

**MODEL ADMINISTRATIVE PROCEDURE ACT**

**For INTERSTATE COMPACTS**

**January 2019**

**Prepared Pursuant to:**

**The American Bar Association's House of Delegates'  
Recommendation #111-B  
Adopted at the 2008 Winter Meeting**

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## **PROJECT INFORMATION**

**HISTORY:** In 2000/2001, a revised Adult Offender Compact was introduced to states. Prior case-law had indicated that enforcement was improved by using administrative-law procedures. So, the Adult Offender Compact Administrators were to comply w/ principles of the Federal APA. But in 2003, a question was raised whether the Federal APA could provide sufficient tools for states, and a study-group of the American Bar Association's Administrative Law Section began to review the case-law. In 2008, it concluded that new APA's were needed, and the A.B.A. House of Delegates agreed. It recommended that new procedures be drafted for multi-state agreements. [See ABA #B111, Winter Meeting - 2008]

**FUNCTION:** This "Model" Interstate Compact APA is intended for use by states for adoption by new Interstate Compacts/agreements, and may also be incorporated-by-reference into existing Compacts.

**MODEL:** This is a "Model" act, to be edited to meet specific needs of particular Compacts or other multi-state agreements. Names of administrative positions and governing entities should be inserted where brackets appear. Where titles, files, and publications need to be specified by name, they need to be inserted. Where provisions do not apply to a compact's functions, they can be omitted or revised.

**SOURCE:** This 'Model' Interstate Compact APA was copied from sections of the Uniform Law Commission's 2010 Model State Administrative Procedure Act. That act is available at: ["uniformlaws.org/shared/docs/state%20administrative%20procedure/msapa\\_final\\_10.pdf."](http://uniformlaws.org/shared/docs/state%20administrative%20procedure/msapa_final_10.pdf)

**DRAFTER'S COMMENTARY:** Drafter's comments incorporated in the ULC 2010 APA, are NOT repeated in this Model Compact APA. Drafters should review comments in that 2010 act that relate to each section of this Model Act for rationale, using section numbers in this act that correspond with section numbers in the ULC 2010 MSAPA. 'Sub-heading' numbers are not the same. Some sections in the ULC 2010 MSAPA are NOT included in this Model Act, as they are not likely to apply to compact functions. Drafters can still insert any of those, or provisions from other state's APAs, as may be useful.

**ADDITIONAL "OPTIONAL" PROCEDURES:** Pages 26 through 28 of this act contain a list of other administrative procedures that, if needed, may be incorporated into this Model Act.

**INCORPORATING BY REFERENCE]:** Existing compacts can incorporate this Model Act into their governing documents. To do so, a compact's board/ or governing body shall issue, and publish [in at least one member state's 'major' newspaper] a procedural rule to "Incorporate By Reference this Model Interstate Compact Administrative Procedure Act into [named] Compact's governing documents, [to become it's] regulatory procedure." Then state that "This procedural rule is adopted in accordance with the "Accardi' principle; for the protection of the public" as affirmed by "Morton v. Ruiz, 415 US 199 (1974)", "American Farm Lines v. Black Ball Freight Service, 397 US 532 (1970)," "Vitarelli v. Seaton, 359 US 535 (1959)", and "Service v Dulles, 354 US 363 (1957)". Once that proposed rule is made "final" [after a 90-day notice period], the Compact can re-issue policies/procedures as "Administrative Rules", and then conduct regulatory actions in accordance with the revised governing documents.

**QUESTIONS ABOUT MODEL ACT:** Questions about this Model Act may be referred to the project coordinator [Re: foregoing list of participants] at 'murraybiker7@hotmail.com'. Host-site staff are not responsible for, or liable for the content of this document, and may not respond to questions.

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SECTION 101. TITLE: THIS ACT MAY BE CITED AS THE “2019 MODEL INTERSTATE COMPACT ADMINISTRATIVE PROCEDURE ACT [MISCAPA].”

SECTION 102. DEFINITIONS: For purposes of this [Act]:

- (1) "Adopt/Adoption" means to issue and implement a new rule, or to amend or repeal an existing rule.
- (2) “Agency” means an entity created by agreement between the states adopting this Interstate Compact APA and one or more other states authorized by that agreement to make and adjudicate rules that grant or withhold relief from legal obligations; not including Legislative or Judicial entities.
- (3) “Bulletin” means a periodical publication for proposed and adopted rules, and guidance information.
- (4) "Code" means the compilation of all effective rules as catalogued by the Compact (Administrator’s) office, and titled as the "[Name of Compact] Code of Administrative Rules."
- (5) "Compact (Administrator)," “Administrative Officer” or “(Administrator)" means a person(s) appointed by the Compact’s governing entity, to direct and/or coordinate the operations of the Compact.
- (6) “Emergency” means a situation when “public health, safety, or welfare” requires immediate action.
- (7) “Final decision maker” means the person or entity, authorized to make a decision or issue a final order in a contested case.
- (8) “Guidance document” means a statement of general applicability which lacks the force of law, interprets a law, rule or regulation; or describes how or when an agency will exercise discretion.
- (9) "Interstate Compact" means a formally named written document, constituting an agreement(s) between two or more states, and possible federal agencies/entities, who intend to address and act upon shared issues.
- (10) "Member State" means a state that has adopted and implemented an Interstate Compact; including the person(s) appointed by that state to represent it before the Compact’s administrative/governing entity.
- (11) “Notice” means a record containing information required to be sent to a person under this act, and is deemed to be legally binding, regardless of whether the person actually comes to know its information.
- (12) “Order” means a legal document of a decision that determines/declares the rights, duties, privileges, immunities, or other interests of a specific person or entity, but not a “class” of persons.
- (13) “Person” or “entity” means an individual, partnership, corporation, association, trust, estate, company, public or private organization, governmental agency, or other legal entity.
- (14) “Proceeding” means any formal or informal agency’s process or procedure that is commenced or conducted by an agency/entity; including rulemaking, investigation, or adjudicative functions.

(15) “Record” means information that is relied on by rule drafters, retrievable in any perceivable form, which typically includes reports, articles, correspondence, comments, analysis, proposed changes, etc..

(16) “Resolution” means a non-binding statement of the Compact’s position on a matter or issue.

(17) “Rule” or “Administrative Rule” means the whole or part of a statement of general applicability that implements, interprets, or prescribes law or policy of its procedure or practice requirements, having the force of law, including the amendment or repeal of an existing rule. These terms do NOT include:

(a) A written statement or communication that applies only to internal management, or which does not affect private rights or procedures available to the public;

(b) An opinion of a State or Federal Attorney General;

(c) Orders or statements that establish criteria or guidelines to be used by agency staff in performing audits, investigations, inspections, settling disputes, negotiating arrangements, or defending, prosecuting, or settling cases, if disclosure of the criteria or guidelines would enable persons violating law(s) to avoid detection, facilitate disregard of lawful requirements, or give improper advantage to persons in an adverse position; or

(d) Declaratory Rulings or Guidance Document/Statements issued by the Compact’s Administration, or rulings in adjudicative proceedings which implement or interpret law or policy.

