insurer that issued an article 44-B policy shall request from the TNC:

(i) the precise times that the driver logged on and off of the TNC's digital network in the 12-hour period immediately preceding and in the 12-hour period immediately following the accident; and

(ii) the precise times that the driver was engaged in a prearranged trip in the 12-hour period immediately preceding and in the 12-hour period immediately following the accident.

(3) The insurer shall, within five business days of receipt of the information, provide to any claimant and any other insurer providing coverage for the TNC vehicle, including the insurer that issued the owner's policy of liability insurance:

(i) the information received from the TNC pursuant to paragraph (2) of this subdivision; and

(ii) a clear description of the coverage, exclusions, and limits under its article 44-B policy.

(4) The TNC shall, within ten business days of receipt of a request from a driver, insurer, claimant, or other TNC regarding an accident, provide:

(i) the precise times that the driver logged on and off of the TNC's digital network in the 12-hour period immediately preceding and in the 12-hour period immediately following the accident; and

(ii) the precise times the driver was engaged in a prearranged trip in the 12-hour period immediately preceding and in the 12-hour period immediately following the accident.

§ 60-3.3 Mandatory liability provisions.

An article 44-B policy shall contain in substance the following minimum provisions or provisions that are equally or more favorable to the insured and judgment creditors, so far as such provisions relate to judgment creditors:

(a)(1) If the policy provides coverage while a driver is logged onto the TNC's digital network but is not engaged in a TNC prearranged trip: insurance against loss from the liability imposed by law for damages, including damages for care and loss of services, because of bodily injury to or death of any person, and injury to or destruction of property arising out of the ownership, maintenance, use or operation of a specific motor vehicle or vehicles within this state, or elsewhere in the United States in North America or Canada, subject to a limit, exclusive of interest and costs, with respect to each such occurrence, of at least \$75,000 because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of at least \$150,000 because of bodily injury to or death of two or more persons in any one accident, and to a limit of at least \$25,000 because of injury to or destruction of property of others in any one accident;

(2) If the policy provides coverage while a driver is engaged in a TNC prearranged trip: insurance against loss from the liability imposed by law for damages, including damages for care and loss of services, because of bodily injury to or death of any person, and injury to or destruction of property arising out of the ownership, maintenance, use, or operation of a specific motor vehicle or vehicles within this state, or elsewhere in the United States in North America or Canada, subject to a limit, exclusive of interest and costs, with respect to each such occurrence, of at least \$1,250,000 because of bodily injury to or death of one or more persons, and injury to or destruction of property; or

(3) If the policy provides coverage while a driver is logged onto the TNC's digital network but is not engaged in a TNC prearranged trip and while a driver is engaged in a TNC prearranged trip, the policy shall provide coverage as specified in both paragraphs (1) and (2) of this subdivision.

(b) With respect to such insurance as is afforded, the insurer, subject to the policy terms shall: defend any suit, with the right to make such investigation, negotiation and settlement as it deems expedient; pay all premiums on attachment bonds and appeal bonds; pay all expenses incurred by the company, all costs taxed against the insured in any such suit, and all interest accruing after entry of judgment until the insurer has paid or tendered or deposited in court such part of such judgment as does not exceed the applicable policy limits; pay expenses incurred by the insured for first aid to others at the time of accident; and reimburse the insured for reasonable expenses other than loss of earnings, incurred at the company's request. The amounts so incurred under this subdivision, except settlement of claims and suits, shall be payable by the company in addition to the applicable policy limits.

(c) When the policy is an individual policy, a provision:

(1) insuring as "insured":

(i) the named insured, his or her spouse if a resident of the same household with respect to the motor vehicle or vehicles;

(ii) any other person using the motor vehicle with the permission of the named insured or such spouse provided his or her actual operation or (if he or she is not operating) his or her other actual use thereof is within the scope of such permission; and

(iii) any other person or organization but only with respect to his, her or its liability because of acts or omissions of an insured within subparagraph (i) or (ii) of this paragraph. As respects any person or organization other than the named insured or such spouse the policy need not apply:

(a) to any person or organization, or to any agent or employee thereof, employed or otherwise engaged in operating an automobile sales agency, repair shop, service station, storage garage or public parking place, with respect to any accident arising out of the maintenance or use of a motor vehicle in connection therewith;

(b) to any employee with respect to injury, sickness, disease or death of a fellow employee injured in the course of his or her employment in an accident arising out of the maintenance or use of the motor vehicle in the business of their common employer; or

(c) to any person or organization, or to any agent or employee thereof, with respect to bodily injury, sickness, disease or death, or injury to or destruction of property arising out of the loading or unloading of the motor vehicle. The insurance shall apply separately to each insured against whom claim is made or suit is brought, provided the inclusion of more than one insured shall not operate to increase the limits of the insurer's liability;

(2) while:

(i) the motor vehicle is used by a TNC driver while logged onto a TNC's digital network but is not engaged in a TNC prearranged trip;

(ii) a TNC driver is engaged in a TNC prearranged trip; or

(iii) the motor vehicle is used by a TNC driver while logged onto the TNC's digital network but is not engaged in a TNC prearranged trip or while a TNC driver is engaged in a TNC prearranged trip.

(d) When the policy is a group policy issued to a TNC, a provision:

(1) insuring as "insured":

(i) the named insured, his or her spouse if a resident of the same household with respect to the motor vehicle or vehicles;

(ii) and any other person using the motor vehicle; and

(iii) any other person or organization but only with respect to his, her or its liability because of acts or omissions of an insured within subparagraph (i) or (ii) of this subdivision. As respects any person or organization other than the named insured or such spouse the policy need not apply:

(a) to any person or organization, or to any agent or employee thereof, employed or otherwise engaged in operating an automobile sales agency, repair shop, service station, storage garage or public parking place, with respect to any accident arising out of the maintenance or use of a motor vehicle in connection therewith;

(b) to any employee with respect to injury, sickness, disease or death of a fellow employee injured in the course of his or her employment in an accident arising out of the maintenance or use of the motor vehicle in the business of their common employer; or

(c) to any person or organization, or to any agent or employee thereof, with respect to bodily injury, sickness, disease or death, or injury to or destruction of property arising out of the loading or unloading of the motor vehicle. The insurance shall apply separately to each insured against whom claim is made or suit is brought, provided the inclusion of more than one insured shall not operate to increase the limits of the insurer's liability;

(2) while:

(i) a TNC driver is logged onto that TNC's digital network but is not engaged in a TNC prearranged trip;

(ii) a TNC driver is engaged in a TNC prearranged trip for that TNC; or

(iii) the motor vehicle is used by a TNC driver while logged onto that TNC's digital network but is not engaged in a TNC prearranged trip or while a TNC driver is engaged in a TNC prearranged trip.

(e)(1) With regard to an individual policy, a provision that the policy shall afford bodily injury and property damage liability insurance for:

(i) any other vehicle of which the named insured acquires ownership, leases, or otherwise is authorized to use provided it replaces the TNC vehicle described in the policy or the company insures all automobiles owned by the named insured or his spouse on the delivery date;

(ii) any motor vehicle, used with the permission of the owner, and not owned by the named insured or his or her spouse or any resident of the same household, which is temporarily substituted for the said motor vehicle while withdrawn from service because of breakdown, servicing, repair, loss or destruction; or

(iii) the incidental use of a motor vehicle not owned by the named insured or a member of the insured's household, nor furnished or available for their regular use, provided the actual operation or other actual use thereof is with the permission of the owner and is within the scope of such permission.

