

**Explanatory Statement Regarding Approval of Proposed Operating Procedure for
Notice and Hearing by the Management Committee**

On February 26, 2007, following a public hearing to receive comments from interested parties and the opportunity for discussion, the Management Committee of the Interstate Insurance Product Regulation Commission ("IIPRC") approved a proposed operating procedure for Notice and Hearing. This explanatory statement is being issued in accordance with the procedure established by Section 109 of the IIPRC's Rule for Adoption, Amendment and Repeal of Rules for the Interstate Product Regulation Commission.

The Management Committee has approved this proposed operating procedure in order to establish notice and hearing procedures regarding adjudications made by the IIPRC in disputed cases pursuant to Article VIII, § 4, Article IX and Article XIV, § 2 of the Interstate Insurance Product Regulation Compact (the "Compact"), as enacted into law by each Compacting State, and the Management Committee believes that this proposed operating procedure establishes the appropriate procedures in accordance with the requirements of the Compact.

There are no changes between the text of the operating procedure as approved by the Management Committee and the text of the proposed operating procedure contained in the notice of proposed operating procedure issued on December 22, 2006. No comments were received on the proposed operating procedure.

**INTERSTATE INSURANCE PRODUCT REGULATION COMMISSION
OPERATING PROCEDURE
FOR NOTICE AND HEARING**

§ 101. Definitions.

As used in this rule:

- (a) “Adjudication” means the process for determination of facts or application of law pursuant to which the Commission formulates and issues an order.
- (b) “Commission” means the Interstate Insurance Product Regulation Commission established by the Compact.
- (c) “Commission record” or “hearing record” means the record maintained in accordance with § 107.
- (d) “Compact” means the compact legislation of the Interstate Insurance Product Regulation Commission enacted into law in each of the compacting states.
- (e) “Disputed case” means an adjudication in which an opportunity for an evidentiary hearing is required by law.
- (f) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (g) “Electronic record” means a record created, generated, sent, communicated, received, or stored by electronic means.
- (h) “Emergency adjudication” means an adjudication held in accordance with § 108.
- (i) “Evidentiary hearing” or “hearing” means a hearing for the receipt of evidence to resolve a disputed issue in which the decision of the hearing officer may be made only on material contained in the hearing record.
- (j) “Formal hearing procedure” means a hearing conducted in accordance with the provisions of § 104.
- (k) “Informal hearing procedure” means a hearing authorized by, and conducted pursuant to § 105.
- (l) “Law” means the Compact, the common law, or rule or order or by-law of the Commission.
- (m) “Management Committee” means the Management Committee formed under Article V of the Compact.

- (n) “Member” means the person chosen by a compacting state as its representative to the Commission, or his or her designee, including but not limited to a commissioner, superintendent, director or administrator.
- (o) “Notify” means to take such steps as may be reasonably required to inform another person in the ordinary course, whether or not the other person actually comes to know of it.
- (p) “Order” means the Commission’s adjudication of particular applicability that determines the legal rights, duties, privileges or immunities, or other legal interests of one or more specific persons.
- (q) “Party” means the Commission taking action, the person against whom the action is directed, and any other person named as a party or permitted to intervene.
- (r) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.
- (s) “Presiding officer” means the person who presides over the evidentiary hearing in a disputed case. A presiding officer may be a hearing officer appointed by the Management Committee, or a review panel composed of a hearing officer appointed by the Management Committee, and one or more other persons appointed by the Management Committee.
- (t) “Procedural order” means an order that is not immediately reviewable by the Commission which is issued by a presiding officer to govern the proceedings in a disputed case, including but not limited to protective orders, pre-hearing orders, the decision of whether to conduct an adjudication using an informal hearing procedure or a formal hearing procedure, and rulings and orders relating to evidentiary matters, subpoenas, discovery, disqualification, judicially noticed facts, intervention, and default.
- (u) “Product filing” means a filing submitted to the Commission for approval of a product, rate or advertisement in accordance with one or more uniform standards.
- (v) “Recommended decision” or “recommended order” means a proposed action issued by a presiding officer which is subject to review by the Commission.
- (w) “Sign” means with present intent to authenticate or adopt a record:
 - (1) to execute or adopt a tangible symbol; or
 - (2) to attach or logically associate with the symbol an electronic symbol, sound or process.
- (x) “Written” means inscribed on a tangible medium.