(17) “Rulemaking” means a multi-step process to adopt a new rule, or to amend or repeal an existing rule.

### SECTION 103. APPLICABILITY.

The Compact (Administrator), as directed by the Compact’s (Governing Entity), shall regulate by rule. This [Act] shall apply to each participating entity of a Member State of this Compact, unless exempted by this Compact or as provided by rule of this Compact; and to all Compact proceedings, including a Member State's proceedings, as may be undertaken for judicial review or civil enforcement of actions under the Compact, which commence following the effective date of adoption by member states. This [act] shall not apply to adjudications, rules, or petitions issued prior to the date of adoption by member states.

### SECTION 201. PUBLICATION, COMPILATION & INDEXING OF RULEMAKING DOCUMENTS.

(a) The Compact (Administrator) shall administer this [act], and shall supervise the publication of a periodic [Administrative Bulletin] and an on-going [Compact Administrative Code].

(b) Unless a document, or record, is exempt from disclosure by this Compact, it shall

(1) Be published in both electronic and written formats, and consist of all rulemaking-related documents/records adopted under this compact;

(2) Conform to a uniform numbering system, form, format, and style for proposed rules, and

(3) Be maintained as part of the official record of all rulemakings.

(c) Acting under authority of the Compact's (Governing Entity), the Compact (Administrator) shall:

(1) Set up and maintain an Internet website and post monthly publications, the compact's (Administrative Code), and all guidance documents as filed;

(2) Publish an (Administrative Bulletin) at least semi-monthly or whenever document filings occur, and

(3) Provide a written copy of the (Administrative Bulletin) and all documents issued by the governing entity to the public upon request. [A cost recovery 'user' fee may be charged where appropriate.]

(d) Acting under authority of the Compact's (Governing Entity), the Compact (Administrator) shall:

(1) Cause that notices of all proposed rules, newly filed rules, amended rules, and filed final rules; including the text of existing language and proposed changes, be published in the (Bulletin);

(2) Cause any other notice(s) or material required to be published in the (Administrative Bulletin); and

(3) Provide an index of each monthly (Bulletin)'s contents to be published therein.

(e) The (Administrator) may make non-substantive changes, including corrections or reformatting of a proposed or final rule. Each month [or a time-frame schedule of a Bulletin or newsletter, or other publication] a list of such changes made by the (Administrator) shall be provided to member state representatives for review.

### SECTION 203. REQUIRED PUBLICATION.

The Compact's (Administrator) shall, on its website and in its office-files:

(a) Provide a description of its organization, stating the general course, operations, and methods by which the public may obtain information, make submissions, or submit requests;

(b) Publish a description of all formal and informal procedures, including a description of all forms and instructions used, or anticipated; and

(c) Adopt and publish rules for the conduct of all meetings and public hearings.

### SECTION 204. DECLARATORY ORDER.

(a) Any 'impacted' (person or entity) may petition the Compact (Administrator) for a declaratory order that interprets how a rule, a guidance document, or an order issued by the Compact's (administration, applies to the petitioner.

(b) The (Administrator) may adopt rules prescribing the (form/format/information) of a petition for seeking such an order; the procedure for its submission, consideration, and prompt disposition.

(c) Not later than (45)-days, or at the next regularly scheduled meeting of the Compact's ((Governing Entity)), whichever is later, after receipt of a petition under subsection (a), the (Administrator) shall:

- (1) issue a declaratory order in response to the petition,
- (2) decline to issue the order and notify the petitioner of that action, or
- (3) schedule the matter for further consideration and notify all parties of such scheduling.

#### SECTION 301. RULEMAKING DOCKET.

(a) The Compact (Administrator) shall set up and maintain an index and a docket for rulemaking proceedings that will be used for each pending rulemaking proceeding, containing:

- (1) The subject matter of the proposed rule;
- (2) Notices related to the proposed rule;
- (3) Statements about how comments on the proposed rule shall be submitted;
- (4) Provision(s) about the time-frame(s) within which comments shall be submitted;
- (5) Information as to where comments can be inspected;
- (6) Requests submitted for a public hearing;
- (7) Appropriate information concerning a public hearing, when needed; and
- (8) The proposed timetable (30-45) days for action on the proposed rule.

(b) A copy of the rulemaking docket shall be made available upon request.

(c) The (Administrator), under direction of the ((Governing Entity)), may adopt guidance documents or procedural policies, for consistency in compact operating functions/duties. These shall not be rules.

#### SECTION 302. RULEMAKING RECORD.

The Compact (Administrator) shall maintain a 'Record' (file) for each rule. The record and related documents/materials shall be available for public inspection at the Compact's ((Governing Entity)'s office), and also be available in electronic form for Internet access, upon request. If any part of the record cannot be made available, the part(s) not displayed shall be described in sufficient detail. The rulemaking record shall contain:

- (a) A copy of the rule and related documents/materials used for the rule, as published in the (Bulletin);
- (b) Copies of any part of the rulemaking docket containing entries relating to the rule;

- (c) Copies of the index, of studies and reports relied on or consulted;
- (d) Any transcripts or summaries of oral presentations made, upon which the rule is derived/based;
- (e) Copies of comments received in response to the notice(s) of the proposed rulemaking; and
- (f) Any petition(s) for agency/entity action on the rule.

### SECTION 303. ADVANCE NOTICE OF PROPOSED RULEMAKING.

The Compact (Administrator) may gather information relevant to a proposed rule, and may solicit comments and recommendations from the public, by publishing an advance notice in the (Bulletin) and indicating where, when, and how persons may input or comment. The (Administrator) may engage in negotiated rulemaking, or solicit recommendations or comments, and may obtain information and opinions from the public on the subject of a proposed rule by any method, but shall not be required to propose or adopt any information provided as input.

### SECTION 304. NOTICE OF PROPOSED RULE.

(a) At least (45)-days before the adoption of a rule, the Compact (Administrator) shall file a notice of the proposed rulemaking for publication in the Compact (Bulletin), which shall include:

- (1) A statement of the proposed rule's purpose;
- (2) A citation/reference to the legal source used by the (Administrator), authorizing the proposed rule;
- (3) The full text of the proposed rule;
- (4) A summary of a regulatory analysis of the proposed rule, if any; and
- (5) A list of where, when, and how a person may comment on the proposed rule, or request a hearing.

(b) Within five (5) working days after publication of the notice of the proposed rulemaking in the (Bulletin), a postal notice, or electronic copy, shall be sent to each member state's representative, and each person who has made a timely request for such a notice. A reasonable fee may be charged for this service based on costs.

### SECTION 305. REGULATORY ANALYSIS.

(a) The Compact (Administrator) shall prepare a regulatory analysis for each proposed rule having an estimated economic impact greater than a value of (\$ \_\_\_\_\_,) which shall be published in total, or if overly lengthy, as a summary, with the notice of the proposed rule.

(b) If a proposed rule has an economic impact of less than a value of (\$ \_\_\_\_\_,) a statement of "Minimal Estimated Economic Impact" shall be published with the proposed rule.