(2) With regard to a group policy, a provision that the group policy shall afford bodily injury and property damage liability insurance for:

(i) any other vehicle of which the insured acquires ownership, leases, or otherwise is authorized to use provided it replaces the insured's TNC vehicle described in the policy;

(ii) any motor vehicle, used with the permission of the owner, and not owned by the insured or his or her spouse or any resident of the same household, which is temporarily substituted for the TNC vehicle while withdrawn from service because of breakdown, servicing, repair, loss or destruction; or

(iii) the incidental use of a motor vehicle not owned by the named insured or a member of the insured's household, nor furnished or available for their regular use, provided the actual operation or other actual use thereof is with the permission of the owner and is within the scope of such permission.

(3) With regard to an individual policy, a provision required by paragraphs (1) of this subdivision need not apply:

(i) to any accident arising out of the maintenance or use of a motor vehicle by a person employed or otherwise engaged in the business of a motor vehicle sales agency, repair shop, service station, storage garage or public parking place; or

(ii) with respect to a newly acquired motor vehicle, to any loss against which the driver has other valid and collectible insurance in satisfaction of Vehicle and Traffic Law article 44-B.

(4) With regard to a group policy, a provision required by paragraph (2) of this subdivision need not apply to any accident arising out of the maintenance or use of a motor vehicle by a person employed or otherwise engaged in the business of a motor vehicle sales agency, repair shop, service station, storage garage or public parking place.

(f) A provision that when a motor vehicle is used or operated in any other state or Canadian province, a policy currently in effect or hereafter issued shall provide at least the minimum amount and kind of coverage that is required in such cases under the laws of such other jurisdiction. Any policy not containing such provision shall nevertheless be deemed to provide such coverage. This provision is not intended to create a duplication of coverage or benefits to the extent that a New York insured carries additional coverages under any automobile or motor vehicle insurance policy or is covered under an automobile or motor vehicle policy of a resident of the jurisdiction wherein an injury occurs.

(g) A provision that the insurer will not provide coverage for any insured who intentionally causes, or directs another person to cause, bodily injury or property damage.

(h) Either of the following provisions:

(1) The insurer shall not be liable for a greater proportion of the loss than the applicable limit of liability of the policy bears to the total applicable limit of liability of all other valid and collectible insurance covering the insured against such loss; provided, however, with respect to a TNC vehicle, other than a newly acquired motor vehicle, for which insurance is provided under subdivision (d) of this section, the insurance shall be excess insurance over any other valid and collectible insurance.

(2) The insurance afforded by this policy is primary insurance, except when stated to apply in excess of or contingent upon the absence of other insurance. When this insurance is primary and the insured has other insurance that is stated to be applicable to the loss on an excess or contingent basis, the amount of the company's liability under this policy shall not be reduced by the existence of such other insurance. When both this insurance

and other insurance apply to the loss on the same basis, whether primary, excess or contingent, the company shall not be liable under this policy for a greater proportion of the loss than that stated in the applicable contribution provision below:

(i) Contribution by equal shares. If all of such other valid and collectible insurance provides for contribution by equal shares, the company shall not be liable for a greater proportion of such loss than would be payable if each insurer contributes an equal share until the share of each insurer equals the lowest applicable limit of liability under any one policy or the full amount of the loss is paid, and with respect to any amount of loss not so paid the remaining insurers then continue to contribute equal shares of the remaining amount of the loss until each such insurer has paid its limit in full or the full amount of the loss is paid.

(ii) Contribution by limits. If any of such other insurance does not provide for contribution by equal shares, the company shall not be liable for a greater proportion of such loss than the applicable limit of liability under this policy for such loss bears to the total applicable limit of liability of all valid and collectible insurance against such loss.

With respect to the maintenance or use of hired motor vehicles and nonowned motor vehicles, this insurance shall apply only as excess insurance over any other valid and collectible insurance available to the insured.

(i)(1) Except as provided in paragraph (2) of this subdivision, a provision that if the insurer cancels the policy, at least 20 days' prior written notice shall be mailed or delivered to the named insured, except where the cancellation is for nonpayment of premium in which case 15 days' notice of cancellation by the insurer shall be sufficient.

(2) If the article 44-B policy is a group policy and the insurer cancels the policy, then the insurer must provide written notice in conformance with Insurance Law section 3455.

§ 60-3.4 Exclusions.

An article 44-B policy may contain in substance the following exclusions:

(a) While the TNC vehicle is used as a public or livery conveyance, provided that the use of the vehicle pursuant to Vehicle and Traffic Law article 44-B shall not be deemed to be use as a public or livery conveyance.

(b) Liability assumed by the insured under any contract or agreement.

(c) Bodily injury to or sickness, disease or death of any employee of the insured arising out of and in the course of:

(1) domestic employment by the insured, if benefits therefor are in whole or in part either payable or required to be provided under any workers' compensation law; or

(2) other employment by the insured.

(d) Any obligation for which the insured or the insured's insurer may be held liable under any workers' compensation, unemployment compensation or disability benefits law, or any similar law.

(e) Injury to or destruction of property owned by the insured or property rented to or in charge of the insured or property as to which the insured is for any purpose exercising physical control.

(f) Bodily injury, sickness, disease or death, or injury to or destruction of property due to war, whether or not declared civil war, insurrection, rebellion or revolution, or any act or condition incident to any of the foregoing.

(g) To the extent the Federal Tort Claims Act provides coverage and protection when the insured vehicle is being operated in the course of employment by an agent, servant, or employee of the United States government, its territories, possessions, political subdivisions, agencies or other independent governmental corporations.

§ 60-3.5 Discretionary provisions.

Such an article 44-B policy may also contain in substance the following provisions:

(a) that written notice of accident, claim or suit is required;

(b) that the insurer is subrogated to any rights of recovery of the insured;

(c) that the terms of the policy may not be waived or changed except as stated in the policy;

(d) that the insurer's consent is necessary to any assignment of interest under the policy;

(e) that the insured will cooperate with the insurer;

(f) that no action shall lie against the insurer unless the insured shall have complied with all the terms of the policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the insurer;

(g) that the insurer issues the policy upon the reliance of the insured's declarations and that the policy contains all agreements between the insured and the insurer and any of its agents relating to the insurance;

(h) a provision relating to the insurer's own method of doing business; and

(i) that notice to the insurer of delivery of a newly acquired additional motor vehicle or an election to insure it under a specific policy is required.

§ 60-3.6 Payments to insured.

For the purpose of complying with the provisions of Insurance Law section 3420(f)(1), no article 44-B policy subject to this Part shall be issued by any insurer unless it contains coverage providing for payments to the insured, as defined in such coverage, by the New York Motor Vehicle Accident Indemnification Corporation, pursuant to the provisions of Insurance Law article 52 applicable to such payments.

§ 60-3.7 Group policy requirements.

(a) The insurer shall be responsible for mailing or delivery of a certificate of insurance to each group member in accordance with Insurance Law section 3455(h).

(b) Until January 1, 2019, a group policy shall provide that the group policy is primary over a policy issued in satisfaction of Vehicle and Traffic Law article 6 and in accordance with section 60-3.3(g)(2) of this Part; provided, however, that if there is a policy issued in satisfaction of Vehicle and Traffic Law article 6 or endorsement thereto that satisfies the financial responsibility requirements of Vehicle and Traffic Law article 44-B, then the group policy may be stated to apply in excess of or contingent upon the absence of other insurance as provided in section 60-3.3(g)(2) of this Part.