§ 102. Applicability; delegation of authority.

- (a) This rule applies to an adjudication made by the Commission in a disputed case, including but not limited to:
 - (1) an adjudication on the request by member of the Commission for a determination that the content of a product or advertisement that is approved by the Commission constitutes a violation of the provisions of, standards, or requirements of the Compact, in accordance with Article VIII of the Compact;
 - (2) an adjudication with respect to a disapproved product filing or advertisement, or with respect to the withdrawal or modification of a previously approved filing, in accordance with Article XI of the Compact; and
 - (3) an adjudication on the determination by the Commission that a compacting state is in default, in accordance with Article XIV of the Compact.
- (b) Unless otherwise expressly directed by the Commission, the powers and duties of the Commission under this rule are hereby delegated to the Management Committee.

§ 103. Presiding Officers.

- (a) In a disputed case, the presiding officer shall regulate the hearing in a manner that will promote an orderly and prompt resolution.
- (b) An individual who has served as investigator, or advocate at any stage in a disputed case may not serve as a presiding officer or assist or advise any presiding officer in the same proceeding.
- (c) An individual who is subject to the authority, direction, or discretion of an individual who has served as investigator, or advocate at any stage in a disputed case, including investigation, may not serve as presiding officer or assist or advise a presiding officer in the same proceeding.
- (d) A presiding officer is subject to disqualification for bias, prejudice, financial interest, or any other cause for which a judge is or may be disqualified.
- (e) Before the taking of evidence at an evidentiary hearing, a party may request the disqualification of the presiding officer by filing a petition that states with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded, or the applicable rule or canon of practice or ethics that requires disqualification. If grounds for disqualification are discovered at a time later than the beginning of the taking of evidence, a party must request disqualification promptly after discovery.
- (f) A presiding officer whose disqualification is requested shall determine whether to grant the petition and state facts and reasons for the determination in writing.

- (g) If a substitute presiding officer is required, a substitute shall be appointed by the Management Committee.

§ 104. Disputed case procedure.

- (a) Except for emergency adjudications, this section applies to disputed cases.
- (b) A disputed case commences when the Commission gives notice of the adjudication to one or more parties, or when a person aggrieved by the action of the Commission requests the commencement of an adjudication in accordance with this rule by filing the request with the Executive Director of the Commission.
- (c) The Commission shall give each Party notice that is consistent with § 106.
- (d) The Commission shall make available to each Party a copy of this rule.
- (e) The following rules apply in a disputed case:
 - (1) Upon proper objection, the presiding officer must exclude evidence that is immaterial, irrelevant, unduly repetitious, or excludable on constitutional or statutory grounds or on the basis of an evidentiary privilege recognized in the courts of the state where the principal office of the Commission is located. In the absence of proper objection, the presiding officer may exclude evidence that is objectionable. Evidence may not be excluded solely because it is hearsay, provided that such evidence is of a type commonly relied on by reasonably prudent men and women in the conduct of their affairs.
 - (2) An objection is timely if made before conclusion of the hearing.
 - (3) Any part of the evidence may be received in written form, if doing so will expedite the hearing without substantial prejudice to the interests of a party. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.
 - (4) All evidence must be made part of the hearing record of the case including, if the Commission desires to avail itself of information or if it is offered into evidence by a party, records in the possession of the Commission which contain information classified by law as not public. No factual information or evidence may be considered in the adjudication of the case unless it is part of the Commission record. If the Commission record contains information that is not public, the presiding officer may conduct a closed hearing to discuss the information, issue necessary protective orders, and seal all or part of the hearing record.
 - (5) The presiding officer may take official notice of all facts of which judicial notice may be taken and of other scientific and technical facts within the specialized knowledge of the Commission. Parties must be notified at the earliest practicable

time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed and their source, including any staff memoranda or data. The parties must be afforded an opportunity to contest any judicially noticed facts before the decision is announced, unless the presiding officer determines as part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