(c) The regulatory analysis shall contain a description of:

- (1) The benefits of the proposed rule, and in what way(s) they justify estimated costs; and
- (2) Whether the proposed rule will achieve the objectives of the legal authority in a cost-effective manner, or with greater or lesser net benefits when compared with taking no action.
- (3) The analysis shall compare the benefits/costs against one or more other regulatory alternatives.

(d) If a good faith effort has been made to comply with this section, the rule shall not be invalidated solely because the regulatory analysis for the proposed rule is later found to be insufficient or inaccurate.

#### SECTION 306. PUBLIC PARTICIPATION.

(a) The Compact (Administrator) shall place a notice of a proposed rulemaking, which specifies a public comment period of at least (thirty) (30)-days after date of publication, in the (Bulletin), during which, persons may submit information and comment on the proposed rule, electronically or in writing. All comments on the proposed rule submitted pursuant to this subsection, within the comment period, shall be considered.

(b) The (Administrator) may consider any other information, available in any format that may relate to a proposed rule; and shall include it as part of the rulemaking record/file.

(c) The (Administrator) may elect to hold a hearing on a proposed rule, unless a Member State's state law requires one to be held. Such a hearing shall be open to the public, be recorded, and occur at least ten (10) working days before the end of the public comment period. A hearing may not be held earlier than (twenty) (20) working days after notice of its location, date, and time is published. The (Administrator), or a member of the ((Governing Entity)), shall preside over the hearing, and shall summarize the presentations made at the hearing for the record.

#### SECTION 307. TIME LIMIT ON ADOPTION OF RULE.

(a) A rule may not be made to become effective until after the public comment period has ended.

(b) Not later than (60)-days after a notice of proposed rulemaking is published in the (Bulletin), the rule shall be adopted, or terminated, by publication of a notice of termination in the (Bulletin). The time period may be extended for adopting the rule, an additional (60)-days, by publishing a statement to that effect in the (Bulletin). A schedule for additional public participation shall be published in the (Bulletin), prior to the rule's adoption.

(c) The (Administrator) shall file a "Notice" of a rule's adoption, in the (Bulletin) not later than (60)-days after the date of its adoption. If no action is taken to adopt the proposed rule within (150)-days of its rule's issuance, or the date of its last amendment, whichever is latest, the proposed rule shall lapse. The rule may be re-filed at any time.

#### SECTION 308. VARIANCE BETWEEN PROPOSED AND FINAL RULE.

The wording and meaning of a final rule must be a "logical outgrowth" of the notice of proposed rulemaking. If a final-rule can be shown to not be consistent with, or rationally reflect the proposed-rule's content or purpose, it shall not be made effective. If a "substantive" change is made, a "Notice of an Amendment(s) to a Proposed Rule" shall be published in the (Bulletin), which action shall extend the public comment period an additional (30)-days. A final rule may be adopted at any time when a "non-substantive" change(s) are made.

#### SECTION 309. EMERGENCY RULE.

If the Compact (Administrator) finds that an imminent peril to the public health, safety, or welfare exists, or the loss of funding for a compact function requires the immediate adoption of a rule, s/he may, without prior notice or hearing, or with an abbreviated notice or hearing that it finds practicable, may adopt an 'emergency' rule without complying with Sections 304, 305, 306 and 307. The emergency rule may be effective for no longer than (180)-days, but may be renewed one time for no more than a second (180)-days, when notice is given. The (Administrator) shall prepare, date, and include in the official rule record, such reasons for finding that an emergency exists. The adoption of an emergency rule shall not preclude a regular filing or adoption of a similar rule, which may be published in accordance with this section at any time. An 'emergency' rule shall also be published on the Compact's Internet website, to notify those who have requested notice of proposed rules filed by the Compact.

#### SECTION 311. GUIDANCE DOCUMENT.

(a) The Compact (Administrator) may issue a guidance document without following the procedures above.

(b) If the (Administrator) relies on a guidance document that could negatively impact a person (or entity) in any administrative proceeding, s/he shall allow that person an opportunity to demonstrate the impact(s), or contest the legality or appropriateness of the guidance document. The (Administrator) may not use a guidance document to foreclose consideration of any issues raised in a rule, regulation, or other guidance document(s).

(c) A guidance document may contain binding instructions to Compact staff, if, at an appropriate stage in the administrative process, organizational procedures provide affected persons adequate opportunity to contest it.

(d) If, in an adjudicative proceeding, the (Administrator) decides to act in a way that is at variance with a position expressed in a guidance document, s/he shall, upon request of a (member state's representative), or other (entity), issue a written explanation for such variance. If an affected person in an adjudicative proceeding has relied on a guidance document in a reasonable manner, the (Administrator's) explanation must include a reasonable justification that the need for the variance outweighs the affected person's reliance interest.

(e) The (Administrator) shall maintain an index of all of its guidance documents, and shall publish them in the (Bulletin), and on the Compact's Internet website, and make all guidance documents available to the public. The (Administrator) shall file said index annually in the (Bulletin). The Compact (Administrator) may not rely on a guidance document, or cite it as precedent against any party to a proceeding, without having taken such actions.

(f) A guidance document may be considered by a presiding officer or final decision maker in any legal action(s), but it shall not bind the presiding officer or the final decision maker in the exercise of discretion.

(g) A member state may petition the (Administrator) to adopt a rule to stand in place of a guidance document.

(h) An authorized representative of a member state may petition the (Administrator) to revise or repeal a guidance document, whereupon no later than (60)-days after the petition's filing, the (Administrator) shall:

- (1) Revise or repeal the guidance document, or initiate a proceeding to consider a revision or repeal; or
- (2) Deny the petition, notify the petitioner of such action, and state the reason(s) for said denial.

### SECTION 312. INFORMATION REQUIRED FOR A FINAL RULE.

(a) A final rule filed by the Compact (Administrator) in the (Bulletin) shall include the text of the rule, plus:

- (1) The date the final rule was adopted and made effective,
- (2) A citation to the specific legal authority for the rule; and
- (3) The effective date of the rule.

(b) A concise explanatory summary statement of any regulatory analysis, or of any provision that may be specifically required, or implied to be required by Section 305, shall be included.

### SECTION 314. INCORPORATION BY REFERENCE.

(a) 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, any state, or any professional association or organization, if:

- (1) A verbatim repetition of 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, publication 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 at a reasonable charge, if any, or where copies are available from an agency of the United States, other state, or the organization or association originally issuing the code, standard, or rule; and
- (5) The (Administrator) maintains a copy of the code, standard, or rule being incorporated, and is readily available for public inspection at the Compact's principal office.

SECTION 315. COMPLIANCE. An action taken under this act is not valid unless it substantially complies with this act.

SECTION 316. FILING OF RULE.

The Compact (Administrator) shall file, and publish in written and electronic form, in the (Bulletin), each final rule. These shall not be filed and published later than (45)-days after official adoption. The (Bulletin) shall maintain a permanent register of all filed rules and any explanatory statements for each rule, shall affix to each final rule a certification of the time and date of filing, and shall publish the notice of a final rule in the (Bulletin).

SECTION 317. EFFECTIVE DATE OF RULE.