(c) Pursuant to Vehicle and Traffic Law section 1693(5), if insurance maintained by a driver pursuant to Vehicle and Traffic Law section 1693(2) and (3) has lapsed or does not provide the required coverage, then the group policy maintained by a TNC shall provide the coverage required by Vehicle and Traffic Law section 1693 beginning with the first dollar of a claim and the insurer shall have the duty to defend such claim.

(d) No group policy or certificate shall contain any deductible or self-insured retention with respect to liability, no-fault or supplementary uninsured/underinsured motorist coverage.

(e) No group policy or certificate shall be subject to a group or sub-group aggregate liability limit of any kind at any time, and any liability limit applicable to a group member shall:

(1) be separate and apart from any liability limit to which any other group member insured under the group policy may be subject; and

(2) operate unaffected by the experience of any other group member or the overall experience of the group itself.

(f) Group policy forms and rates of an authorized insurer shall comply with Insurance Law article 23 standards, and no such rates shall be excessive, inadequate, unfairly discriminatory, destructive of competition, detrimental to solvency, or otherwise unreasonable, subject to the following factors:

(1) advantages may be considered, based on actual or reasonably anticipated loss and expense experience of the group or its members, where such advantages and experience can be fairly demonstrated; and

(2) rates, rating plans or rating rules recognizing loss differences on a group basis, in comparison to like risks not in the group, shall be deemed rating classifications subject to the superintendent's approval pursuant to Insurance Law section 2307.

(g) Except with respect to requiring a TNC driver to be insured under the group policy required by Article 44-B of the Vehicle and Traffic Law, no insurer shall provide coverage in regard to a group program that:

(1) requires the purchase of insurance as a condition of group membership; or

(2) imposes any penalty upon a group member if insurance is not purchased.

(h) No insurer shall provide coverage in regard to a group if:

(1) the purchase of any good or service from the group or sponsoring entity is a condition of purchasing insurance by a group member; or

(2) the purchase of insurance by a group member is a condition of purchasing any good or service from the group or sponsoring entity.

§ 60-3.8 Excess line policies.

(a)(1) In accordance with Vehicle and Traffic Law section 1693(7)(b), a TNC group policy may be procured by a licensed excess line broker pursuant to Insurance Law section 2118 and regulations thereunder if the insurance is unavailable from authorized insurers. The excess line broker shall obtain declinations from three authorized insurers as provided in section 27.3 of Part 27 of this Title (Insurance Regulation 41). The excess line broker may not utilize the procedure specified in section 27.3(g) or (h) of this Part.

(2) The declinations obtained pursuant to section 27.3 of Part 27 of this Title shall be valid for one year and apply to all of the drivers insured under the group policy with respect to coverages provided without option by the group policyholder. The affidavit by a broker or an excess line broker, evidencing the requisite number of declinations, shall be executed and filed by the licensee on behalf of the group policyholder. The excess line broker shall not renew the group policy with the unauthorized insurer unless the excess line broker obtains three declinations in accordance with the provisions of section 27.3 of Part 27 of this Title.

(3) The excess line broker shall provide a written affirmation to the TNC of the unavailability of coverage from an authorized insurer annually.

(b) Prior to procuring a group policy from an unauthorized insurer, an excess line broker shall obtain a written commitment from the unauthorized insurer that the insurer shall:

(1) cooperate with the superintendent with regard to any inquiry or request for information pertaining to the group policy or any claim submitted thereunder;

(2) comply with the requirements of Part 216 of this Title (Insurance Regulation 64);

(3) use licensed adjusters to investigate or adjust claims submitted under the group policy;

(4) and maintain records in accordance with Part 243 of this Title (Insurance Regulation 152) and maintain the privacy of consumers and customers in accordance with Part 420 of this Title (Insurance Regulation 169).

§ 60-3.9 Notice by motor vehicle insurers.

Every insurer writing motor vehicle liability insurance in satisfaction of the financial requirements of Vehicle and Traffic Law article 6 or motor vehicle physical damage insurance shall provide an annual written notice to the named insured under such a policy advising the named insured whether, or to what extent, it provides

coverage under the policy while the vehicle is being used as a TNC vehicle pursuant to Vehicle and Traffic Law article 44-B. The notice shall also state whether the insurer makes such coverage available on an optional basis.

(Matter in brackets is deleted; new matter is underlined.)

Section 65-1.1(a) is amended as follows:

(a) Every owner's policy of liability insurance issued in satisfaction of the minimum requirements of article 6 or 8 of the Vehicle and Traffic Law and article 51 of the Insurance Law and every policy issued in satisfaction of the minimum requirements of article 44-B of the Vehicle and Traffic Law shall contain provisions providing minimum first-party benefits equal to those set out below in the mandatory personal injury protection endorsement (New York), or mandatory personal injury protection endorsement - motorcycles (New York), respectively.

Section 65-1.1(d) is amended as follows:

MANDATORY PERSONAL INJURY PROTECTION ENDORSEMENT
(New York)

The Company agrees with the named insured, as follows:

Section I

Mandatory Personal Injury Protection

The company will pay first-party benefits to reimburse for basic economic loss sustained by an eligible injured person on account of personal injuries caused by an accident arising out of the use or operation of a motor vehicle or a motorcycle during the policy period and within the United States of America, its territories or possessions, or Canada.¹

First-Party Benefits

First-party benefits, other than death benefits, are payments equal to basic economic loss, reduced by the following:

- (a) 20 percent of the eligible injured person's loss of earnings from work to the extent that an eligible injured person's basic economic loss consists of such loss of earnings;
- (b) amounts recovered or recoverable on account of personal injury to an eligible injured person under State or Federal laws providing social security disability or workers' compensation benefits, or disability benefits under article 9 of the New York Workers' Compensation Law;
- (c) the amount of any applicable deductible, provided that such deductible shall apply to each accident, but only to the total of first-party benefits otherwise payable to the named insured and any relative as a result of that accident.

Basic Economic Loss

Basic economic loss shall consist of medical expense, work loss, other expense and, when death occurs, a death benefit as herein provided. Except for such death benefit, basic economic loss shall not include any loss sustained on account of death. Basic economic loss of each eligible injured person on account of any single accident shall not exceed \$50,000, except that any death benefit hereunder shall be in addition thereto.

Medical Expense

Medical expense shall consist of necessary expenses for:

- (a) medical, hospital (including services rendered in compliance with Article 41 of the Public Health Law, whether or not such services are rendered directly by a hospital), surgical, nursing, dental, ambulance, X-ray, prescription drug and prosthetic services;
- (b) psychiatric, physical and occupational therapy and rehabilitation;
- (c) any nonmedical remedial care and treatment rendered in accordance with a religious method of healing recognized by the laws of New York; and
- (d) any other professional health services.

These medical expenses will not be subject to a time limitation, provided that, within one year after the date of the accident, it is ascertainable that further medical expenses may be sustained as a result of the injury. Payments hereunder for necessary medical expenses shall be subject to the limitations and requirements of section 5108 of the New York Insurance Law.

Work Loss

Work loss shall consist of the sum of the following losses and expenses, up to a maximum payment of \$2,000 per month for a maximum period of three years from the date of the accident:

- (a) loss of earnings from work which the eligible injured person would have performed had such person not been injured, except that an employee who is entitled to receive monetary payments, pursuant to statute or contract with the employer, or who receives voluntary monetary benefits paid for by the employer, by reason of such employee's inability to work because of personal injury arising out of the use or operation of a motor vehicle or a motorcycle, shall not be entitled to receive first-party benefits for loss of earnings from work to the extent that such monetary payments or benefits from the employer do not result in the employee suffering a reduction in income or a reduction in such employee's level of future benefits arising from a subsequent illness or injury; and
- (b) reasonable and necessary expenses sustained by the eligible injured person in obtaining services in lieu of those which such person would have performed for income.

