Pursuant to Article III of the Bylaws of the Surplus Lines Insurance Multi-State Compliance Compact Commission, this rule for rulemaking is adopted. As used herein, the term “rule” means a rule as defined in the Surplus Lines Insurance Multi-State Compliance Compact (Compact). 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 Executive 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 Operations Committee recommendation made pursuant to Article VIII, Section 2, of the Bylaws of the Commission, and/or any Executive Committee determinations with respect thereto;
(7) any known timetable for Operations Committee recommendations, Executive Committee decisions, Commission decisions or other action in the proceeding;
(8) the date of the rule’s recommendation by the Operations Committee;
(8) the date of the rule’s approval by the Executive 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.

(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 Executive 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 Executive 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, to the Legislative Committee, to the Operations Committee, and to any advisory committee established pursuant to Article VIII of the Bylaws of the Commission.

§ 104. Public Participation.

(a) For a period of no less than 60 days after publication of the notice of proposed rule, the Executive 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 Executive Committee, the Legislative Committee, the Operations 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, including individuals, legal entities, or both, 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 Executive Committee shall designate a person to preside at a required public hearing on a proposed rule. Unless the hearing is conducted before the Executive Committee, the designated presiding official shall prepare a memorandum for consideration by the Executive 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 Executive Committee shall issue guidelines for the conduct of public hearings. Those guidelines may include provisions calculated to prevent undue repetition in the public hearings.

§ 105. Regulatory Analysis.

(a) The Executive 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, the Operations 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 Executive 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.

§ 106. Time and Manner of Rule Approval.

(a) The Executive 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 Executive 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 Executive Committee takes any action with respect to the approval of a rule:

(1) the Executive Committee shall consider the written submissions, oral submissions or any memorandum summarizing oral submissions;

(2) the Executive 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) 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 compactor state responsible for insurance issues with written notice of the proposed rule, which notice shall include all documents described in Section 103(a).

(d) Before the end of the period of public participation described in Section 104, the Executive Committee shall accept determinations and recommendations of the Operations Committee made pursuant to Article VIII, Section 2, of the Bylaws of the Commission unless good cause is shown why such
determinations and recommendations should not be approved. Any disputes as to whether good cause exists to reject any determination or recommendation of the Operations Committee shall be resolved by the majority vote of the Commission.

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

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

(a) The Executive 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 Executive 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.

(a) To the extent the Executive 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 Executive 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. “Emergency circumstances” include, but are not limited to circumstances in which a rule is necessary to 1) meet an imminent threat to public health, safety, or welfare; 2) prevent a loss of federal or state funds; 3) meet a deadline for the promulgation of an administrative rule which is established by federal law or rule; or 4) protect human health and the environment.

(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 Executive Committee may propose a permanent rule on the same subject at the same time as it proposes an emergency rule.

(a) At the time it approves a proposed rule, the Executive 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;

3. a summary of the reasons for the Executive Committee’s decision to agree or disagree with substantial comments for or against the original proposed rule; and
(4) a summary of any Operations Committee determinations and recommendations made pursuant to Article VIII, Section 2, of the Bylaws of the Commission, including a showing of good cause as to why such determinations and recommendations were not accepted, if applicable.

(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.

§ 110. Adoption of Rule by Commission.
Upon approval of any rule by the Executive 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.

§ 111. 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.

§ 112. Rulemaking Record.
(a) The executive director shall maintain an official rulemaking record for each rule the Executive 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 Executive 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 Executive Committee and all other written materials considered by the Executive 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.

§ 113. 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.

§ 114. 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.

§ 115. 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.

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.

§ 117. 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 Executive Committee requesting the initiation of rulemaking.

(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.

This Amended Rule is effective [DATE].

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