- (a) Except as otherwise provided in this section, a final rule shall become effective (45)-days after publication of the rule text in the (Bulletin), and on the Compact's Internet website, unless withdrawn by the (Administrator);
- (b) A rule may become effective later than the date set under subsection (a) if that date is specified in the rule text as published in the (Bulletin), or on any subsequent date established by subsection (a) above;
- (c) An emergency rule under Section 309 becomes effective upon adoption by the (Administrator).

SECTION 318. PETITION FOR ADOPTION OF RULE.

Any member state's representative to the Compact, or any person from an organization or commercial entity from a member state, may petition the Compact (Administrator) to issue and publish a proposed rule. The (Administrator) shall prescribe, by rule, the form of the petition and the submittal procedure. Not later than (60)-days after submittal, the petitioner shall be issued a response which shall state the reason(s) for the denial, -or that pursuant to that petition, the (Administrator) plans to file a proposed rule to that effect within (120)-days.

SECTION 401. ADJUDICATIVE ACTIONS. This act shall apply to adjudicative actions filed by the Compact's (Governing Entity), a member state's representative(s), or by a person(s) or organization(s) or commercial entity(s), from a member state, or by a person(s) or entity from another state impacted by actions of the compact. A contesting party shall:

- (1) First, engage in an "Alternative Dispute Resolution" process, such as arbitration or mediation, whereby contesting party(s) present the issue(s) to be heard by the Compact (Administrator). Or, if the (Administrator) was aware of the issue for at least (60)-days, then it may be heard by one or three members of the Compact's (Governing Entity) from a state(s) not a party in the matter, or by their appointed representative(s). Such an action shall also constitute the final-step in the exhaustion of

administrative remedies. A recommendation or decision shall be issued to the involved parties within (60)-days. If the outcome is not satisfactory to the contesting party(s), a petition may be filed in accordance with (2) below:

(2) Second, a trial de novo shall be conducted by a Presiding Officer appointed by the (Administrator), who shall be a Licensed/Certified Administrative-Law-Judge [ALJ], or similarly qualified person residing in a state not a party to the matter, or by an ALJ from a compact member-state who is currently employed by an executive branch agency's Independent ALJ-Panel that employs two or more ALJ's who regularly review cases involving various state agencies. The Presiding Officer shall act as the decision maker.

(3) If the contesting party(s) disagrees with the de novo decision, it may either:

(A) Engage in a second alternative dispute resolution effort, or:

(B) File an Appeal to a State Court if the dispute is not between states. If it is a dispute between one or more states, an Appeal shall be filed in the Federal court having oversight of the state where the administrative offices of the Council of State Governments is located. That Court shall take Judicial Notice of the Compact's official (Code of Administrative Rules), and shall act as the decision maker.

#### SECTION 402. PRESIDING OFFICER – DISQUALIFICATION:

(a) If challenged, the presiding officer may be disqualified if it can be shown that bias, prejudice, financial interest, or ex parte communications under Section 408, or any other issue that would create a reasonable question of impartiality has occurred. A presiding officer, after making a reasonable inquiry, shall disclose to all parties any known facts related to grounds for disqualification that are material to the impartiality of the presiding officer.

(c) A party may petition for the disqualification of a presiding officer after notice that such person will preside, or, if later, promptly on discovering facts that are grounds for disqualification; by stating a specific reason(s) for a claim that a fair/impartial hearing cannot be accorded, or that an applicable rule or canon of practice or ethics would justify disqualification. The petition may be denied if the petitioner fails to exercise due diligence in requesting disqualification after discovering a basis for disqualification.

(d) A presiding officer whose disqualification is requested, shall decide whether to grant the petition, and shall state facts & reasons for the decision. A decision to deny shall not be subject to interlocutory judicial review.

(e) If a substitute presiding officer is required, said substitute shall either be appointed by the Compact's (Administrative Officer), or by a majority vote of the Compact's (Governing Entity).

#### SECTION 403. CONTESTED CASE PROCEDURE.

(a) A dispute brought by one or more states against one or more other states, or against the Compact (Governing Entity), shall be filed with the Compact (Administrator), who shall immediately advise all members of the (Governing Entity). Within (30)-days of the filing, the (Administrator) may elect to hear the matter, or assign it for a trial de' novo. The following procedures shall apply:

- (1) The presiding officer shall schedule the involved party(s) for a hearing, and issue a written notice that outlines the issues. Involved persons shall be notified of the procedures and time limits to file petitions; and a copy of these and any other applicable materials governing the contested case shall be provided.
- (2) The presiding officer shall give all parties a timely opportunity to file pleadings, motions, and objections, and may extend the opportunity to file briefs, proposed findings of fact and conclusions of law, and proposed recommended, initial, or final orders. If all parties consent, the parties in a contested case may agree to engage in an alternative dispute resolution procedure.
- (3) To obtain full disclosure of relevant facts/issues, all parties shall be allowed to present evidence and argument(s), conduct cross-examination, respond, and submit rebuttal evidence.
- (4) The presiding officer may conduct all or part of an evidentiary hearing or a prehearing conference by in-person or various electronic means. If all parties consent, the hearing may be conducted electronically, and witnesses may be kept from being seen if the presiding officer finds that this will not impair reliable determination of the credibility of testimony. Each party shall be given an opportunity to attend, hear and be heard at proceedings in progress. Procedures for electronic hearings may be provided by rule.
- (5) Except as provided in subsection (f) below, hearings shall be open to the public. A hearing conducted by electronic means shall be open to the public if the public can attend at a room(s) where the presiding officer is located, or can at least hear the proceeding as it occurs.
- (6) The hearing shall be open to the public.
- (7) A party, at that party's expense, may be represented by counsel; or be advised, accompanied by, or be represented by another individual, which shall be disclosed to the presiding officer prior to starting.
- (8) A presiding officer shall ensure that a hearing record is created that complies with Section 406.
- (9) The decision in a contested case shall be based on the hearing record and contain a statement of the factual and legal bases of the decision. If a finding of fact is set forth in language based on other than this act, the decision must be accompanied by a concise and explicit statement of the underlying facts supporting such findings of fact. The decision shall be prepared electronically and, upon request, be made available in writing.
- (10) The Compact's ((Governing Entity)) may dispose of a contested case without a hearing, by stipulation, by an agreed upon settlement, by a consent order, or by a finding of default.
- (11) If it is found that an imminent peril to the public health, safety, or welfare exists, and if all parties agree, and unless it is prohibited under laws of a member state that is a party to the petition, an emergency adjudication procedure may be conducted in a contested matter/case, and any of the foregoing procedures and schedules may be re-defined or modified to meet the needs of all parties involved.

SECTION 404. EVIDENCE IN A CONTESTED CASE.

