

RULE FOR ADOPTION, AMENDMENT AND REPEAL OF RULES FOR THE INTERSTATE INSURANCE PRODUCT REGULATION COMMISSION

Pursuant to Article III of the Bylaws of the Interstate Insurance Product Regulation Commission, this rule for rulemaking is adopted. As used herein, the term “rule” means a rule as defined in the Interstate Insurance Product Regulation Compact (Compact) and an “operating procedure” as defined therein. All terms used herein have the same meaning ascribed to them in the bylaws and the Compact.

§101. Initiation of Rulemaking.

The rulemaking procedure is initiated by a majority vote of the Management Committee to (a) cause notice of a contemplated rulemaking action to be published under section 103 of this procedure; or (b) approve a rule under Section 108 of this procedure.

§ 102. Public Rulemaking Docket.

(a) The executive director shall maintain a current, public rulemaking docket.

(b) The rulemaking docket shall list each pending rulemaking proceeding. For each rulemaking proceeding, the docket shall indicate:

- (1) the subject matter of the proposed rule;
- (2) a citation to all published notices relating to the proceeding;
- (3) where written submissions on the proposed rule may be inspected;
- (4) the time during which written submissions may be made;
- (5)(i) the names of persons who have made written requests for an opportunity for public hearings on the proposed rule;
- (ii) where those requests may be inspected; and
- (iii) where and when public hearings may be made;
- (6) the current status of the proposed rule and any Management Committee determinations with respect thereto;
- (7) any known timetable for Management Committee decisions, Commission decisions or other action in the proceeding;
- (8) the date of the rule's approval by the Management Committee;
- (9) the date of the rule's adoption by the Commission
- (10) the date of the rule's filing, indexing, and publication; and
- (11) the rule's effective date.

§ 103. Notice of Potential Rulemaking.

(a) The Commission and its Management Committee or any other committees or subcommittees of the Commission may gather relevant information in advance of developing a rule and may solicit comments and recommendations from the public by publishing a notice of potential rulemaking on the official website of the Commission and in any other publication that may be designated by the Commission.

(b) The notice of potential rulemaking shall contain a request for comments, both general and specific, on the need for the potential rule and the provisions that the rule might include. The notice shall also include a period of no less than 60 days within which written comments may be submitted.

(c) The comments received shall be considered by the Commission when developing a potential rule.

(d) This section does not prohibit the Commission from obtaining or utilizing information and opinions from members of the public on the subject of a potential rule by any other method or procedure.

§ 104. Notice of Proposed Rule.

(a) For a period of no less than 60 days before the approval of a proposed new or amended rule or the repeal of an existing rule the Management Committee shall cause notice of its contemplated action to be published on the official website of the Commission and in any other publication that may be designated by the Commission. The notice of proposed rule must include:

- (1) a short explanation of the purpose of the proposed new or amended rule or the reason for the repeal of an existing rule;
- (2) the specific legal authority authorizing the proposed new or amended rule;
- (3) the text of the proposed new or amended rule;
- (4) where, when, and how persons may present their views on the proposed new or amended rule or the repeal of an existing rule; and
- (5) where, when, and how persons may request a public hearing on the proposed new or amended rule or the repeal of an existing rule if the notice does not already provide for one.

(b) Within 3 days after its publication, the executive director shall cause a copy of the notice of proposed rule to be sent to each person who has made a timely request to the executive director for a copy of the notice. The Management Committee may charge persons for the actual cost of providing them with mailed copies. The executive director shall also cause a copy of the notice of proposed rule to be sent to each Compact member, and to the Legislative Committee, and to the industry and consumer advisory committees.

§ 105. Public Participation.

(a) For a period of no less than 60 days after publication of the notice of proposed rule, the Management Committee shall afford persons the opportunity to submit in writing argument, data, and views on the proposed rule.

(b)(1) The Management Committee shall schedule a public hearing on a proposed rule if, within 20 days after the published notice of proposed rule, a written request for a public hearing is submitted by a Commission member, the Management Committee, the Legislative Committee, an advisory committee established pursuant to Article VIII of the Bylaws of the Commission, or a

person or organization representing at least 25 persons affected by the proposed rule. At that proceeding, persons may present oral argument, data, and views on the proposed rule.

(2) A public hearing on a proposed rule, if required, may not be held earlier than 20 days after notice of its location and time is published on the official website of the Commission and such other publication as the Commission may designate.

(3) The Management Committee shall designate a person to preside at a required public hearing on a proposed rule. Unless the hearing is conducted before the Management Committee, the designated presiding official shall prepare a memorandum for consideration by the Management Committee summarizing the contents of the presentations made at the public hearing. Public hearings must be open to the public and be recorded. A public hearing may take place in-person, or by telephone, or by electronic means provided that the hearing complies with the provisions of this section.

(4) The Management Committee shall issue guidelines for the conduct of public hearings. Those guidelines may include provisions calculated to prevent undue repetition in the public hearings.

§ 106. Regulatory Analysis.