Other Expenses

Other expenses shall consist of all reasonable and necessary expenses, other than medical expense and work loss, up to \$25 per day for a period of one year from the date of the accident causing injury.

Death Benefit

Upon the death of any eligible injured person, caused by an accident to which this coverage applies, the Company will pay to the estate of such person a death benefit of \$2,000.

Eligible Injured Person

Subject to the exclusions and conditions set forth below, an eligible injured person is:

- (a) the named insured and any relative who sustains personal injury arising out of the use or operation of any motor vehicle;
- (b) the named insured and any relative who sustains personal injury arising out of the use or operation of any motorcycle, while not occupying a motorcycle;
- (c) any other person who sustains personal injury arising out of the use or operation of the insured motor vehicle in the State of New York while not occupying another motor vehicle; or
- (d) any New York State resident who sustains personal injury arising out of the use or operation of the insured motor vehicle outside of New York while not occupying another motor vehicle.

Exclusions

This coverage does not apply to personal injury sustained by:

- (a) the named insured while occupying, or while a pedestrian through being struck by, any motor vehicle owned by the named insured with respect to which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is not in effect;
- (b) any relative while occupying, or while a pedestrian through being struck by, any motor vehicle owned by the relative with respect to which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is not in effect;
- (c) the named insured or relative while occupying, or while a pedestrian through being struck by, a motor vehicle in New York State, other than the insured motor vehicle, with respect to which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is in effect; however, this exclusion does not apply to personal injury sustained in New York State by the named insured or relative while occupying a bus or school bus, as defined in sections 104 and 142 of the New York Vehicle and Traffic Law, unless that person is the operator, an owner, or an employee of the owner or operator, of such bus or school bus;

(d) any person in New York State while occupying the insured motor vehicle which is a bus or school bus, as defined in sections 104 and 142 of the New York Vehicle and Traffic Law, but only if such person is a named insured or relative under any other policy providing the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act; however, this exclusion does not apply to the operator, an owner, or an employee of the owner or operator, of such bus or school bus;^{[1] 2}

(e) any person while occupying a motorcycle;

(f) any person who intentionally causes his or her own personal injury;^{[2] 3}

(g) any person as a result of operating a motor vehicle while in an intoxicated condition or while his or her ability to operate the vehicle is impaired by the use of a drug (within the meaning of section 1192 of the New York Vehicle and Traffic Law), except that coverage shall apply to necessary emergency health services rendered in a general hospital, as defined in section 2801(10) of the New York Public Health Law, including ambulance services attendant thereto and related medical screening. However, where the person has been convicted of violating section 1192 of the New York Vehicle and Traffic Law while operating a motor vehicle in an intoxicated condition or while his or her ability to operate such vehicle is impaired by the use of a drug, and the conviction is a final determination, the company has a cause of action against such person for the amount of first party benefits that are paid or payable;^{[3 or] 4}

(h) any person while:

(1) committing an act which would constitute a felony, or seeking to avoid lawful apprehension or arrest by a law enforcement officer; ^{[2] 3}

(2) operating a motor vehicle in a race or speed test; ^{[2] 3}

(3) operating or occupying a motor vehicle known to that person to be stolen; ^{[2] 3} or

(4) repairing, servicing or otherwise maintaining a motor vehicle if the conduct is within the course of a business of repairing, servicing or otherwise maintaining a motor vehicle and the injury occurs on the business premises; ^{[2] 3}

(i) the named insured or relative while not occupying a motor vehicle or a motorcycle when struck by a motorcycle in New York State with respect to which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is in effect;

(j) any New York State resident other than the named insured or relative injured through the use or operation of the insured motor vehicle outside of New York State if such resident is the owner or a relative of the owner of a motor vehicle insured under another policy providing the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act;

(k) any New York State resident other than the named insured or relative injured through the use or operation of the insured motor vehicle outside of New York State if such resident is the owner of a motor vehicle for which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is not in effect[.]; or

(l) any person who is injured while, pursuant to article 44-B of the Vehicle and Traffic Law, the insured motor vehicle is being used or operated by a transportation network company driver.⁵

Other Definitions

When used in reference to this coverage:

(a) the *insured motor vehicle* means a motor vehicle owned by the named insured and to which the bodily injury liability insurance of this policy applies and for which a specific premium is charged;

(b) *motorcycle* means a vehicle as defined in section 123 of the New York Vehicle and Traffic Law and which is required to carry financial security pursuant to article 6, 8 or 48-A of the Vehicle and Traffic Law;

(c) *motor vehicle* means a motor vehicle, as defined in section 311 of the New York Vehicle and Traffic Law, and also includes fire and police vehicles, but shall not include any motor vehicle not required to carry financial security pursuant to article 6, 8 or 48-A of the Vehicle and Traffic Law, or a motorcycle as defined above;

(d) *named insured* means the person or organization named (in the declarations)^[4]⁶

(e) *occupying* means in or upon or entering into or alighting from;

(f) *personal injury* means bodily injury, sickness or disease;

(g) *relative* means a spouse, child, or other person related to the named insured by blood, marriage, or adoption (including a ward or foster child), who regularly resides in the insured's household, including any such person who regularly resides in the household, but is temporarily living elsewhere; and

(h) *use or operation* of a motor vehicle or a motorcycle includes the loading or unloading of such vehicle.

Conditions

Action Against Company. No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with the terms of this coverage.

Notice. In the event of an accident, written notice setting forth details sufficient to identify the eligible injured person, along with reasonably obtainable information regarding the time, place and circumstances of the accident, shall be given by, or on behalf of, each eligible injured person, to the Company, or any of the Company's authorized agents, as soon as reasonably practicable, but in no event more than 30 days after the date of the accident, unless the eligible injured person submits written proof providing clear and reasonable justification for the failure to comply with such time limitation. If an eligible injured person or that person's legal representative institutes a proceeding to recover damages for personal injury under section 5104(b) of the New York Insurance Law, a copy of the summons and complaint or other process served in connection with such action shall be forwarded as soon as practicable to the Company or any of the Company's authorized agents by such eligible injured person or that person's legal representative.

Proof of Claim. Medical, Work Loss, and Other Necessary Expenses. In the case of a claim for health service expenses, the eligible injured person or that person's assignee or representative shall submit written proof of claim to the Company, including full particulars of the nature and extent of the injuries and treatment received and contemplated, as soon as reasonably practicable but, in no event later than 45 days after the date services are rendered. The eligible injured person or that person's representative shall submit written proof of claim for work loss benefits and for other necessary expenses to the Company as soon as reasonably practicable but, in no event, later than 90 days after the work loss is incurred or the other necessary services are rendered. The foregoing time limitations for the submission of proof of claim shall apply unless the eligible injured person or that person's representative submits written proof providing clear and reasonable justification for the failure to comply with such time limitation. Upon request by the Company, the eligible injured person or that person's assignee or representative shall:

- (a) execute a written proof of claim under oath;
- (b) as may reasonably be required submit to examinations under oath by any person named by the Company and subscribe the same;
- (c) provide authorization that will enable the Company to obtain medical records; and
- (d) provide any other pertinent information that may assist the Company in determining the amount due and payable.

The eligible injured person shall submit to medical examination by physicians selected by, or acceptable to, the Company, when, and as often as, the Company may reasonably require.