- (a) Except as otherwise provided in paragraph (b) below, all relevant evidence shall be admissible, including hearsay if it is of a type commonly relied on by reasonably prudent persons.
- (b) The presiding officer may exclude evidence in the absence of an objection, if the evidence is determined to be irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds, or is based on an evidentiary privilege recognized in the federal courts. Such evidence shall be excluded if an objection is made at the time the evidence is offered.
- (c) If the presiding officer excludes evidence, the offering party may make an offer of proof before further evidence is presented, or at a later time determined by the presiding officer.
- (d) Evidence may be received if it will expedite the hearing without substantial prejudice to a party. Documentary evidence may be in the form of a copy(s), if the original(s) is not readily available, or by incorporation by reference. If requested, party(s) shall have an opportunity to compare copies with originals.
- (e) Testimony given must be made under an oath of affirmation.
- (f) Information or evidence shall be included in the hearing record, and may not be considered in determining the case unless it is part of the hearing record. If the hearing record contains confidential information, the presiding officer may conduct a closed hearing to discuss it, issue protective orders, or seal all or part of the hearing record.
- (g) The presiding officer may take official notice of all facts of which judicial notice may be taken; and of scientific, technical, or other facts within a field of knowledge. The parties shall be notified at the earliest practicable time of any facts proposed to be noticed and their source, including staff memoranda or data. They shall also be afforded an opportunity to contest any officially noticed fact before the final decision is issued.
- (h) The experience, technical competence, and specialized knowledge of the presiding officer who is hearing the case, may be used in evaluating the evidence in the hearing record.

SECTION 406. HEARING RECORD IN A CONTESTED CASE.

- (a) The Compact (Administrator) shall maintain a hearing record, as provided by Section 403, for each contested matter/case. The hearing record must contain:
  - (1) A recording (or a sufficient written summary) of each proceeding;
  - (2) A notice of each proceeding;
  - (3) Any prehearing order;
  - (4) Any motion, pleading, brief, petition, request, and intermediate ruling;
  - (5) Evidence admitted;
  - (6) A statement of any matter officially noticed;

- (7) Any proffer of proof and objection and ruling thereon;
- (8) Any proposed finding, requested order, and exception;
- (9) Any transcript of the proceeding prepared at the direction of the (Administrator);
- (10) Any recommended order, final order, or order on reconsideration; and
- (11) Any matter placed on the record after an ex parte communication under Section 408.

(b) The hearing record shall constitute the exclusive basis for any further action in a matter.

#### SECTION 408. EX PARTE COMMUNICATIONS.

(a) Except as otherwise provided below, during the pendency of a contested case (ie, from the issuance of the entity's pleading -or from a request, for a decision, whichever is earlier), the Presiding Officer, may not make to, or receive from any person, any communication concerning the case without notice and opportunity for all parties to participate in the communication.

(1) The Presiding Officer may communicate about a pending contested case with any person if the communication is required for the disposition of ex parte matters authorized by a participating member's state statutes, or if it concerns an uncontested procedural issue.

(2) The Presiding Officer may communicate about a pending contested case with a person authorized by law to provide legal advice, and may communicate on ministerial matters with that person, if said individual providing legal advice or ministerial information has not served as investigator, prosecutor, or advocate at any stage of the case, and if it does not augment, diminish, or modify the evidence in the record, and is:

(A) An explanation of the technical or scientific basis of, or technical or scientific terms in, the evidence in the hearing record;

(B) An explanation of the precedent, policies, or procedures of the [entity]; or

(C) Any other communication that does not address the quality or sufficiency of, or the weight that should be given to, evidence in the hearing record or the credibility of witnesses.

(b) If a presiding officer makes or receives a communication in violation of this section, and if said communication is within a record, a record of that shall be made as part of the hearing-record, as well as any memoranda or information that contains the presiding officer's response to said communication, including the identity of the person that communicated; or

(c) If the communication is oral, shall prepare a memorandum that contains the substance of the verbal communication, any response of the presiding officer to the communication, and the identity of the person that communicated.



- (d) 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 not later than (15)-days after the notice is given. For good cause, the presiding officer may permit additional testimony in response to the prohibited communication.
- (e) While a contested matter/case is pending, no communication, direct or indirect, regarding any issue in the case may be made between the presiding officer and the contesting party(s). Unless provided by any provision of this compact, a communication permitted by this subsection is not a meeting involving other persons.
- (f) If necessary to eliminate the effect of a communication received in violation of this section, a presiding officer may be disqualified under Section 402(d) and (e), the parts of the record pertaining to the communication may be sealed by protective order, or other appropriate relief may be granted, including an adverse ruling on the merits of the matter/case, or a dismissal of the application.

#### SECTION 409. INTERVENTION.

- (a) A presiding officer may grant a timely petition for intervention, with notice to all parties, if:
- (1) The petitioner has an interest that may be adversely affected by the outcome of the matter/case, and that interest is not adequately represented by existing parties; or
  - (2) If the petitioner's claim or defense is based on the same transaction or occurrence as the matter/case.
- (b) A presiding officer may impose conditions at any time on an intervener's participation in the matter.
- (c) A presiding officer may permit intervention provisionally and, at any time later in the proceedings, or at the end of the case, s/he may revoke the provisional intervention.
- (d) Upon request by the petitioners, or a party, or by action of the presiding officer, a hearing may be held on the intervention petition.
- (e) The presiding officer shall promptly give notice of an order granting, denying, or revoking intervention to the petitioner, to the parties, and shall allow parties a reasonable time to prepare for the hearing on the merits.

#### SECTION 410. SUBPOENAS.

- (a) Upon a written request by a party and a showing of general relevance and reasonable scope of the evidence sought for use, the presiding officer may issue a subpoena. A subpoena may also be issued for the attendance of a witness and the production of books, records, and other evidence.
- (b) A subpoena issued under (a), above) shall be served, and upon a written application to the presiding officer, may be enforced under the same authority.
- (c) The presiding officer may provide for witness-fees, which shall be paid by the party requesting a subpoena.

SECTION 411. DISCOVERY.

(a) For purposes of this section, the term “statement” includes a record(s) of a person’s written statement signed by the person, and also any record(s) that summarizes n oral statement(s) made by the person.

(b) Except in matters involving an emergency-rule, a party, on written notice to another party at least (30)-days before the matter is to be heard, and unless otherwise provided by Compact rule, may obtain the names and addresses of witnesses the other party will present at the hearing, to the extent known to the other party; and may inspect and copy any of the following material in the possession, custody, or control of the other party:

- (1) Statements of parties and witnesses proposed to be called by the other party;
- (2) All records and other evidence the other party proposes to offer;
- (3) Investigative reports made by or on behalf of the other party pertaining to the issues of the case;
- (4) Statements of expert witnesses proposed to be called by the other party;
- (5) Any exculpatory material in the possession of the entity; and
- (6) Other materials for good cause shown.

(c) Parties shall have a duty to supplement responses provided under subsection (b) to include information thereafter acquired, to the extent that the information will be relied on in the adjudication.

(d) Upon petition, the presiding officer shall issue a protective order for any material for which discovery is sought under this section which is exempt, privileged, or otherwise made confidential or protected from disclosure by law of a member state, and material the disclosure of which would result in annoyance, embarrassment, oppression, or undue burden or expense to any person or entity.

(e) If petitioned, the presiding officer shall issue an order compelling discovery for refusal to comply with a discovery request unless good cause exists for refusal. If there is a failure to comply with the order, the presiding officer may authorize enforcement proceedings in accordance with federal court rules of civil procedure.