(a) The Management Committee shall issue a regulatory analysis of a proposed rule if within 15 days after the published notice of proposed rule a written request for the analysis is filed with the Commission by a Commission member, the Management Committee, the Legislative Committee, or an advisory committee established pursuant to Article VIII of the Bylaws of the Commission.

(b) The regulatory analysis shall contain:

(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

(2) a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons;

(3) the probable costs to the Commission of the implementation and enforcement of the proposed rule and any anticipated effect on Compact revenues or state revenues;

(4) a comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction;

(5) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule;

(6) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the Commission and the reasons why they were rejected in favor of the proposed rule; and

(7) a description of the proposed rule with respect to the purposes of the Compact.

(c) Each regulatory analysis shall include quantification of the data to the extent practicable and shall take account of both short-term and long-term consequences.

(d) The regulatory analysis shall be published on the official website of the Commission at least 10 days before the earlier of:

- (1) the end of the period during which persons may make written submissions on the proposed rule; or
- (2) the date of any scheduled public hearing on the proposed rule.

(e) If the Management Committee has made a good faith effort to comply with subsections (a) and (b) of this Section, the rule may not be invalidated on the ground that the contents of the regulatory analysis are insufficient or inaccurate.

§ 107. Time and Manner of Rule Approval.

(a) The Management Committee may not approve a rule until the period for making written submissions and public hearings has expired.

(b) Within 180 days after the later of the publication of the notice of proposed rule, or the end of public hearings thereon, the Management Committee shall approve the rule as proposed, amend the rule and approve it as amended, or disapprove the rule and terminate the proceeding by publication of a notice to that effect on the official webpage of the Commission and in such other publication as the Commission may designate.

(c) Before the Management Committee takes any action with respect to the approval of a rule:

- (1) the Management Committee shall consider the written submissions, oral submissions or any memorandum summarizing oral submissions;
- (2) the Management Committee shall consult with the Legislative Committee, with such consultation to take place before the end of the period of public participation described in Section 104; and
- (3) if the proposed rule is a uniform standard, before the end of the period of public participation described in Section 104 the executive director shall provide the relevant state legislative committees in each compacting state responsible for insurance issues with written notice of the proposed rule, which notice shall include all documents described in Section 103(a).

(d) Within the scope of its delegated authority, the Management Committee may use its own experience, technical competence, specialized knowledge, and judgment in the approval of a rule.

(e) A rule shall be approved by the Management Committee in accordance with the terms of the Compact and Bylaws.

§ 108. Variance between Approved Rule and Published Notice of Proposed Rule Approval.

(a) The Management Committee may not approve and the Commission may not adopt a rule that is substantially different from the proposed rule contained in the published notice of proposed rule. However, the Management Committee may terminate a rulemaking proceeding and commence a new rulemaking proceeding for the purpose of approving a substantially different rule.

(b) In determining whether an approved or adopted rule is substantially different from the published proposed rule upon which it is required to be based, the following factors shall be considered:

(1) the extent to which all persons affected by the approved or adopted rule should have understood that the published proposed rule would affect their interests;

(2) the extent to which the subject matter of the approved or adopted rule or the issues determined by that rule are different from the subject matter or issues involved in the published proposed rule; and

(3) the extent to which the effects of the approved or adopted rule differ from the effects of the published proposed rule had it been approved or adopted instead.

(c) A notice of potential rulemaking does not constitute a “published notice of proposed rule” for purposes of this section.

§ 109. Emergency Rules.

(a) To the extent the Management Committee for good cause finds that emergency circumstances exist such that the requirements of Sections 103 through 107 are contrary to the public interest in the process of approving a particular rule, those requirements shall not apply, and the Commission may adopt an emergency rule under this section by majority vote of the Commission members. The Management Committee shall incorporate the required finding of emergency circumstances and a brief statement of its supporting reasons in each rule approved in reliance upon this subsection.

(b) An emergency rule adopted under this section shall cease to be effective 180 days after it is adopted, or such earlier period as may be determined by the Commission. The Management Committee may propose a permanent rule on the same subject at the same time as it proposes an emergency rule.

§ 110. Concise Explanatory Statement.

(a) At the time it approves a proposed rule, the Management Committee shall issue a concise explanatory statement containing:

(1) its reasons for approving the proposed rule;

(2) an indication of any change between the text of the proposed rule contained in the published notice of proposed rule and the text of the proposed rule as finally approved, with the reasons for any change; and

(3) a summary of the reasons for the Management Committee’s decision to agree or disagree with substantial comments for or against the original proposed rule.

(b) Only the reasons contained in the concise explanatory statement may be used by any party as justifications for the adoption of the rule in any proceeding in which its validity is at issue.

§ 111. Adoption of Rule by Commission.

Upon approval of any rule by the Management Committee under Section 106 or 108, the executive director shall mail a copy to each member of the Commission and place consideration of the rule on the agenda of the next meeting of the Commission. A rule shall be rejected if not adopted by a vote of the Commission in accordance with the terms of the Compact and Bylaws.

§ 112. Contents, Style, and Form of Rule.