Arbitration. In the event any person making a claim for first-party benefits and the Company do not agree regarding any matter relating to the claim, such person shall have the option of submitting such disagreement to arbitration pursuant to procedures promulgated or approved by the Superintendent of Financial Services.

Reimbursement and Trust Agreement. To the extent that the Company pays first-party benefits, the Company is entitled to the proceeds of any settlement or judgment resulting from the exercise of any right of recovery for damages for personal injury under section 5104(b) of the New York Insurance Law. The Company shall have a lien upon any such settlement or judgment to the extent that the Company has paid first-party benefits. An eligible injured person shall:

- (a) hold in trust, for the benefit of the Company, all rights of recovery which that person shall have for personal injury under section 5104(b) of the New York Insurance Law;
- (b) do whatever is proper to secure, and shall do nothing to prejudice, such rights; and
- (c) execute, and deliver to the Company, instruments and papers as may be appropriate to secure the rights and obligations of such person and the Company established by this provision.

An eligible injured person shall not compromise an action to recover damages brought under section 5104(b) of the New York Insurance Law, except:

- (a) with the written consent of the Company;
- (b) with approval of the court; or
- (c) where the amount of the settlement exceeds \$50,000.

Other Coverage. Where more than one source of first-party benefits required by article 51 of the New York Insurance Law and article 6, [or] 8, or 44-B of the New York Vehicle and Traffic Law is available and applicable to an eligible injured person in any one accident, this Company is liable to an eligible injured person only for an amount equal to the maximum amount that the eligible injured person is entitled to recover under this coverage, divided by the number of available and applicable sources of required first-party benefits. An eligible injured person shall not recover duplicate benefits for the same elements of loss under this coverage or any other mandatory first-party motor vehicle or no-fault motor vehicle insurance coverage issued in compliance with the laws of another state.

If the eligible injured person is entitled to benefits under any such mandatory first-party motor vehicle or no-fault motor vehicle insurance for the same elements of loss under this coverage, this Company shall be liable only for an amount equal to the proportion that the total amount available under this coverage bears to the sum of the amount available under this coverage and the amount available under such other mandatory insurance for the common elements of loss. However, where another state's mandatory first-party or no-fault motor vehicle insurance law provides unlimited coverage available to an eligible injured person for an element of loss under this coverage, the obligation of this Company is to share equally for that element of loss with such other mandatory insurance until the \$50,000, or \$75,000 if Optional Basic Economic Loss (OBEL) coverage is purchased, limit of this coverage is exhausted by the payment of that element of loss and any other elements of loss.

Section II

Excess Coverage

If motor vehicle medical payments coverage or any disability coverages or uninsured motorists coverage are afforded under this policy, such coverages shall be excess insurance over any Mandatory PIP, OBEL or Additional PIP benefits paid or payable, or which would be paid or payable but for the application of a deductible, under this or any other motor vehicle No-Fault insurance policy.

Section III

Constitutionality

If it is conclusively determined by a court of competent jurisdiction that the New York Comprehensive Motor Vehicle Insurance Reparations Act, or any amendment thereto, is invalid or unenforceable in whole or in part, then, subject to the approval of the Superintendent of Financial Services, the Company may amend this policy and may also recompute the premium for the existing or amended policy.

These amendments and recomputations will be effective retroactively to the date that such act or any amendment is deemed to be invalid or unenforceable in whole or in part.

* * *

¹ If the policy is being used to satisfy the financial responsibility requirements of article 44-B of the Vehicle and Traffic Law, then the Company may substitute the following language:

The company will pay first-party benefits to reimburse for basic economic loss sustained by an eligible injured person on account of personal injuries caused by an accident arising out of the use or operation of a motor vehicle, pursuant to article 44-B of the Vehicle and Traffic Law, by a transportation network company driver during the policy period and within the United States of America, its territories or possessions, or Canada.

² Language in brackets may be deleted if the insured motor vehicle is not a bus or school bus.

[²]³ These exclusions may be deleted, in the event the Company wishes to provide coverage under the indicated circumstances.

[³]⁴ This exclusion may be deleted, in the event the company wishes to provide coverage under the indicated circumstance. Alternatively, the company may delete the cause of action language only, provided, however, that, in either case, if the company deletes this language, then the company will be deemed to have waived its right to bring a cause of action against the person.

⁵ An insurer may not include this exclusion in a policy used to satisfy the requirements under article 44-B of the Vehicle and Traffic Law. An insurer may use one of the following exclusions:

If the policy provides liability coverage while, pursuant to article 44-B of the Vehicle and Traffic Law, the insured motor vehicle is being used or operated by a transportation network company driver while providing a transportation network company prearranged trip:

any person who is injured while, pursuant to article 44-B of the Vehicle and Traffic Law, the insured motor vehicle is being used or operated by a transportation network company driver while the driver is logged onto a transportation network company's digital network but is not engaged in a transportation network company prearranged trip.

If the policy provides liability coverage while, pursuant to article 44-B of the Vehicle and Traffic Law, the insured motor vehicle is being used or operated by a transportation network company driver while logged onto a transportation network company's digital network but who is not engaged in a transportation network company prearranged trip:

any person who is injured while, pursuant to article 44-B of the Vehicle and Traffic Law, the insured motor vehicle is being used or operated by a transportation network company driver, while the driver provides a transportation network company prearranged trip.

[⁴]⁶ Companies may substitute the appropriate term, reference or language for the matter set out in brackets. With respect to a group policy issued pursuant to Insurance Law section 3455, the named insured includes transportation network driver to whom a certificate of insurance is issued under the group policy.

Footnotes 5 through 11, as set forth in Sections 65-1.1(e) and (f) and 65-1.2, are renumbered as footnotes 7 through 13.

Section 65-1.3(c) is amended as follows:

ADDITIONAL PERSONAL INJURY PROTECTION ENDORSEMENT
(New York)

The Company agrees with the named insured subject to all of the provisions, exclusions and conditions of the Mandatory Personal Injury Protection (Endorsement)^{[12] 14} (New York), not expressly modified in this (Endorsement) ^{[12] 14} as follows:

Additional Personal Injury Protection

The Company will pay additional first-party benefits to reimburse for extended economic loss on account of personal injuries sustained by an eligible injured person and caused by an accident arising out of the use or operation of a motor vehicle or motorcycle during the policy period. This coverage only applies to motor vehicle accidents within the United States of America, its territories or possessions, or Canada.¹⁵

Eligible Injured Person

Subject to the exclusions and conditions set forth below, an eligible injured person is:

- (a) the named insured and any relative who sustains personal injury arising out of the use or operation of any motor vehicle;
- (b) the named insured and any relative who sustains personal injury arising out of the use or operation of any motorcycle while not occupying a motorcycle;
- (c) any other person who sustains personal injury arising out of the use or operation of the insured motor vehicle while occupying the insured motor vehicle; or
- (d) any other person who sustains personal injury arising out of the use or operation of any other motor vehicle (other than a public or livery conveyance) while occupying such other motor vehicle, if such other motor vehicle is being operated by the named insured or any relative.