(f) On a petition, or for good cause, the presiding officer shall issue an order authorizing discovery in accordance with Federal Court rules of civil procedure.

(g) The Compact (Administrator) may provide by rule that some or all discovery procedures under this section do not apply to a specified program or category of cases; if it is found that the availability of discovery would unduly complicate or interfere with the hearing process because of the volume of the caseload and the need for expedition and informality in that process, and if alternative procedures for the sharing of relevant information are sufficient to ensure the fundamental fairness of the proceedings.

SECTION 412. DEFAULT.

(a) Unless otherwise provided by Compact Rule, if a party without good cause fails to attend or participate in a conference or hearing, the presiding officer may issue a default order.

(b) If a default order is issued, the presiding officer may elect to conduct any further proceedings necessary to complete the adjudication without the defaulting party. In doing so, all issues in the adjudication, including those affecting the defaulting party, shall be determined.

(c) A recommended, initial, or final order issued against a defaulting party may be based on the defaulting party's admissions, or upon other evidence that may be used without notice to the defaulting party. If the burden of proof is upon the defaulting party to establish that the party is entitled to the action sought, the presiding officer may issue a recommended, initial, or final order without taking evidence.

(d) Not later than (20)-days after notice to a party subject to a default order that a recommended, initial, or final order has been rendered against, said party may petition the presiding officer to vacate the recommended, initial, or final order. If good cause is shown to exist for that party's failure to appear, the presiding officer shall vacate the decision and, after proper service of notice, conduct another evidentiary hearing. If good cause is not shown for said party's failure to appear, the presiding officer shall deny the motion to vacate.

#### SECTION 413. ORDERS: RECOMMENDED, INITIAL, OR FINAL.

(a) A recommended, initial, or Final Order shall only be issued by the Compact (Administrator).

(b) Prior to a Final Order's issuance, the (Administrator) shall issue an Initial Order, which is scheduled to become the Final Order, (30)-days after issuance, unless it is reviewed by the (Governing Entity) on its own initiative, or upon petition of a party.

(c) A recommended, initial, or Final Order shall be served on each party by the (Administrator), not later than (90)-days after the hearing, or after memoranda, briefs, or proposed findings are submitted, whichever is latest. The (Administrator) may extend the time by stipulation, waiver, or for good cause shown.

(d) A recommended, initial, or Final Order shall separately state 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 a stay. The (Administrator) may permit a party to submit proposed findings of fact and conclusions of law. The Order shall include available procedures/time limits for seeking reconsideration or other administrative relief, and shall list the time limits for petitioning judicial review of the Order. A recommended or initial order shall state circumstances under which the Order, without further notice, may become final.

(e) Findings of fact shall be based only on the evidence and matters officially noticed in the hearing record. Nevertheless, hearsay evidence may be used if it is sufficient to support a finding of fact if it constitutes reliable, probative, and substantial evidence.

(g) If signed by the (Administrator), an initial or Final Order, issued under this section is effective (30)-days after all parties are notified of the Order, unless reconsideration, or a stay, is granted.

#### SECTION 414. REVIEW OF INITIAL ORDER.

- (a) The Compact (Administrator) [if not the Presiding Officer], or designee, may review an Initial Order on their own initiative, or a party may petition the (Administrator), or (Governing Entity), to review an Initial Order.
- (b) A petition for review of an Initial Order must be filed with the (Administrator), not later than (15)-days after notice to the parties of the order. If the (Administrator) elects to review an Initial Order on her/his own initiative, s/he shall give notice to the parties of the intent to review the Order. The notice must be given not later than (15)-days after parties are notified of the Order. If a petition for review is not filed or the (Administrator) does not elect to review the Initial Order within the set time limit, the Initial Order shall become a Final Order.
- (c) The period in subsection (b) for a party to file a petition, or for the (Administrator) to notify the parties of the intent to review an Initial Order, shall be tolled by the submission of a timely petition under Section 416 for reconsideration of the Order. A new (15)-day period shall begin upon disposition of the petition for reconsideration. If an Order is subject to both a timely petition for reconsideration, and a petition for review by the (Administrator), the petition for reconsideration must be disposed of first, unless the (Administrator) determines that action on the petition for reconsideration has been unreasonably delayed.
- (d) When reviewing an Initial Order, the (Administrator) shall review the findings of fact, the credibility of documents and witnesses, the hearing record, or parts of the record, as designated by the parties; and may or may not direct that a de novo review be conducted.
- (e) If the (Administrator) reviews an Initial Order, s/he shall issue a Final Order disposing of the proceeding not later than (120)-days after the decision to review the Initial Order, or s/he shall remand the matter for further proceedings with instructions to the officer who presided over the matter. Upon remanding a matter, the Compact (Administrator) may order any temporary relief as is authorized or appropriate.
- (f) A Final Order, or an Order remanding the matter for further proceedings, shall identify any difference between the Initial Order and the Final Order, and shall state the facts of record that support any difference in findings of fact, the law that supports any difference in legal conclusions, and any policy reasons that support any difference in the exercise of discretion. Findings of fact must be based exclusively on the evidence and matters officially noticed in the hearing record in the contested case. A Final Order under this section must include, or incorporate by express reference to the Initial Order, the matters required by Section 413(d). The (Administrator) shall deliver the Order to the officer who presided, and notify the parties of the Order.

#### SECTION 415. REVIEW OF RECOMMENDED ORDER.

- (a) The Compact (Administrator) [if not the Presiding Officer], shall review a Recommended Order upon a petition of an affected party; and may or may not direct that a de novo review be conducted.
- (b) In reviewing a Recommended Order, the (Administrator) shall consider the opportunity to observe the witnesses and determine their credibility, and also consider the hearing record, or parts thereof.

(c) The (Administrator) may render a Final Order disposing of the proceeding, or remand the matter for further proceedings with instructions to the presiding officer who rendered the Recommended Order. On remanding a matter, the (Administrator) may order any temporary relief that is authorized and appropriate.

(d) A Final Order or an order remanding the matter for further proceedings, must identify any difference between the Final Order and the recommended order and must state the facts of record that support any difference in findings of fact, the law that supports any difference in legal conclusions, and the policy reasons that support any difference in the exercise of discretion. Findings of fact must be based exclusively on the evidence and matters officially noticed in the hearing record. A Final Order under this section must include, or incorporate by express reference to the recommended order, the matters required by Section 413. The (Administrator) shall deliver the Order to the parties of the Order.

#### SECTION 416. RECONSIDERATION.

(a) Not later than (15)-days after notice to the parties that a Final Order has been issued, a party may file a petition for reconsideration that addresses the specific grounds on which relief is requested. The place of filing, and other procedures, if any, shall be specified by rule(s) of the Compact, and shall be stated in the Final Order.

(b) If a petition for reconsideration is filed in a timely manner, and if the petitioner(s) has complied with the Compact's procedural rules for reconsideration, if any, the time for filing a petition for judicial review does not begin until the Compact (Administrator) disposes of the petition for reconsideration as provided in Section 503.

