



DRAFT TRANSMITTAL MEMORANDUM FOR PUBLIC COMMENT

TO: Insurance Compact Management Committee

FROM: Insurance Compact Rulemaking Committee

DATE: July 30, 2025

SUBJECT: Proposed Recommendation to Amend “Rulemaking Rule” to Add a Provision for Direct Final Rule and Recommendation for No Further Changes to the Rulemaking Process or the Appeals Procedure

The Rulemaking Committee brings forward a recommendation to amend the *Rule for Adoption, Amendment and Repeal of Rules for the Interstate Insurance Product Regulation Commission (“Rulemaking Rule”)* to add a provision for a rulemaking process for noncontroversial new and amended rules. In addition, the Rulemaking Committee provides an update on its consideration of other possible actions to address two strategic action items, including how to accelerate the rulemaking process and whether to enhance the current appeals process.

The Rulemaking Committee held four member-only calls to discuss these strategic items and exchanged processes used by insurance departments to address accelerated rulemaking and appeals of product filing decisions. At the May Compact Roundtable, members and stakeholders discussed these items in order to solicit ideas for further consideration. The Rulemaking Committee is exposing this draft Recommendation for further public input and suggestions before presentation to the Management Committee.

The Committee views that current practices of using subgroups and stakeholder-provided draft standards have proven effective and no further changes, other than the direct final rule amendment to the *Rulemaking Rule*, are recommended. The Committee welcomes public input on other ways to accelerate the rulemaking process.

In regard to the appeals procedure, the Committee views the current operating procedures, *Operating Procedure for Notice and Hearing* and *Operating Procedure for Advisory and Interpretive Opinions*, as sufficient to challenge product filing decisions and no further changes are recommended to the organization’s appeals procedures. The Committee welcomes public input on other procedures needed to appeal product filing decisions.

A. ACCELERATED RULEMAKING PROCESS

The Management Committee requested the Rulemaking Committee consider and bring forth a recommendation with respect to Priority 1, Action Item 3, of the [*Compact Compass 2.0 Strategic Plan 2025 – 2028*](#) which provides:

Develop an accelerated rulemaking process allowing Compacting States to amend existing Uniform Standards to better respond and adapt to regulatory changes and innovative product development available in the insurance marketplace.

1. Compact's Rulemaking Rule

The Commission's rulemaking process is outlined in its "Rulemaking Rule" titled [*Rule for Adoption, Amendment and Repeal of Rules for the Interstate Insurance Product Regulation Commission*](#). Article VII(2) of the [*Compact Statute*](#) requires that *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.* The Commission adopted its *Rulemaking Rule* in 2007 modeling it on the Model State Administrative Procedures Act or "MSAPA" of 1981.

The Commission amended the Rulemaking Rule in 2008 to clarify the effective date of rules in Section 116. In 2011, Section 103 was added to include a process for advanced or potential rulemaking, and in 2024, Section 120 was added to address incorporation by reference.

2. New MSAPA Provisions

In 2010, the [*Uniform Law Commission*](#) adopted a revised Model State Administrative Procedures Act (referred to as Model State Administrative Procedures Act or "MSAPA" of 2010). MSAPA 2010 added two provisions that warrant consideration for purposes of this strategic action item:

MSAPA 2010 PROVISION § 310:

§ 310 DIRECT FINAL RULE. *If an agency proposes to adopt a rule which is expected to be noncontroversial, it may use direct final rulemaking authorized by this section and must comply with Section 304(a)(1), (2), (3), and (5), Section 304(b), and Section 313(1). The proposed rule must be published in the [administrative bulletin] with a statement by the agency that it does not expect the adoption of the rule to be controversial and that the proposed rule takes effect 30 days after publication if no objection is received. If no objection is received, the rule becomes final under Section 317(e). If an objection to the rule is received from any person not later than [] days after publication of the notice of the proposed rule, the proposed rule does not become final. The agency shall file notice of the objection with the [publisher] for publication in the [administrative bulletin], and may proceed with rulemaking under Sections 304 through 307.*

MSAPA 2010 PROVISION § 303:

§303 (b) and (c). NEGOTIATED RULEMAKING.

(b) An agency may engage in negotiated rulemaking by appointing a committee to comment or make recommendations on the subject matter of a proposed rulemaking under active consideration within the agency. In making appointments to the committee, the agency shall make reasonable efforts to establish a balance in representation among members of the public known to have an interest in the subject matter of the proposed rulemaking. At least annually, the agency shall publish in the [administrative bulletin] a list of all committees with their membership. Notice of a meeting of the committee must be published in the [administrative bulletin] at least [15 days] before the meeting. A meeting of the committee is open to the public.

(c) A committee appointed under subsection (b), in consultation with one or more agency representatives, shall attempt to reach a consensus on the terms or substance of a proposed rule. The committee shall present the consensus recommendation, if any, to the agency. The agency shall consider whether to use it as the basis for a proposed rule under Section 304, but the agency is not required to propose or adopt the recommendation.

3. Direct Final Rule Provision

The Rulemaking Committee views that the inclusion of a direct final rule provision, based on MSAPA 2010 § 310, would accelerate the rulemaking process for non-controversial new and amended rules. This new process would expedite rules that are widely acceptable, allowing Compact members and staff to direct resources to matters that need fuller discussion and deliberation. The committee discussed whether to caveat that an objection must be substantive, but agreed not to limit the type of objection that would trigger the regular rulemaking process.

The Rulemaking Committee adapted the MSAPA 2010 direct final rule provision to have a 60-day notice provision, which is the same period for notice and comment in the regular rulemaking procedure. The Rulemaking Committee addressed two concerns raised at the May Compact Roundtable confirming that the legislative notice requirement and the 90-day promulgation period remain applicable.