Exclusions

This coverage does not apply to personal injury sustained by:

- (a) any person while occupying a motor vehicle owned by such person with respect to which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is not in effect;
- (b) any person while occupying, or while a pedestrian through being struck by, a motor vehicle owned by the named insured with respect to which additional personal injury protection coverage is not provided under this policy;

(c) any relative while occupying, or while a pedestrian through being struck by, a motor vehicle owned by such relative with respect to which additional personal injury protection coverage is not provided under this policy;

(d) any New York State resident other than the named insured or relative injured through the use or operation of a motor vehicle outside of New York State if such resident is the owner of a motor vehicle for which the coverage required by the New York Comprehensive Motor Vehicle Insurance Reparations Act is not in effect;

(e) any person while occupying a motorcycle;

(f) any person who intentionally causes his own personal injury;^{[13] 16}

(g) any person as a result of operating a motor vehicle while in an intoxicated condition or while his or her ability to operate the vehicle is impaired by the use of a drug (within the meaning of section 1192 of the New York Vehicle and Traffic Law) except that coverage shall apply to necessary emergency health services rendered in a general hospital, as defined in section 2801(10) of the New York Public Health Law, including ambulance services attendant thereto and related medical screening. However, where the person has been convicted of violating section 1192 of the New York Vehicle and Traffic Law while operating a motor vehicle in an intoxicated condition or while his or her ability to operate such vehicle is impaired by the use of a drug, and the conviction is a final determination, the company has a cause of action against such person for the amount of first party benefits that are paid or payable;^{[14] 17} or

(h) any person while:

(i) committing an act which would constitute a felony, or seeking to avoid lawful apprehension or arrest by a law enforcement officer;^{[13] 16}

(ii) operating a motor vehicle in a race or speed test; ^{[13] 16}

(iii) operating or occupying a motor vehicle known to him to be stolen; or ^{[13] 16}

(iv) repairing, servicing, or otherwise maintaining a motor vehicle if such conduct is within the course of a business of repairing, servicing or otherwise maintaining a motor vehicle and the injury occurs on the business premises[.];^{[13] 16} or

(i) any person who is injured while, pursuant to article 44-B of the Vehicle and Traffic Law, the insured motor vehicle is being used or operated by a transportation network company driver.¹⁸

Additional First-Party Benefits

Additional first-party benefits are payments equal to extended economic loss reduced by:

(a) 20 percent of the eligible injured person's loss of earnings from work, to the extent that the extended economic loss covered by this (Endorsement)^{[15] 19} includes such loss of earnings;

(b) amounts recovered or recoverable on account of personal injury to an eligible injured person under State or Federal laws providing social security disability or workers' compensation benefits or disability benefits under article 9 of the New York Workers' Compensation law, which amounts have not been applied to reduce first-party benefits recovered or recoverable under basic economic loss;

(c) amounts recovered or recoverable by the eligible injured person for any element of extended economic loss covered by this (Endorsement) ^[15] ¹⁹ under any mandatory source of first-party automobile no-fault benefits required by the laws of any state (other than the State of New York) of the United States of America, its possessions or territories, or by the laws of any province of Canada.

Extended Economic Loss

Extended economic loss shall consist of the following:

(a) basic economic loss sustained on account of an accident occurring within the United States of America, its possessions or territories, or Canada, which is not recovered or recoverable under a policy issued in satisfaction of the requirements of article 6 or 8 of the New York Vehicle and Traffic law and article 51 of the New York Insurance Law;

(b) the difference between

(i) basic economic loss; and

(ii) basic economic loss recomputed in accordance with the time and dollar limits [set out in the declarations]; ^[15] ¹⁹ and

((c) an additional death benefit in the amount set out in the declarations)^[16] ²⁰

Two or More Motor Vehicles Insured Under This Policy

The limit of liability under this (Endorsement) ^[15] ¹⁹ applicable to injuries sustained by an eligible injured person while occupying, or while a pedestrian through being struck by, the insured motor vehicle shall be as stated (in the declarations) ^[15] ¹⁹ for that insured motor vehicle. The limit of liability for injuries covered by this (Endorsement)^[17] ²¹ and sustained by an eligible injured person while occupying, or while a pedestrian through being struck by, a motor vehicle, other than the insured motor vehicle, shall be the highest limit stated for this coverage in the declarations for any insured motor vehicle under this policy.

Arbitration

In the event any person making a claim for additional first-party benefits and the Company do not agree regarding any matter relating to the claim, such person shall have the option of submitting such disagreement to arbitration pursuant to procedures promulgated or approved by the Superintendent of Financial Services.

Subrogation

In the event of any payment for extended economic loss, the Company is subrogated to the extent of such payments to the rights of the person to whom, or for whose benefit, such payments were made. Such person must execute and deliver instruments and papers and do whatever else is necessary to secure such rights. Such person shall do nothing to prejudice such rights.

Other Coverage; Nonduplication

The eligible injured person shall not recover duplicate benefits for the same elements of loss covered by this (Endorsement)^{[18] 22} or any other optional first-party automobile or no-fault automobile insurance coverage.

If an eligible injured person is entitled to New York mandatory and additional personal injury protection benefits under any other policy, and if such eligible injured person is not entitled to New York mandatory personal injury protection benefits under this policy, then the coverage provided under this Additional Personal Injury Protection Endorsement (New York) shall be excess over such other New York mandatory and additional personal injury protection benefits.

When coverage provided under this (Endorsement)^{[18] 22} applies on an excess basis, it shall apply only in the amount by which the total limit of liability of New York mandatory and additional personal injury protection coverage available under this policy exceeds the total limit of liability for any other applicable New York mandatory and additional personal injury protection coverage

Subject to the provisions of the preceding three paragraphs, if the eligible injured person is entitled to benefits under any other optional first-party automobile or no-fault automobile insurance for the same elements of loss covered by this (Endorsement)^{[18] 22} this Company shall be liable only for an amount equal to the proportion that the total amount available under this [Endorsement] ^{[18] 22} bears to the sum of the amounts available under this (Endorsement)^{[19] 23} and such other optional insurance, for the same element of loss.

^{[12] 14} Companies may substitute the appropriate term, reference or language for the matter set out in parenthesis.

¹⁵ If the policy is being used to satisfy the financial responsibility requirements of article 44-B of the Vehicle and Traffic Law, then the Company may substitute the following language:

The company will pay first-party benefits to reimburse for basic economic loss sustained by an eligible injured person on account of personal injuries caused by an accident arising out of the use or operation of a motor vehicle, pursuant to article 44-B of the Vehicle and Traffic Law, by a transportation network company driver during the policy period and within the United States of America, its territories or possessions, or Canada.

^{[13] 16} These exclusions may be deleted, in the event the Company wishes to provide coverage under the indicated circumstances.

^{[14] 17} This exclusion may be deleted, in the event the company wishes to provide coverage under the indicated circumstance. Alternatively, the company may delete the cause of action language only, provided, however, that, in either case, if the company deletes this language, then the company will be deemed to have waived its right to bring a cause of action against the person.

¹⁸ An insurer may not include this exclusion in a policy used to satisfy the requirements under article 44-B of the Vehicle and Traffic Law. An insurer may use one of the following exclusions:

If the policy provides liability coverage while, pursuant to article 44-B of the Vehicle and Traffic Law, the insured motor vehicle is being used or operated by a transportation network company driver while providing a transportation network company prearranged trip:

any person who is injured while, pursuant to article 44-B of the Vehicle and Traffic Law, the insured motor vehicle is being used or operated by a transportation network company driver while the driver is logged onto a transportation network company's digital network but is not engaged in a transportation network company prearranged trip.

If the policy provides liability coverage while, pursuant to article 44-B of the Vehicle and Traffic Law, the insured motor vehicle is being used or operated by a transportation network company driver while logged onto a transportation network company's digital network but who is not engaged in a transportation network company prearranged trip:

any person who is injured while, pursuant to article 44-B of the Vehicle and Traffic Law, the insured motor vehicle is being used or operated by a transportation network company driver while the driver provides a transportation network company prearranged trip.

[¹⁵] ¹⁹ Companies may substitute the appropriate term, reference or language for the matter set out in brackets.