(c) Not later than (20)-days after a petition is filed under subsection (a), the (Administrator) shall either issue a written order denying or granting the petition to dissolve or modify the Final Order, or grant the petition and set the matter for further proceedings. If the (Administrator) fails to respond to the petition not later than (30)-days after filing, or longer as agreed to by the parties, the petition shall be deemed denied. The petition may be granted by issuing statements of findings of facts, conclusions of law, and reasons for granting the petition.

#### SECTION 417. STAY.

Not later than (10)-days after the parties are notified of the order, a party may request the Compact (Administrator) to stay a Final Order pending judicial review, who may grant such request for a stay pending judicial review upon a finding that a standard of justice may require. The (Administrator) may grant or deny the request for a stay of the order before, on, or after the effective date of the order.

#### SECTION 418. AVAILABILITY OF ORDERS - INDEX.

(a) Except as otherwise provided below, the Compact (Administrator) shall create an Index of all final orders, and make said Index and all final orders available for public inspection. A charge may be made using actual costs.

(b) Except as otherwise provided in subsection (c), final orders that are exempt, privileged, or otherwise made confidential or protected from disclosure in accordance with [the public records rule(s) of the Compact], are not

public records and may not be indexed. The Final Order may be excluded from an index and disclosed only by decision of a quorum of the (Governing Entity) members, with a written statement of reasons attached thereto.

(c) If the (Administrator) finds it is possible to redact a final order that is exempt, privileged, or otherwise made confidential or protected from disclosure by law of a member state(s) so that it complies with the requirements of that law, the redacted order may be placed in the index and published.

(d) The Compact Entity may not rely on a final order adverse to a party, as precedent in future actions, unless the (Administrator) designates it as precedent, publishes, indexes, and provides for public access.

#### SECTION 501. RIGHT TO JUDICIAL REVIEW: FINAL ENTITY ACTION REVIEWABLE.

For purposes of this Act, “Final Entity Action” means an act of the Compact (Administrator) or (Governing Entity) which imposes an obligation, grants, or denies a right. However, it does not mean a failure to act.

(a) Persons or entities are entitled to judicial review of a final entity action, if they are:

(1) Official governmental representatives of Compact Member-State(s) or

(2) A person(s) aggrieved by a final Compact action, policy, rule, or order. Such persons are also entitled to judicial review of an action that is not final if postponement of judicial review would result in an inadequate remedy or irreparable harm that outweighs the public benefit derived from postponing judicial review.

(b) The court may compel an action to be taken that is unlawfully withheld or unreasonably delayed.

#### SECTION 503. TIME LIMITATIONS TO SEEK JUDICIAL REVIEW.

(a) Judicial review of a rule based on noncompliance with the requirements of this Compact, must be commenced not later than (12)-months after the rule’s effective date. Judicial review of a rule, or a guidance document on other grounds, may be sought at any time.

(b) Judicial review of an order, or other final entity action other than a rule or guidance document, must be commenced not later than (120)-days after the date the parties are notified of an order or other entity action.

(c) The time to seek judicial review is tolled any time a party files for an administrative remedy to be heard by the Compact (Administrator) or (Governing Entity), which must be exhausted as a condition of judicial review.

(d) A party may not petition for judicial review while seeking reconsideration under Section 416. During the time a petition for reconsideration is pending before the Compact (Administrator), the time for seeking judicial review in accordance with subsection (b), is tolled.

#### SECTION 504. STAY – PENDING APPEAL

A petition for judicial review does not automatically stay a decision by a presiding officer, or a Federal court. A party may request the officer, or the Federal court, for a stay on the same basis as stays are granted under the rules of appellate procedure of the Federal Court. The reviewing officer, or court, has discretion to deny, or grant a stay, regardless of whether the challenging party first sought a stay.

#### SECTION 505. STANDING.

Persons who shall have standing for judicial review of a recommendation by the Compact (Administrator), or a decision of a presiding officer, shall include authorized representatives of a state that is aggrieved by an action of this compact; any authorized representative of a country, state, county or city aggrieved by an action of this compact, or a private citizen that is aggrieved by an action of this compact.

#### SECTION 506. EXHAUSTION OF ADMINISTRATIVE REMEDIES.

- (a) A petition may be filed for judicial review under this act, only after administrative remedies available under the provisions of this compact are exhausted.
- (b) Administrative Remedies shall consist of a good faith effort by the affected parties, to meet and discuss the issue(s) in dispute, with a record being made of such a meeting(s), and if such is unsuccessful, a notice of the matter(s) in dispute shall be filed with the Compact (Administrator). If a solution is not found, the final step shall be a formal ‘complaint’ filed with the (Administrator) requesting a hearing with all parties [Re: Section 401].
- (c) Filing a petition for reconsideration or a stay of proceedings is not a prerequisite for seeking judicial review.
- (d) A petitioner for administrative remedy, or judicial review of a rule, need not have participated in any aspect of the rulemaking proceedings on which the rule is based.
- (e) The court may relieve a petitioner of the requirement to exhaust any or all administrative remedies to the extent the administrative remedies are inadequate, or if it would result in irreparable harm.

#### SECTION 508. SCOPE OF REVIEW.

- (a) Except as provided by this Compact, in a judicial review of any challenge of this Compact’s action(s):
  - (1) The burden of proof of the invalidity of the Compact’s action(s) is on the party asserting invalidity,
  - (2) The court shall make a ruling on each material issue on which the court’s decision is based, and
  - (3) The court may grant relief only if it determines that a person seeking judicial review has been prejudiced by one or more of the following, such as:

- (A) The Compact (Administrator), or (Governing Entity), had erroneously interpreted the law;
- (B) The Compact (Administrator), or (Governing Entity), had committed an error of procedure;
- (C) The Compact (Administrator), or (Governing Entity)'s action(s) was found to be arbitrary, capricious, or did abuse his/her discretion, or otherwise acted in a way not in accordance with law; or
- (D) The Compact (Administrator), or (Governing Entity)'s determination of facts is found to not be supported by substantial evidence in the record as a whole.

(b) In making a determination under this section, the court shall review the record or the parts designated by the parties, and shall consider the possibility of harmless error.

#### SECTION 701. REVIEW OF RULES BY STATES

(a) The Compact (Administrator) shall provide a copy of each proposed rule and each emergency rule to each member-state's Representative at the same time it is published in the (Bulletin); and shall use an alternate delivery if such (Bulletin) is un-available to state representatives within (15)-days of that publication.

(b) Each State's Compact Representative shall be responsible to obtain and to disseminate copies of all Compact rules to all of that state's individual persons who have indicated a desire, or who have a defined need, to review such rules; including any and all executive and legislative branch committee members, or staff, who have an official role to examine and review such rules, and who are responsible to determine if:

- (1) The rule is a valid exercise of delegated authority;
- (2) Statutory authority for the rule has not expired or been repealed;
- (3) The rule is necessary to accomplish the expressed or implied purposes of the Compact's statute;
- (4) The rule is a reasonable implementation of the law as it applies to any affected class of persons; and
- (5) The Compact (Administrator), or (Governing Entity), has complied with the regulatory analysis requirements of Section 305, and the analysis properly reflects the effect of the rule.

(c) Each State's Compact Representative shall be responsible to coordinate and obtain all feedback from persons, or entities in that state who review compact rules, and may request from the (Administrator) such information as may be necessary to respond to questions about a rule.