(a) Each rule adopted by the Commission must contain the text of the rule and:

- (1) the date the Commission adopted the rule;
- (2) a concise statement of the purpose and scope of the rule;
- (3) a reference to all rules repealed, amended, or suspended by the rule;
- (4) a reference to the specific statutory or other authority authorizing adoption of the rule;
- (5) any findings required by any provision of law as a prerequisite to approval or adoption or effectiveness of the rule; and
- (6) the effective date of the rule.

(b) To the extent feasible, each rule should be written in clear and concise language understandable to persons who may be affected by it.

§ 113. Rulemaking Record.

(a) The executive director shall maintain an official rulemaking record for each rule the Management Committee proposes by publication on the official website of the Commission and in such other publication as the Commission may designate for publication of a notice of proposed rule, or approves under Section 108. The record and materials incorporated by reference must be available for public inspection.

(b) The rulemaking record must contain:

- (1) copies of all publications with respect to the rule or the proceeding upon which the rule is based;
- (2) copies of any portions of the Management Committee's public rulemaking docket containing entries relating to the rule or the proceeding upon which the rule is based;
- (3) all written petitions, requests, submissions, and comments received by the Management Committee and all other written materials considered by the Management Committee in connection with the formulation, proposal, or approval of the rule or the proceeding upon which the rule is based;
- (4) any official transcript of public hearings made in the proceeding upon which the rule is based or, if not transcribed, any tape recording or stenographic record of those presentations, and any memorandum prepared by a presiding official summarizing the contents of those presentations;
- (5) a copy of the rule and explanatory statement filed in the office of the executive director;
- (6) all petitions for exceptions to, amendments of, or repeal or suspension of, the rule; and
- (7) a copy of any regulatory analysis prepared for the proceeding upon which the rule is based.

(c) Upon judicial review, the record required by this section constitutes the official Commission rulemaking record with respect to a rule. Except as provided in Section 109(b) or otherwise required by a provision of law, the Commission rulemaking record need not constitute the exclusive basis for Commission action on that rule or for judicial review thereof.

§ 114. Invalidity of Rules Not Adopted According to Chapter.

Any rule adopted by the Commission is invalid unless adopted in substantial compliance with the provisions of Sections 102 through 110. However, inadvertent failure to mail a notice of proposed rule to any person as required by Section 103(b) does not invalidate a rule.

§ 115. Copy of Rule Sent to Each Member.

The Commission shall transmit to each member a copy of each adopted rule as soon after its adoption as is practicable.

§ 116. Effective Date of Rules.

A rule is effective on the date established by the Commission upon adoption of the rule or 45 days after the rule is published following its adoption by the Commission if no special provision is made. A Uniform Standard shall become effective 90 days after being published following its adoption by the Commission or such later date as the Commission may determine. A Uniform Standard shall be published no earlier than ten (10) business days following its adoption by the commission.

§ 117. Special Provision for Certain Rules.

Except to the extent otherwise provided by any provision of law, Sections 102 through 115 are inapplicable to a rule concerning only the internal management of the Commission which does not directly and substantially affect the procedural or substantive rights or duties of any segment of the public.

§ 118. Petition For Approval of a New Rule, Amendment of an Existing Rule, or Repeal of an Existing Rule.

Any Commission member, the Legislative Committee, or advisory committee established pursuant to Article VIII of the Bylaws of the Commission may petition the Management Committee requesting the initiation of rulemaking.

§ 119. Commission Review of Rules.

(a) The Commission shall review each of its rules within five years of the rule's original effective date or within five years of the filing of the last five-year review, whichever is later.

(b) The Commission may consider any substantial review of a rule to be a five-year review. If the Commission chooses to consider a substantial review a five-year review, the Commission shall follow the procedures outlined in subsection (c).

(c) At the conclusion of its review, the Commission shall publish on the official website of the Commission a notice of review on or before the anniversary date indicating its intent to continue, amend, or repeal the rule.

§ 120. Incorporation by Reference

(a) A Rule may incorporate by reference a model law, regulation, procedure or guideline adopted by the National Association of Insurance Commissioners.

(b) A Rule may incorporate by reference a code, standard, or rule adopted by an organization of which a two-thirds majority of the Compacting States are members.

(c) Materials may be incorporated by reference pursuant to Sections (a) and (b) if:

(1) Repeating verbatim the text of the materials in the Rule would be unduly cumbersome, expensive, or otherwise inexpedient; and,

(2) The reference in the Rule fully identifies the citation of the incorporated materials and the materials are readily available to the public in written or electronic form at no charge or for a reasonable charge; and,

(3) The Commission maintains a copy of the materials readily available for public inspection upon request.

(d) When the materials incorporated by reference are changed by the adopting organization in a manner that would require Compacting States to take regulatory or legislative action to adopt, the Commission shall automatically initiate the rulemaking process in accordance with Sections 104 and 105 herein and the procedures for adoption of a new or amended Rule by the Management Committee and Commission shall apply.

The first amendment to this rule was effective October 12, 2008. The second amendment to this rule was effective November 10, 2011. The third amendment to this rule is effective _____.