- (6) The experience, technical competence, and specialized knowledge of the presiding officer may be used in the evaluation of the evidence.
- (f) Except for emergency hearings under § 108, in a disputed case, the presiding officer, at appropriate stages of the proceedings, shall give all parties the opportunity to file pleadings, motions, objections, and offers of settlement in a timely manner. The presiding officer, at appropriate stages of the proceeding, may give all parties full opportunity to file briefs, proposed findings of fact and conclusions of law, and proposed recommended decisions or orders. If available, the original of all records must be filed with the Commission and copies of all filings shall be sent to all parties.
- (g) Except for emergency hearings under § 108, in a disputed case, to the extent necessary for full disclosure of all relevant facts and issues, the presiding officer shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence.
- (h) If each party to a hearing has an opportunity to hear, speak, and be heard in the proceeding as it occurs, the presiding officer may conduct all, or part of, an evidentiary hearing, or a prehearing conference, by telephone, television, or other electronic means.
- (i) All testimony of parties and witnesses must be given under oath or affirmation and the presiding officer may administer an oath or affirmation for that purpose.
- (j) A hearing in a disputed case is open to the public, except for a hearing or part of a hearing that the presiding officer closes on the basis of applicable law, or on the same basis and for the same reasons that the Commission may exempt a Commission record from inspection, examination and copying. To the extent that a hearing is conducted by telephone, television, or other electronic means, and is not closed, a hearing is open if members of the public have an opportunity, at reasonable times, to hear or inspect the Commission's record, and to inspect any transcript obtained by the Commission.
- (k) At the party's expense, any party may be represented by counsel or may be advised, accompanied, or represented by another individual.
- (l) The decision in a disputed case must be in writing, based on the record, and include a statement of the factual and legal bases of the decision.

- (m) This section applies to Commission procedure in disputed cases without further action by the Commission, and prevails over a conflicting or inconsistent provision of the Commission's rules.

§ 105. Informal adjudication.

- (a) The Commission may use an informal hearing procedure in a disputed case, including but not limited to the appeal of product disapprovals to a review panel under Article XI of the Compact, if:
 - (1) there is no disputed issue of material fact; or
 - (2) the parties by written agreement consent to an informal hearing.
- (b) It shall be presumed that a review panel considering a product disapproval under Article XI of the Compact will use the informal hearing procedure authorized by this section unless the review panel finds cause to consider the matter pursuant to a formal hearing procedure.
- (c) Except as otherwise provided in subsection (d), the adjudication procedures required under § 104 apply to an informal adjudication.
- (d) In an informal adjudication, the presiding officer shall regulate the course of the proceeding consistent with the due process requirement of a meaningful opportunity to be heard. The presiding officer shall permit the parties and their representatives, and may permit others, to offer written or oral comments on the issues. The presiding officer may limit the use of witnesses, testimony, evidence, cross-examination, and argument and may limit or eliminate the use of pleadings, intervention, discovery, pre-hearing conferences, and rebuttal. Where appropriate in the discretion of the presiding officer, an informal adjudication may be in the nature of a conference.
- (e) In regulating the course of the informal adjudication proceedings, the presiding officer shall recognize the rights of the parties:
 - (1) to notice that includes the decision to proceed by informal adjudication;
 - (2) to protest the choice of informal procedure, and that protest must be promptly decided by the presiding officer;
 - (3) to participate in person or by a representative;
 - (4) to be informed briefly, in writing, of the basis for an adverse decision in the case.
- (f) The Commission record for review of informal adjudication consists of the official transcript of oral testimony and any records that were considered by, prepared by, or submitted to, the presiding officer for use in the informal adjudication or by or to the Commission on review. The Commission shall maintain these records as its record of the informal adjudication.

