



TRANSMITTAL MEMORANDUM

TO: Insurance Compact Management Committee

FROM: Insurance Compact Rulemaking Committee

DATE: August 15, 2023

SUBJECT: Recommendation to Amend “Rulemaking Rule” to Adding a Provision to Address Incorporation by Reference in the Uniform Standards

The Rulemaking Committee brings forward a recommendation to the Management Committee to initiate the rulemaking process, consider applicable comments, and consider adoption of an amendment to the Rule for Adoption, Amendment and Repeal of Rules for the Interstate Insurance Product Regulation Commission (referred to as the “Rulemaking Rule”).

The Rulemaking Committee was asked to develop a procedure within the Compact’s operating procedures to address amendments to NAIC Model Laws and Regulations that are incorporated by reference in the Uniform Standards. The Rulemaking Committee viewed this as a clean-up provision to address the process for handling when there is an amendment to a model law provision incorporated by reference into the Uniform Standard – instead of having to conduct emergency rulemaking.

A listing of NAIC Model Laws incorporated by reference across all Uniform Standards is attached as Appendix A.

BACKGROUND

The Compact Statute, Article VII, Section 2, provides that the Compact’s *Rules and Operating Procedures shall be made pursuant to a rulemaking process that conforms to the Model State Administrative Procedure Act of 1981 as amended, as may be appropriate to the operations of the Commission*. In the early years of the Compact, the Rulemaking Committee used the Model State Administrative Procedure Act (referred to as MSAPA), specifically Article III of MSAPA, to draft the Commission’s Rule for Adoption, Amendment and Repeal of Rules for the Interstate Insurance Product Regulation Commission (referred to as the “Rulemaking Rule”). The adopted Rulemaking Rule is modeled on MSAPA and customized to the operations of the Commission.

One provision in Article III of MSAPA that was not included in the current Rulemaking Rule is titled Incorporation By Reference and is excerpted herein:

§ 314. INCORPORATION BY REFERENCE.

A rule may incorporate by reference all or any part of a code, standard, or rule that has been adopted by an agency of the United States, this state, or another state, or by a nationally recognized organization or association, if:

- (1) repeating verbatim the text of the code, standard, or rule in the rule would be unduly cumbersome, expensive, or otherwise inexpedient;
- (2) the reference in the rule fully identifies the incorporated code, standard, or rule by citation, place of inspection, and date[, and states whether the rule includes any later amendments or editions of the incorporated code, standard, or rule];
- (3) the code, standard, or rule is readily available to the public in written or electronic form at no charge or for a reasonable charge;
- (4) the rule states where copies of the code, standard, or rule are available from the agency adopting the rule for a reasonable charge, if any, or where copies are available from the agency of the United States, this state, another state, or the organization or association originally issuing the code, standard, or rule; and
- (5) the agency maintains a copy of the code, standard, or rule readily available for public inspection at the principal office of the agency.

Proposed New Provision to the Rule for Adoption, Amendment and Repeal of Rules of the Interstate Insurance Product Regulation Commission

The Rulemaking Committee recommends amending the Rulemaking Rule to add a provision addressing incorporation by reference and the procedure for when the material incorporated by reference is amended. The Rulemaking Committee adapted the provision from MSAPA to apply to the types of incorporation by reference that has occurred or could occur when developing the Uniform Standards.

§ 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.

Under this recommendation, the Compact would have a formal procedure for considering amendments to materials incorporated by reference in the Uniform Standards.

The Rulemaking Committee is available to discuss this recommendation and provide input on any comments raised during the notice and comment period of the rulemaking process.

PROVISIONS OF NAIC MODELS INCORPORATED BY REFERENCE IN UNIFORM STANDARDS

Standard	170	171	250	255	640	641	805	806	808
Individual Long-Term Care					X	X			
Individual Disability Income	X	X							
Group Disability Income	X	X							
Individual Term Life									X
Individual Whole Life									X
Endowment Life									X
Life Benefit Features									X
Deferred Non-Variable Annuity							X	X	
Deferred Variable Annuity			X				X	X	
Annuity Benefit Features				X			X		

NAIC Models

#170 NAIC Model Accident and Sickness Insurance Minimum Standards Act

#171 NAIC Model Regulation to Implement the Accident and Sickness Insurance Minimum Standards Act

#250 NAIC Model Variable Annuity Regulation

#255 NAIC Model Modified Guaranteed Annuity Regulation

#640 NAIC Model Long-Term Care Insurance Act

#641 NAIC Model Long-Term Care Insurance Regulation

#805 NAIC Model Standard Nonforfeiture Law for Individual Deferred Annuities

#806 NAIC Model Annuity Nonforfeiture Regulation

#808 NAIC Model Standard Nonforfeiture Law for Life Insurance