

INTERSTATE COMPACT ON
EDUCATIONAL OPPORTUNITY
FOR MILITARY CHILDREN

PROMULGATION
OF RULES

Adopted May 2019

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INTRODUCTION

The promulgation of rules by the Military Interstate Children's Compact Commission (MIC3) is dictated by guidance in four different legal documents.^{1,2,3,4} These documents are specifically cited where appropriate in the following paragraphs that describe the various facets of MIC3's authority and rulemaking process.

Authority to Promulgate Rules

Article XII: Rulemaking Functions of the Interstate Commission¹ vests the Commission with broad rulemaking powers. Rules promulgated by the Commission have the force and effect of statutory law within member states and all state agencies and courts must give full effect to the rules.

Rulemaking Process

In adopting rules, the Commission is required to substantially comply with the Model State Administrative Procedures Act² or such other administrative procedures act that complies with due process requirements. MIC3's process for adopting or amending rules according to Chapter 200 – GENERAL PROVISIONS. SEC. 2.102 Adoption of Rules - Amendment,³ includes, but is not limited to, the following:

- Rules Committee Meetings
- Publication of Proposed Rule Changes
- 30-day Period for Public Comment
- Rules Committee Meeting to discuss Public Comment and Amend Proposals
- Publication of Modified Proposed Rules Changes
- Public Hearing
- Vote on Proposed Changes at MIC3's Annual Meeting

Limits of Rulemaking Authority

The Commission's rulemaking authority is limited by Article XII, Section D¹, which provides that if a majority of state legislatures reject a Commission rule by enacting a statute to that effect, the rule has no force or effect in any member state. Consequently, a single state may not unilaterally reject a rule even if it adopts legislation to that effect. Rejection of a rule requires legislative action by a majority of the member states.

Challenging Commission Rules

The MIC3 provides a mechanism for challenging Commission rules. Under Article XII, Section C¹, not later than thirty days after the promulgation of a rule, any interested party may file a petition in the United States District Court for the District of Columbia or the United States District Court in which the Commission has its principal offices (currently the United States District Court for the Eastern District of Kentucky) challenging the rule. If the court finds that the Commission's action is not supported by substantial evidence in the rulemaking record, the court must declare the rule unlawful and set it aside. The Model State Administrative Procedures Act² guides the determination as to whether substantial evidence exists to support the Commission's action.

For more information, see Chapter 200 – GENERAL PROVISIONS, SEC. 2.102 Adoption of Rules; Amendment.³

OVERVIEW

The MIC3 rulemaking process begins with the submission of proposed new rules or amendments to existing rules to the MIC3 National Office for referral to the Rules Committee. Proposals, draft and final rules are vetted through an extensive review process, which includes posting, comment periods, and sharing of comments for Commissioners, as well as publication at least 30 days prior to and a public hearing prior to the scheduled vote.

Proposed rules or amendments to the rules shall be adopted by majority vote of the members of the Interstate Commission at an Annual Business Meeting (ABM).

DEVELOPING & SUBMITTING PROPOSALS

Proposed new rules and amendments to existing rules shall be submitted to the MIC3 National Office for referral to the Rules Committee as follows:

1. Any Commissioner may submit a proposed rule or rule amendment for referral to the Rules Committee during an ABM. This proposal must be made in the form of a motion and approved by a majority vote of a quorum of the Commission members present at the meeting;
2. Standing Committees of the Commission may propose rules or rule amendments by a majority vote of that committee; and
3. Any regional group of States as may be subsequently recognized by the Commission may propose rules or rules amendments by a majority vote of members of that region.

Initial Draft

Initial drafts are commonly developed by the Rules Committee based on recommendations from other committees, but initial drafts can be developed by any committee, Commissioner, or designee. A template is attached.

Recommendation of Issues to Rules Committee for Review

If a Committee has concerns regarding a rules-related issue, the Committee may vote to recommend the Rules Committee review the issue to determine what, if any, further action should be taken. It is not necessary for the Committee to draft a proposal if this type of recommendation is made.

RULES COMMITTEE REVIEW

The Rules Committee reviews all proposals, taking into consideration the following:

- Proposed language;
- Need/justification for the proposal;
- Impact on other Rules;
- Formatting changes (requires notification to referring Committee Chair);
- Impact on MIC3 processes or policies (including data/data collection);
- Legal issues (if applicable); and
- Feasibility/applicability across all member states.

Rules Committee Actions

After discussing a recommendation or proposal, the Rules Committee will determine whether to develop a proposal, support a proposal as submitted, or recommend changes.

Rules Committee Proposals

The Rules Committee may develop proposals based on recommendations received from other Committees, Commissioners, or Designees.

Recommend Substantive Changes to Proposals from Committee

If the Rules Committee determines substantive changes are needed, the proposal will be returned to the referring Committee with reasoning and justification for the suggested changes. The referring Committee may:

- approve the Rules Committee's changes;
- proceed with its original submission; or
- withdraw its original submission.

Any adjustments made to a proposal must be approved by majority vote of that Committee. A proposal may be withdrawn at any time by the Committee who initially submitted it.

Recommend Formatting Changes to Proposals

Formatting or technical modifications may be made prior to posting proposals for comment. This may include grammar, numbering (Rule and subsections), and language modifications that do not affect the intent of the proposal or the justification. Any formatting changes are conveyed to the referring party or Committee Chair who can dispute the format change for context.