§ 106. Notice.

- (a) Except for an emergency adjudication under § 108, the Commission shall give reasonable notice of the right to an evidentiary hearing in a disputed case.

- (b) In case of applications or petitions submitted by persons other than the Commission, within a reasonable time after filing, the Commission shall give notice to all parties that an action has been commenced. The notice must include:
 - (1) the official file or other reference number, the name of the proceeding, and a general description of the subject matter;
 - (2) the name, official title, mailing address, e-mail address, facsimile address, and telephone number of the presiding officer;
 - (3) a statement of the time, place, and nature of any scheduled prehearing conference or hearing;
 - (4) the name, official title, mailing address, e-mail address, facsimile address, and telephone number of any attorney or employee who has been designated to represent the Commission; and
 - (5) any other matter that the presiding officer considers desirable to expedite the proceedings.

- (c) In case of actions initiated by the Commission that may or will result in an order, the Commission shall give an initial notice to the party or parties against which the action is brought by personal service in a manner appropriate under the rules of civil procedure for the service of process in a civil action in the state where the principal office of the Commission is located, which includes:
 - (1) notification that an action that may result in an order has been commenced against them;
 - (2) a short and plain statement of the matters asserted, including the issues involved;
 - (3) a statement of the legal authority and jurisdiction under which the hearing is held that includes identification of the statutory sections involved;
 - (4) the official file or other reference number, the name of the proceeding, and a general description of the subject matter;
 - (5) the name, official title, mailing address, e-mail address, facsimile address, and telephone number of the presiding officer or, if no officer has been appointed at the time the notice is given, the name, official title, mailing address, e-mail

address, facsimile address, and telephone number of any attorney or employee designated to represent the Commission;

- (6) a statement that a party who fails to attend any subsequent proceeding in a disputed case may be held in default;
 - (7) a statement that the party served may request a hearing and instructions in plain language about how to request a hearing; and
 - (8) the names and last known addresses of all parties and other persons to which notice is being given by the Commission.
- (d) When a prehearing meeting or conference is scheduled, the Commission shall give parties notice at least 14 days before the hearing that contains the information contained in subsection (c).
- (e) Notice may include other matters that the presiding officer considers desirable to expedite the proceedings.

§ 107. Commission record in disputed case.

- (a) The Commission shall maintain an official record of each disputed case.
- (b) The Commission record consists of:
 - (1) notices of all proceedings;
 - (2) any pre-hearing order;
 - (3) any motions, pleadings, briefs, petitions, requests, and intermediate rulings;
 - (4) evidence received or considered;
 - (5) a statement of matters judicially noticed;
 - (6) proffers of proof and objections and rulings thereon;
 - (7) proposed findings, requested orders, and exceptions;
 - (8) the record prepared for the presiding officer at the hearing, and any transcript of all or part of the hearing considered before final disposition of the proceeding;
 - (9) any final order, recommended decision, or order on reconsideration;
 - (10) all memoranda, data, or testimony prepared under § 109; and
 - (11) matters placed on the record after an ex parte communication.

- (c) The Commission record constitutes the exclusive basis for Commission action in a disputed case and for judicial review of the case.
- (d) The Commission record may be maintained by inscription on a tangible medium or stored in an electronic or other medium that is retrievable in a perceivable form.

§ 108. Emergency adjudication.

- (a) The Commission may conduct an emergency adjudication in a disputed case under the procedure provided in this section.
- (b) The Commission may issue an order under this section only to deal with an immediate danger to the public health, safety, or welfare. The Commission may take only action that is necessary to deal with the immediate danger to the public health, safety, or welfare. The emergency action must be limited to interim relief.
- (c) Before issuing an order under this section, the Commission, if practicable, shall give notice and an opportunity to be heard to the person to which the agency action is directed. The notice and hearing may be oral or written and may be communicated by telephone, facsimile, or other electronic means.
- (d) Any order issued under this section must contain an explanation that briefly explains the factual and legal basis for the emergency decision.
- (e) The Commission shall give notice of an order to the extent practicable to the person to which the Commission action is directed. The order is effective when issued.
- (f) After issuing an order pursuant to this section, the Commission shall proceed as soon as feasible to conduct an adjudication following disputed case procedure under § 104 in order to resolve the issues underlying the temporary, interim relief.
- (g) The Commission record in an emergency adjudication consists of any testimony or records concerning the matter that were considered or prepared by the Commission. The Commission shall maintain those records as the Commission record of the disputed case.
- (h) On issuance of an order under this section, the person against which the Commission action is directed may obtain judicial review without exhausting administrative remedies.