[¹⁶] ²⁰ Language in brackets may be deleted if additional death benefits are not offered.

[¹⁷] ²¹ Companies may substitute the appropriate term, reference or language for the matter set out in brackets.

[¹⁸] ²² Companies may substitute the appropriate term, reference or language for the matter set out in brackets.

[¹⁹] ²³ Companies may substitute the appropriate term, reference or language for the matter set out in brackets.

Section 65-3.12(a) and (b) are amended as follows:

(a) *Institution of claims for first-party benefits-priority.* (1) Subject to paragraph (9) of this subdivision, an applicant who is an operator or occupant of an insured motor vehicle, or any other person, not occupying another motor vehicle or a motorcycle, who sustains a personal injury arising out of the use or operation in New York State of such motor vehicle, shall institute the claim against the insurer of such motor vehicle.

(2) An applicant who is neither an operator nor an occupant of a motor vehicle or a motorcycle, and who sustains a personal injury arising out of the use or operation in New York State of more than one insured motor vehicle or insured motorcycle shall institute the claim against the insurer of any one of such motor vehicles or motorcycles unless the insurers agree among themselves that one of them will accept and pay the claim initially.

(3) An applicant who is a named insured or a relative of a named insured, other than the occupant of a motorcycle, and who sustains a personal injury arising out of the use or operation of a motor vehicle outside of

New York State, shall institute the claim against the insurer of the named insured or the insurer of the relative. Where there is more than one insurer which would be the source of benefits, the insurers may agree among themselves, if there is a valid basis therefor, that one of them will accept and pay the claim initially. If there is no such agreement, the provisions of subdivisions (b) and (e) of this section shall apply.

(4) An applicant who is a named insured or a relative of a named insured, other than the occupant of a motorcycle, and who sustains a personal injury arising out of the use or operation of an uninsured motor vehicle in New York State, shall institute the claim against the insurer of the named insured or the insurer of the relative. Where there is more than one insurer which would be the source of benefits, the insurers may agree among themselves, if there is a valid basis therefor, that one of them will accept and pay the claim initially. If there is no such agreement, the provisions of subdivisions (b) and (e) of this section shall apply. If there is no such insurer and the accident occurs in New York State, then an applicant who is a qualified person as defined in article 52 of the Insurance Law shall institute the claim against the MVAIC.

(5) An applicant who is neither an operator nor an occupant of a motor vehicle or a motorcycle, and who sustains a personal injury arising out of the use or operation in New York State of an insured motorcycle, shall institute the claim against the insurer of the motorcycle.

(6) An applicant who is a named insured or a relative of a named insured, other than the occupant of a motor vehicle or a motorcycle, and who sustains a personal injury arising out of the use or operation of an uninsured motorcycle in New York State shall institute the claim against the insurer of the named insured or the insurer of the relative. Where there is more than one insurer which would be the source of benefits, the insurers may agree among themselves, if there is a valid basis therefor, that one of them will accept and pay the claim initially. If there is no such agreement, the provisions of subdivisions (b) and (e) of this section shall apply. If there is no such insurer and the accident occurs in New York State, then an applicant who is a qualified person as defined in article 52 of the Insurance Law shall institute the claim against the MVAIC.

(7) An applicant who is a named insured or a relative of a named insured, other than the occupant of a motor vehicle or a motorcycle, and who sustains a personal injury arising out of the use or operation of a motorcycle outside of New York State shall institute the claim against the insurer of the named insured or relative. Where there is more than one insurer which would be the source of benefits, the insurers may agree among themselves, if there is a valid basis therefor, that one of them will accept and pay the claim initially. If there is no such agreement, the provisions of subdivisions (b) and (e) of this section shall apply.

(8) An applicant who is a New York State resident and who is neither a named insured or relative under any mandatory personal injury protection endorsement nor the owner of an uninsured motor vehicle and who sustains a personal injury arising out of the use or operation of a New York insured motor vehicle outside of New York State shall institute the claim against the insurer of such motor vehicle. Where there is more than one insurer that would be the source of benefits, the insurers may agree among themselves, if there is a valid basis therefor, that one of them will accept and pay the claim initially. If there is no such agreement, the provisions of subdivisions (b) and (e) of this section shall apply.

(9) An applicant, other than an operator, owner, or employee of the owner or operator of a bus or school bus, who, while an occupant of such bus or school bus, sustains a personal injury arising out of the use or operation in New York State of such bus or school bus, shall institute the claim against the applicant's own insurer. If the

applicant does not have an insurer, the applicant shall institute the claim against the insurer of the bus or school bus.

(10) An applicant who is an operator, owner, or employee of the operator or owner of a bus or school bus, and who, while an occupant of such bus or school bus, sustains a personal injury arising out of the use or operation of such bus or school bus, shall institute the claim against the insurer of such bus or school bus.

(b)(1) If a dispute regarding priority of payment arises among insurers who otherwise are liable for the payment of first-party benefits, or if a dispute arises among insurers who are liable for the payment of first-party benefits and have the same priority of payment, then the first insurer to whom notice of claim is given pursuant to section 65-3.3 or 65-3.4(a) of this Subpart, by or on behalf of an eligible injured person, shall be responsible for payment to such person. Any such dispute shall be resolved in accordance with the arbitration procedures established pursuant to section 5105 of the Insurance Law and section 65-4.11 of this Part. Each insurer that concludes that it was not the first insurer contacted to provide first party benefits shall issue a denial of claim form (NF-10) that includes the following statement in box 33:

If, after contacting the insurer that we advised you has primary responsibility for the payment of first party benefits, that insurer denies coverage for your claim, you have the option to submit this dispute for expedited arbitration by providing a copy of the denial form and a written request along with a \$40 filing fee to the organization listed under option two on the back of this form. Your \$40 filing fee will be refunded to you by the insurer determined to be responsible for processing your claim. This arbitration is limited solely to determining the insurer to process your claim, and it will not resolve issues regarding pending bills or consider any other defense to payment. You do not need to submit bills for this arbitration.

(2)(i) Under section 5106(d)(2) of the Insurance Law, a group policy issued pursuant to section 3455 of the Insurance Law shall provide first party benefits when a dispute exists as to whether a driver was using or operating a motor vehicle in connection with a transportation network company when loss, damage, injury, or death occurs. Section 5106(d)(2) of the Insurance Law requires a transportation network company to notify the insurer that issued the owner's policy of liability insurance of the dispute within ten business days of becoming aware that the dispute exists. When there is a dispute, the group insurer liable for the payment of first party benefits under a group policy shall have the right to recover the amount paid from the driver's insurer to the extent that the driver would have been liable to pay damages in an action at law.

(ii) Any such dispute shall be resolved in accordance with the arbitration procedures established pursuant to section 65-4.11 of this Part.

(iii) Each insurer that is not the insurer that issued the group policy shall issue a denial of claim form (NF-10) that includes in box 33 the statement set forth in paragraph (1) of this subdivision.

(3) With respect to any accident, insured event, or occurrence prior to January 1, 2019, where the driver was using or operating a motor vehicle in connection with a transportation network company when loss, damage, injury, or death occurs:

(i) an insurer that issued a group policy pursuant to section 3455 of the Insurance Law shall not seek to recover any amount that it pays pursuant to article 51 of the Insurance Law from the insurer that issued the

owner's policy of liability insurance issued in satisfaction of the minimum requirements of article 6 of the Vehicle and Traffic Law; and

(ii) If an insurer that issued the owner's policy of liability insurance issued in satisfaction of the minimum requirements of article 6 of the Vehicle and Traffic Law receives the claim first, the insurer that issued a group policy pursuant to section 3455 of the Insurance Law shall fully indemnify the insurer that issued the owner's policy of liability insurance for amounts that it pays pursuant to article 51 of the Insurance Law.