The Rulemaking Committee recommends amending the Rulemaking Rule to add a provision for Direct Final Rule as Section 110 and renumbering the existing provisions accordingly. The Rulemaking Committee adapted the provision from MSAPA to fit smoothly into the *Rulemaking Rule* as follows:

§ 110. Direct Final Rule

- (a) If the Management Committee proposes to adopt a rule that is expected to be noncontroversial, it may use direct final rulemaking authorized by this section and must comply with Section 104(a)(1), (2), (3), and (5), Section 104(b), and Section 111(a).**
- (b) The proposed rule must be published on the official web page of the Commission with a statement that it does not expect the adoption of the rule to be controversial and that the proposed rule takes effect 60 days after publication if no objection is received.**
- (c) If no objection to the rule is received, the rule becomes final under Section 117. If an objection is received not later than 60 days after publication of the notice of the proposed rule, the proposed rule does not become final. Upon receipt of an objection, the Management Committee shall provide notice to the Commission of the objection and may proceed with rulemaking under Section 104 through 107.**

4. Negotiated Rulemaking Provision

With respect to the MSAPA 2010 Section 303(b) and (c), the Rulemaking Committee does not find the need to include provisions for “negotiated rulemaking.” The Rulemaking Committee observed that the negotiated rulemaking provisions resemble the existing methods used by the Product Standards Committee when a sub-group is utilized to begin the drafting of a new standard.

The details of workflow timelines for three recently adopted standards were examined. In the case of index-linked variable annuities and group whole life standards, subgroups did the initial drafting respectively which expedited the consideration process at the Product Standards Committee. In the case of disability income buy-sell and key person standards, the Product Standards Committee considered proposed standards initially drafted by industry stakeholders.

It was agreed that the use of sub-groups, and proposed draft standards received from industry, can speed up the Product Standard Committee process. It was suggested that the existing advanced rulemaking procedures in Section 103 of the *Rulemaking Rule*, Notice of Potential Rulemaking, may be utilized to incorporate public and industry input into the process. In conclusion, the Rulemaking Committee recommends utilization of existing rules and procedures rather than adding MSAPA 2010 § 303 (b) and (c).

The Committee welcomes public input on these recommendations and other ways to accelerate the rulemaking process.

B. APPEALS PROCEDURE

The Management Committee requested the Rulemaking Committee consider and bring forth a recommendation with respect to Priority 2, Action Item 1, of the [*Compact Compass 2.0 Strategic Plan 2025 – 2028*](#) which provides:

Create written procedures for filers to appeal product filing decisions including a level of review by a body of Compacting State regulators that provides a path for filers to challenge how the Uniform Standards and Operating Procedures are applied to product filings.

1. Operating Procedure for Notice and Hearing

During previous Compact Roundtables, attendees have voiced their desire to have a process to challenge Compact Office interpretations of the Uniform Standards during the product review process.

The Commission has an [*Operating Procedure for Notice and Hearing*](#) (referred to as the “Notice and Hearing Rule”), which applies to adjudications by the Commission, *defined as the process for determination of facts or application of law pursuant to which the Commission formulates and issues an order.* Section 101(a). One of the types of adjudication listed is *with respect to a disapproved product filing or advertisement, or with respect to the withdrawal or modification of a previously approved filing.* Section 102(a)(2).

Section 105(b) of the *Notice and Hearing Rule* provides for informal adjudication and includes the following provision: *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.* Note, Section 105 does not specify the timeframes for an informal hearing procedure, nor does it specify requirements for the composition of the review panel or the qualifications of the presiding officer.

To date, the Compact Office has not had to disapprove a product filing as the filer will do one of the following: 1) comply with all objections to get approval even if it requires complying with objections the filer disagrees with; 2) withdraw the entire filing or remove the portion of the filing that is the subject of objection even if the filer disagrees with the Compact Office. As such, the Compact Office has not had a filer request an appeal of any of its decision(s).

The Rulemaking Committee considered whether the procedures should be updated to allow an appeal before a final disapproval has been issued by the Compact Office. The Rulemaking Committee agreed it would not be practical to permit an appeal before a final disapproval. The

Rulemaking Committee noted that the Compact Office handles challenges to product filing decisions in a comparable manner as the insurance departments, in that, concerns may be escalated to senior leadership. The Rulemaking Committee does not recommend changes to the appeals procedure in the current Operating Procedure at this time, especially since this available relief has not yet been utilized.

2. Operating Procedure for the Issuance of Advisory and Interpretive Opinion

Since the issue that underlies this strategic item is the request to appeal the Compact Office's interpretation of the Uniform Standards, the Rulemaking Committee considered the possibility of an interpretational ruling letter/process, somewhat resembling IRS private letter rulings. The Rulemaking Committee reviewed the [*Operating Procedure for the Issuance of Advisory and Interpretive Opinion*](#). The Rulemaking Committee reviewed this Operating Procedure and concluded it has sufficient procedures for a requesting party to seek interpretive guidance from the Commission on the Compact's Office's actions with respect to application of its Uniform Standards and Operating Procedures.

The Rulemaking Committee does not recommend new rules or changes to existing rules in response to Priority 2, Action Item 1 as it recommends utilization of the existing operating procedures for notice and hearing and advisory opinions to address any desire to appeal a final disapproval of a product filing or interpretive guidance on Uniform Standards and Operating Procedures.

The Committee welcomes public input on these recommendations and other options for an appeals procedures for filers to appeal product filing decisions.