POSTING AND COMMENTS

Initial Commission Comment Period

The Rules Committee posts all proposals publicly, allowing Commission Members to submit comments. All comments are posted on the Commission's website. These comments are critical in preparing the final proposal drafts. Referring Committees should discuss comments prior to the proposal's final drafting and posting. The comment period typically lasts thirty (30) days.

Final Drafting and Posting

After the initial comment period, the Rules Committee meets to discuss and consider the comments to determine if any changes are needed. Working with the referring Committees, the Rules Committee shall prepare a final draft of the proposed rule(s) or amendments for consideration by the Commission no later than the next annual meeting falling in an odd-numbered year. Prior to promulgation and adoption of a final rule by MIC3, the text of the proposed rule or amendment must be published by the Rules Committee no later than 30

days prior to the scheduled vote at the Annual Business Meeting. Posting must be on the official MIC3 website, and in addition to the text of the proposed rule or amendment, the reason for the proposed rule must be provided.

Public Hearing

Prior to the Commission voting, a Public Hearing must be held to allow public input regarding any proposed rule changes. Public comments may also be submitted in writing and read at the Public Hearing. The Public Hearing is typically held in conjunction with the Annual Business Meeting. The Commission may make a transcript or recording of the public hearing if it chooses to do so. However, no transcript of the hearing is required unless a written request for one is made, and a recording may be made in lieu of a transcript.

To facilitate fair and reasonable opportunity to comment, each proposed rule or amendment shall state the place, time, and date of the scheduled public hearing; the manner by which interested persons may submit notice to MIC3 of their intention to attend the hearing and any written comments; and the name, position, physical and electronic mail address, telephone, and telefax number of the person to whom interested persons may send notice of their attendance and written comments.

FINAL VOTE AT ANNUAL BUSINESS MEETING

During the General Session, the Commission takes final action on a proposed rule by majority vote of a quorum of the Commissioners and determines the effective date of the rule. No additional rules or amendments may be made at this time. A rule or amendment may be referred back to the Rules Committee for further action, either prior to or subsequent to final action on the proposed rule or amendment.

JUDICIAL REVIEW

Not later than 60 days after a rule is adopted, any interested person may file a petition for judicial review of the rule in the United States District Court of the District of Columbia or in the federal district court where the MIC3 National Office is located. If the court finds that the Commission's action is not supported by substantial evidence, as defined in the federal Administrative Procedures Act², in the rule making record, the court shall hold the rule unlawful and set it aside.

EMERGENCY RULE

Upon determination that an emergency exists, MIC3 may promulgate an emergency rule that shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided in the Compact and in the MIC3 Compact Rules shall be retroactively applied to the rule as soon as reasonably possible, in no event later than (90 days after the effective date of the rule. An emergency rule is one that must be made effective immediately in order to meet an imminent threat to public health safety, or welfare; prevent a loss of federal or state funds; meet a deadline for promulgation of an administrative rule that is established by federal law or rule; or protect human health and the environment.

1. Interstate Compact on Educational Opportunity for Military Children: Model Compact Language, <http://www.mic3.net/assets/model-language.pdf>

2. Model State Administrative Procedures Act, 1981 Act, Uniform Law Annotated, Vol. 15, p. 1 (2000)

3. MIC3 Compact Rules. 2018, October 7. <http://www.mic3.net/assets/rules-2018-revised-9-nov--2018.pdf>
4. Interstate Commission on Educational Opportunity for Military Children Bylaws. 2017, October (*amended*). <http://www.mic3.net/assets/by-laws-amended-oct-2017.pdf>

RULE PROPOSAL (TEMPLATE)

Proposed by: _____ Date Submitted: _____

Proposed New Rule or Amendment:

How to format a proposed amendment to a current rule:

- **Enter** the full rule as it currently exists.
- **Strikethrough** any proposed deleted language.
- **Add** new proposed language in **red** and **underline**.

How to format a proposed **new** rule:

- **Present** new rule proposal text all in **red and underline**.
- May suggest the section of the MIC3 Rules where the proposed rule could be added.

Justification:

Describe why the proposed new rule or amendment is needed, how it meets the goals (establishing legislation/strategic plan) of the Compact, and case examples (sample cases/applicable cases).

Is the proposed rule

—within MIC3’s legal authority as defined in establishing legislation?

—uniformly feasible and applicable across all member states (or is the problem better resolved by policy changes within applicable jurisdictions)?

—the best solution to the problem it is proposed to solve?

—flexible enough to accommodate different LEA/SEA structures and operations?

Effect on Other Rules, Advisory Opinions or Dispute Resolutions:

Whether the proposal affects/addresses/conflicts with any other rules, etc.

Process/Policy Impact:

Any impact to specific MIC3 processes or policies and whether the proposal can be implemented without modification to current practices.

Fiscal Impact:

The National Office will obtain a quote related to any fiscal impact of a rules change.

Rules Committee Action:

The history of the proposal, including all Rules Committee motions, will be documented here.

Effective Date:

Date the proposal should be effective, typically January 1 of the year following adoption.

Military Interstate Children's Compact Commission

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