§ 109. Ex parte communications.

- (a) Except for communication from a law clerk or other person who serves on the personal staff of the presiding officer or except as otherwise provided in subsection (b), while a disputed case is pending, the presiding officer may not receive any communication, direct or indirect, from any person regarding any issue in the proceeding without notice and opportunity for all parties to participate in the communication.

- (b) Communication to a member of the Commission sitting as presiding officer from an employee or representative of the Commission that is a party to the proceeding is permissible in the following circumstances. The communication consists of an explanation of the technical or scientific basis of, or technical or scientific terms in, the evidence in the record, if:
 - (1) the employee or representative giving the technical explanation has not served as investigator or advocate at any stage of the proceeding;
 - (2) the employee or representative giving the technical explanation does not receive communications that the member of the Commission is prohibited from receiving; and
 - (3) the technical or scientific term on which explanation is sought is not a contested issue or an issue whose application is central to the decision in the case.
- (c) If the presiding officer receives advice under subsection (b), the advice, if written, must be made part of the hearing record. If the advice is verbal, a memorandum containing the substance of the advice must be made part of the record and the parties must be notified of the communication. The parties may respond to the advice of an employee or representative of the Commission in a record that is made part of the hearing record.
- (d) If a presiding officer receives a communication in violation of this section:
 - (1) if it is a written communication, the presiding officer shall make the communication a part of the hearing record and prepare and make part of the record a memorandum that contains the response of the presiding officer to the communication and the identity of the parties who communicated; or
 - (2) if it is a verbal communication, the presiding officer must prepare a memorandum that contains the substance of the verbal communication, the response of the presiding officer, and the identity of the parties who communicated.
- (e) If a communication prohibited by this section is made, the presiding officer shall notify all parties of the prohibited communication and permit parties to respond in writing within 15 days. Upon good cause shown, the presiding officer may permit additional testimony in response to the prohibited communication.
- (f) While a proceeding is pending, there shall be no communication, direct or indirect, regarding the merits of any issue in the proceeding between the presiding officer and the Commission or other person or body to which the power to hear or decide in the proceeding is delegated. However, where the presiding officer is a member of the Commission that is a body of persons, the presiding officer may communicate with the other members of the Commission without violation of this subsection.
- (g) If necessary to eliminate the effect of a communication received in violation of this section, a presiding officer may be disqualified and the portions of the record pertaining

to the communication may be sealed by protective order or other relief may be granted as appropriate.

§ 110. Intervention.

- (a) A presiding officer shall grant a petition for intervention in a disputed case if the petitioner has a right under law to initiate the proceeding in which intervention is sought.
- (b) A presiding officer shall grant a petition for intervention if the petitioner has an interest that will or may be adversely affected by the outcome of the proceeding and that interest is not adequately represented.
- (c) When intervention is granted or at any subsequent time, the presiding officer may impose conditions upon the intervener's participation in the proceedings.
- (d) A presiding officer may permit intervention conditionally and, at any time later in the proceedings or at the end of the proceedings, may revoke the conditional intervention.
- (e) The presiding officer, at least five (5) business days before the hearing, shall issue an order granting or denying each pending petition for intervention, specifying any conditions, and briefly stating the reasons for the order. The presiding officer shall promptly give notice to the petitioner for intervention and to all parties of an order granting, denying, or modifying intervention.

§ 111. Subpoenas.