A new section 65-3.12(f) is added as follows:

(f) For the purposes of this section, "insurer of such motor vehicle" means any insurer that is providing first party benefits at the time the personal injury is sustained.

New section 65-3.13(a)(6) and (c) are added as follows:

(6) If a dispute arises among insurers who are liable for the payment of additional personal injury protection benefits and have the same priority of payment, then the first insurer to whom notice of claim is given pursuant to section 65-3.3 or 65-3.4(a) of this Subpart, by or on behalf of an eligible injured person, shall be responsible for payment to such person. Any such dispute shall be resolved in accordance with the arbitration procedures established pursuant to section 5105 of the Insurance Law and section 65-4.11 of this Part. Each insurer that concludes that it was not the first insurer contacted to provide additional personal injury protection benefits shall issue a denial of claim form (NF-10) that includes the following statement in box 33:

If, after contacting the insurer that we advised you has primary responsibility for the payment of additional personal injury protection benefits, that insurer denies coverage for your claim, you have the option to submit this dispute for expedited arbitration by providing a copy of the denial form and a written request along with a \$40 filing fee to the organization listed under option two on the back of this form. Your \$40 filing fee will be refunded to you by the insurer determined to be responsible for processing your claim. This arbitration is limited solely to determining the insurer to process your claim, and it will not resolve issues regarding pending bills or consider any other defense to payment. You do not need to submit bills for this arbitration.

(c) For the purposes of this section, "insurer of such motor vehicle" means any insurer that is providing additional personal injury protection benefits at the time the personal injury is sustained.

Section 65-4.5(b)(1) and (2) are amended as follows:

(b) *Special expedited arbitration.* (1) Special expedited arbitration shall be available for disputes involving:

(i) the failure to submit notice of claim within 30 calendar days after the accident and where it has been determined by the insurer that reasonable justification for late notice has not been established; and

(ii) the proper application of sections 65-3.12(b) and (c) and 65-3.13(a)(2)-(4) and (6) of this Part.

(2)(i) An applicant may request special expedited arbitration for resolution of the dispute involving late notice within 30 calendar days after mailing of the denial of claim by the insurer stating that reasonable justification for late notice has not been established.

(ii)(a) In regard to disputes related to section 65-3.12(b) and (c) or 65-3.13(a)(2)-(4) and (6) of this Part, an applicant may request special expedited arbitration to designate an insurer that is responsible for processing first-party benefits and additional first party benefits, after each insurer has issued a denial of claim form (NF-10) stating that the insurer is not the insurer eligible to process the first-party benefits claimed.

(b) Special expedited arbitration required by clause (a) of this subparagraph shall only designate an insurer to commence processing the claim based upon the first insurer notified that is otherwise liable for the payment of first party benefits. The insurer designated by the arbitration shall retain all rights of investigation afforded under statute and regulation, and the ultimate liability for payment of benefits shall be resolved in accordance with section 65-4.11 of this Subpart.

Section 65-4.11(a)(1) and (2) are amended as follows:

(a) *Applicability.* (1) This section shall apply to mandatory arbitration of controversies between insurers, pursuant to the provisions of [section] sections 5105 and 5106(d) of the Insurance Law, and shall apply to insurers, self-insurers and compensation providers. The term *insurer* as used in this section (except as specified in paragraphs (c)(2) and (f)(1) of this section) shall include both “insurers” and “self-insurers” as those terms are defined in this Part and article 51 of the Insurance Law; the Motor Vehicle Accident Indemnification Corporation (MVAIC); any company providing insurance pursuant to section 5103(g) of the Insurance Law; and compensation providers as defined in section 5102(l) of the Insurance Law.

(2) [All] Except as provided in section 65-3.12(b)(3) of this Part, all insurers shall submit controversies arising out of accidents, insured events or occurrences within the jurisdiction of section 5105, 5106(d), or 5221(b) of the Insurance Law to mandatory arbitration, as prescribed in this section. Controversies arising from accidents, insured events or occurrences outside the jurisdiction of section 5105, 5106(d), or 5221(b) of the Insurance Law may be submitted with the consent of the controverting insurers.

Section 169.1(d)(1) is amended as follows:

(d) *Other exceptions and restrictions.* (1) No points or surcharge may be imposed for an accident occurring under the following circumstances:

(i) when the motor vehicle was lawfully parked; [or]

(ii) when the motor vehicle of the insured or other operator resident in the same household was struck in rear by another motor vehicle, and the insured or other resident operator has not been convicted of a moving traffic violation in connection with the accident; [or]

(iii) when the motor vehicle operated by the insured or other operator was struck by a hit-and-run vehicle, if the accident is reported to the proper authority within 24 hours by the insured or resident operator; [or]

(iv) when the insured or other resident in the insured's household operates a vehicle for hire or a motor vehicle other than a noncommercial motor vehicle, and the accident occurred while in the course of employment and said accident did not result in a conviction for a moving traffic violation; [or]

(v) when the insured has had an accident while operating, as an employee, a commercial motor vehicle in the course of employment and in the discharge of the employee's duties at the time of the accident, unless the accident is determined to have been caused by the intentional action or gross negligence of the insured. For purposes of this rule only, the term gross negligence shall not mean the insured's failure to refuse to drive or operate a commercial motor vehicle which has a defective condition that is known to the insured, provided the insured had reported such defective condition to the insured's immediate supervisor or employer[.]; or

(vi) when the insured or other resident in the insured's household has had an accident while, pursuant to article 44-B of the Vehicle and Traffic Law, the insured or other resident in the insured's household was logged onto a TNC's digital network but not engaged in a pre-arranged trip or engaged in a TNC prearranged trip, and the accident did not result in a conviction for a moving traffic violation, unless the policy is providing coverage for such operation of the motor vehicle. If the coverage is provided pursuant to an endorsement, then the insurer may impose a surcharge on the separate premium for the endorsement.

A new section 216.2(e) is added as follows

(e) This Part shall also apply to an unauthorized insurer with respect to a group policy issued pursuant to Insurance Law section 3455.



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

I, Maria T. Vullo, Superintendent of Financial Services, do hereby certify that the foregoing is the consolidated 15th amendment to Part 27 (Insurance Regulation 41), 10th amendment to Part 60-1 (Insurance Regulation 35-A), 7th amendment to Part 60-2 (Insurance Regulation 35-D), new Part 60-3 (Insurance Regulation 35-E), 3rd amendment to Part 65-1 (Insurance Regulation 68-A), 8th amendment to Part 65-3 (Insurance Regulation 68-C), 6th amendment to Part 65-4 (Insurance Regulation 68-D), 6th amendment to Part 169 (Insurance Regulation 100), and 17th amendment to Part 216 (Insurance Regulation 64) of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York signed by me on October 10, 2017 pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law, Sections 301, 2105, 2118, 2305, 2307, 2334, 2335, 2601, 3420, 3455, 5102, 5105, and 5106 and Articles 23 and 51 of the Insurance Law, Sections 1693, 1694 and 311 of the Vehicle and Traffic Law, and Part AAA of Chapter 59 of the Laws of 2017, to take effect upon publication in the State Register.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed rule was published in the State Register on June 21, 2017. No other publication or prior notice is required by statute.

Maria T. Vullo
Superintendent of Financial Services

Date: October 10, 2017