(d) If a Member State's Representative, from his/her own review, or from other state reviewer input, questions or challenges a rule, or if any other impacted party has a question, s/he shall submit such comment(s) in writing, to the (Administrator), who shall enter such input into the rule making "Record," and schedule the matter for discussion by the Compact's (Governing Entity), either electronically, or at their next scheduled meeting, respecting that State's recommendation(s) for revising or re-drafting the proposed rule. The Proposed Rule shall not be made effective until after such a discussion is held, and a vote taken on said comment(s).

(e) The Compact's (Governing Entity) is responsible for the approval of all Compact rules.



SECTION 703. RULES REVIEW, PROCEDURE AND POWERS.

(a) Not later than (60)-days after receiving a copy of a Proposed Rule from the Compact (Administrator), the Compact's (Governing Entity) may, following their review and by majority vote, shall either approve the Proposed Rule, disapprove the rule as written and propose one or more amendments to it, or disapprove the Proposed Rule.

(b) If the Compact's (Governing Entity) does not disapprove or propose an amendment to the Proposed Rule, it shall become effective on the date specified in the (Bulletin).

(c) If the Compact's (Governing Entity) adopts an amendment(s) to the Proposed Rule, the (Administrator) shall file the amendment and re-publish the rule, as amended, as though it was a newly Proposed Rule. The (Administrator) shall include an explanation for the amended rule, and shall include the text of the amended Proposed Rule.

(d) An amended Proposed Rule shall conform to the legal authority granted by the Compact.

(e) Before the effective date specified in the (Bulletin), the (Administrator) may withdraw the rule by giving notice of its withdrawal to the Compact (Governing Entity). Such notice shall also be provided to member states by being published in the next edition of the (Bulletin). A withdrawal terminates the rulemaking, but does not prevent the Compact (Administrator) from initiating new rulemaking for the same or substantially similar issue.

SECTION 800. EFFECTIVE DATE. This act shall take effect on \_\_\_\_\_ (Date).

SECTION 900. SEVERABILITY. The provisions of this act are severable. If any part of this act is declared invalid, unconstitutional, or otherwise unenforceable by a court of competent jurisdiction, that declaration shall not affect the parts which remain.

[ See Also 'Optional Additional Procedures' – Pages 26, 27, 28, ]

ADDITIONAL “OPTIONAL” PROCEDURES: This Compact’s administrators may issue rules that incorporate other procedures into this act as needed for certain functions. For example, some state A.P.A.’s, or the federal APA, may contain provisions beneficial to this Compact. In addition, the following issues were suggested by the ABA’s study of Administrative Procedure Acts, for possible inclusion as may be applicable:

- 1- Provide for use of various other State APA/Federal APA standards of review, and specify whether they shall include substantial evidence or de novo;
- 2- Provide that, if any particular state or federal law does, or does not apply to a compact agency, if such a law is not specifically preserved in the compact;
- 3- State whether states may opt out of some or all of this compact’s provisions;
- 4- Provide whether the need exists to expressly allow hearing officers to hear compact adjudications that may involve citizens from other states;
- 5- Explain how the Compact will administer the separation of multiple functions involving the need to maintain impartial decision makers;
- 6- Define methods of obtaining or restricting ex-parte input from lawmakers in one or more states;
- 7- Provide whether a Compact agency’s precedent is binding on the agency and courts, and if so, provide a statement of precedent that is expressly preserved in the Compact. If multiple states’ precedent is preserved, then specify what methods are to be used to resolve inconsistencies between the precedents;
- 8- Specify whether administrative summary judgment can be used, and whether consideration should be given to its possible effect on uniform rulings;
- 9- Specify whether member states may issue separate rules to administer the compact in those states;
- 10- Define the applications and limitations of the use of ‘Interpretive-Rules;’
- 11- State what publications [and their locations] are to be used for publishing rules, rulemaking notices and other regulatory information;
- 12- State whether, if providing for any state court jurisdiction, there is a need to also include a method to ensure uniform and objective decision making;
- 13- State whether a need exists to specify considerations for venue, and provisions for the means of transfer between different court systems;
- 14- Define, when state law is absent, or differs, a strict application of the doctrine of primary jurisdiction may promote uniformity – when there is a need to bring uniformity to the states;
- 15- State if there is a need to authorize all possible relief that a Court may order;
- 16- Provide specific uniform standard(s) of review, of compact agency decisions;

- 17- State what deference is needed regarding questions of law, and if that deference is affected by inconsistent precedent supplied by constituent states;
- 18- Provide for direct review of agency action in the federal court(s) having jurisdiction overlapping that of the compact under review, including: (a) being confined to questions of law to avoid conflicts with Article III “case or controversy” limitations, and insure against reviewing courts becoming extensions of the compact agencies whose actions they review; (b) limitations to persons aggrieved by final agency action who have first sought relief, and (c) that the scope of review conform to 5 U.S.C. § 706(2)(A)-(E);
- 19- Provide a specific location where requests are to be submitted to obtain compact documents, and what general limitations exist as to the availability of compact documents, including whether they are to be available at both the compact’s principal office and other state or local offices that also administer the compact, the means of requesting, costs, time to respond, etc.;
- 20- Include in the definition of “agency” that FOIA rules for the compact should either recognize that requests to state and local agencies administering a compact, agree with relevant state FOIA’s, or provide that state and local agencies administering a compact are to be subject to this act;
- 21- Define the records of each entity involved in the compact, and state whether agency records for a compact entity are also records of the states, and other [named] agencies that implement an aspect of the compact, and whether records of one party state are also records of other party states;
- 22- Provide a uniform means for a person to seek review of a decision to release, or not release, a document, such as: a federal or other non-interested agency review, a joint state A.G. review, or a judicial review;
- 23- Provide a list of FOIA exemptions (including references to other lists), or authorize the compact to list exempted documents tailored to that compact, and/or allow for the exempting of documents that are to be kept confidential, and also provide guidance for when a compact entity may disclose documents if a conflict occurs among laws concerning disclosure of the same document;
- 24- Since a U.S. District Court could directly apply an unfamiliar state FOIA, depending on the terms of the compact, and since some states may have internal procedures for resolving disclosure disputes, require compact entities to develop exhaustion requirements specific to their duties;
- 25- Set an alternative procedure for calling a meeting, rather than have a single individual appointed by a party state to always handle that function. Also, requirements may be needed to for meeting locations based on compact needs, and for publishing meeting locations in specific locations;
- 26- Provide specific requirements for the use of advisory committees;
- 27- Specify whether compact officials are removable at will, and by whom;
- 28- Provide that a single state [or the federal government] may not unilaterally oversee and review a compact agency’s rulemaking, and specify a procedure for joint review and action;
- 29- State specific requirements for strategic planning, or provide for joint strategic planning and performance goal requirements;

30- Require that unilateral oversight of the compact not be permitted, or that the compact be structured to avoid to impermissible unilateral action;

31- Provide that while compact officials, as governmental appointees, may be required to comply with state conflict of interest reporting laws, when such laws would lead to unilateral state action;