- (a) In a disputed case, upon tender of the proper fees established by the Commission for witnesses, calculated in the same manner as under the rules of civil procedure of the state where the principal offices of the Commission are located, by the party applying for the subpoena, the presiding officer or any other officer to whom the power is delegated may issue subpoenas for the attendance of witnesses and the production of books, records and other evidence for use at the hearing.
- (b) After the commencement of a disputed case, when a written request for a subpoena to compel attendance by a witness at the hearing of the case or to produce books, papers, records, or records that are relevant and reasonable is made by a party, the presiding officer shall issue subpoenas.
- (c) Subpoenas, protective orders, and other orders issued under this section may be enforced pursuant to the rules of civil procedure of the state where the principal offices of the Commission are located.

§ 112. Discovery.

- (a) As used in this section, "statement" includes records signed by a person of his or her oral statements and records that summarize these oral utterances.

- (b) Except in an emergency hearing under § 108, a party, upon written notice to another party at least 30 days before an evidentiary hearing, is entitled to:
- (1) obtain the names and addresses of witnesses to the extent known to the other party; and
 - (2) inspect and make a copy of any of the following material in the possession, custody, or control of the other party:
 - (i) a statement of a person named in the initial pleading or any subsequent pleading if it is claimed that a party's act or omission as to that person is the basis for the adjudication;
 - (ii) a statement relating to the subject matter of the adjudication made by any party to another party or person;
 - (iii) statements of witnesses then proposed to be called and of other persons having knowledge of facts that are the basis for the proceeding;
 - (iv) all writings, including reports of mental, physical, and blood examinations and things which the party then proposes to offer in evidence;
 - (v) investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the adjudication, to the extent that these reports contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions, or events that are the basis for the adjudication or reflect matters perceived by the investigator in the course of the investigation, or contain or include by attachment any statement or writing described in this section; or
 - (vi) any other material for good cause shown.
 - (3) Upon petition, a presiding officer may issue a protective order for any material for which discovery is sought under this section that is exempt, privileged, or otherwise made confidential or protected from disclosure by law.
 - (4) For refusal to comply with discovery requests, a presiding officer may issue a discovery order. Failure to comply with the discovery order shall be enforced according to the rules of civil procedure of the state where the principal offices of the Commission are located.

§ 113. Default.

- (a) If a party without good cause fails to attend or participate in a pre-hearing conference, hearing, or other stage of a disputed case, the presiding officer at his discretion may issue a default order or proceed with a hearing in the absence of the party.

- (b) Under subsection (a), a default judgment must be based on the absent party's admissions, or other evidence and affidavits, which can be used without notice to the absent party. This subsection does not apply where the burden is on the absent party to establish that he or she is entitled to the agency action sought.
- (c) Within 30 days of a decision rendered against a party who failed to appear, that party may petition the presiding officer to vacate the recommended or final order. If adequate reasons are provided showing good cause for the party's failure to appear, the presiding officer shall vacate the decision and, after proper service of notice, conduct another evidentiary hearing. If adequate reasons are not provided showing good cause for the party's failure to appear, the presiding officer shall deny the motion to vacate.

§ 114. Recommended decisions and final orders

- (a) The presiding officer shall render a recommended decision, which becomes a final order 30 days after it is served in accordance with subsection (b), unless reviewed by the Commission on its own motion or on petition of a party.
- (b) Unless the time is extended by stipulation, waiver, or upon a showing of good cause, a recommended decision must be served in writing within 90 days after conclusion of the hearing or after submission of memos, briefs, or proposed findings, whichever is later.
- (c) A recommended decision must include separately stated findings of fact and conclusions of law on all material issues of fact, law, or discretion, the remedy prescribed, and, if applicable, the action taken on a petition for stay. If a party has submitted proposed findings of fact, the recommended decision must include support for any proposed findings. The recommended decision must also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief. A recommended decision must include a statement of any circumstances under which the recommended decision, without further notice, may become a final order.
- (d) Findings of fact must be based exclusively upon the evidence of record in the disputed case and on matters judicially noticed.
- (e) A presiding officer shall cause copies of the recommended decision to be delivered to each party and to the Commission's Executive Director or other person designated by the Commission within the time limits set in subsection (b).

§ 115. Commission review of recommended decisions.

- (a) The Commission may review a recommended decision on its own motion.
- (b) A party may petition for Commission review a recommended decision. Upon petition by any party, the Commission shall review a Commission order.
- (c) A petition for review of a recommended decision must be filed with the Executive Director of the Commission, or with any person designated for this purpose by the

Commission within 20 days after the recommended decision is rendered. If the Commission decides to review a recommended decision on its own motion, the Commission shall give written notice to each party of its intention to review the recommended decision within 20 days after it is rendered.

- (d) The 20-day period for a party to file a petition or for the Commission to review a recommended decision in subsection (b) is tolled by the submission of a timely petition for reconsideration of the recommended decision pursuant to § 116. A new 20-day period for petitioning for review by the Commission starts to run on the date the presiding officer issues and serves a ruling on the motion for reconsideration. If a recommended decision is subject both to a timely petition for reconsideration and to a petition for review, either on motion or on the Commission's own motion, the petition for reconsideration must be disposed of first, unless the Commission determines that action on the petition for reconsideration has been unreasonably delayed.
- (e) The Commission that reviews a recommended decision shall exercise all the decision-making power that the Commission would have had if the Commission had conducted the hearing that produced the recommended decision, except to the extent that the issues subject to review are limited by a provision of law or by the Commission upon notice to all the parties. In reviewing findings of fact in recommended decisions by presiding officers, the Commission shall give due regard to the presiding officer's opportunity to observe the witnesses. The Commission shall consider the Commission record or such portions of it as have been designated by the parties.
- (f) The Commission may render a final order disposing of the proceeding or may remand the matter for further proceedings with instructions to the presiding officer who rendered the recommended decision. Upon remanding a matter, the Commission may order such temporary relief as is authorized and appropriate.
- (g) A final order or an order remanding the matter for further proceedings under this section must identify any difference between the order and the recommended decision and shall state the facts of record which support any difference in findings of fact, state the source of law which supports any difference in legal conclusions, and state the policy reasons which support any difference in the exercise of discretion. A final order under this section must include, or incorporate by express reference to the recommended decision, all the matters required by § 114(d). The Commission shall cause an order issued under this section to be delivered to the presiding officer and to all parties.

§ 116. Reconsideration.

- (a) Any party may file a petition for reconsideration of a recommended decision issued by a presiding officer or a final order issued by the Commission that states the specific grounds upon which relief is requested. The petition for reconsideration shall be filed within 20 days of the date the recommended decision is issued by the presiding officer or a final order has been issued by the Commission.

- (b) If a petition for reconsideration of a final order issued by the Commission is timely filed, the time for filing a petition for judicial review does not commence until the Commission disposes of the petition for reconsideration.
- (c) If a petition is filed under subsection (a), the presiding officer or the Commission, as applicable, shall render a written order within 20 days denying the petition, granting the petition and dissolving or modifying the recommended decision or final order, or granting the petition and setting the matter for further proceedings. The petition may be granted only if the presiding officer or the Commission, as applicable, states findings of facts, conclusions of law, and the reasons for granting the petition.

§ 117. Stay.

A party may request the Commission to stay a recommended decision or final order within five days after it is rendered.

§ 118. Exhaustion of administrative remedies.

- (a) Except as otherwise provided by law, a person aggrieved by a final order of the Commission may seek judicial review in accordance with the Compact.
- (b) No petition for review by the Commission may be filed with respect to a procedural order until the presiding officer has issued a recommended decision with respect to the disputed case.

§ 119. Adoption; Effective Date.

This Rule was adopted by the Commission on _____, pursuant to the procedures set forth in the Rule for the Adoption, Amendment and Repeal of Rules for the Interstate Insurance Product Regulation Commission. This Rule shall take effect on _____.