

A motion by Kansas to amend the rules relating to compliance review:

Rule 905. Annual Recertification

A. Recertification Requirement. Pursuant to Section 803 of the Agreement, each member state shall annually recertify to the Governing Board by August 1 of each year that the state is in substantial compliance with each provision of the Agreement as required by Section 805 of the Agreement. As used in this rule, “compliance” means substantial compliance with each provision of the Agreement as required by Section 805 of the Agreement.

1. Recertification Documents. (a) On or before August 1 of each year, each member state shall submit to the Executive Director either a statement certifying that the state is in compliance with the Agreement as it exists on August 1st of the year or a statement of noncompliance. The Executive Director shall forward all statements and any accompanying documents to the Chair of Compliance Review and Interpretations Committee (“CRIC”).

(b) With the statement, each member state shall submit: (1) the certificate of compliance issued for the recertification period that sets out the state’s statutes, rules, regulations, and other authorities adopted to comply with the specific provisions of the Agreement as of August 1 of the year, (2) a list and the effective date of any of the state’s statutes, regulations, or written policies to remain or come into compliance that have changed since August 1 of the prior year, (3) its most current taxability matrix, (4) a statement disclosing any known items of noncompliance with a description of the action the state intends to take to remedy the noncompliance, and (5) a list of any significant administrative or judicial decisions (regardless of outcome) that impact the state’s compliance since August 1 of the prior year.

2. Posting Documents. Each member state shall post its statement of recertification or its statement of noncompliance and its certificate of compliance on the state’s web site on or before August 1 of each year. The Executive Director shall post all recertification filings on the Governing Board’s web site.

~~B. Compliance Review And Interpretations Committee.~~

B. Review Responsibility. Pursuant to Article 7, Section 2 of the by-laws, the ~~Compliance Review and Interpretations Committee~~ CRIC is responsible for reviewing ~~compliance review reports to determine~~ each state’s annual recertification filings, determining any needs for re-assessment and recommending to the Governing Board findings of compliance and non-compliance ~~to the Governing Board.~~

~~2. Recertification Documents.~~

~~a. By August 1 of each year, each member state shall submit to the Executive Director a statement certifying that the state is in compliance with the Agreement or submit a statement of noncompliance. The Executive Director~~

~~shall forward all statements and any accompanying documents to the Chair of the Compliance Review and Interpretations Committee. A member state shall indicate any known items of noncompliance that may occur at a date following its certification submission or action needed to be taken to comply with requirements of the Agreement with future effective dates.~~

- ~~b. With the statement in subsection (a), each member state shall submit a certificate of compliance that sets out the state's statutes, rules, regulations, or other authorities that have been adopted to come into compliance with the specific provisions of the Agreement.~~
- ~~c. Each member state shall post its statement of recertification or its statement of noncompliance and an updated certificate of compliance on the state's web site by August 1 of each year. The updated certificate of compliance shall reflect the state's compliance with the provisions of the Agreement through August 1 of the year of submission. The Executive Director shall post all recertification filings on the Governing Board's web site.~~

~~3. Evaluation~~

- ~~a. The Compliance Review and Interpretations Committee and any designees that the chair of the Committee appoints to provide assistance shall review all statements and accompanying documents.~~
- ~~b. The Compliance Review and Interpretations Committee shall submit to a member state any findings of noncompliance based on a review of a certificate of compliance or other documentation submitted with a member state's annual statement of recertification. Such member state shall have 30 days to respond to the findings in writing to the chair of the Compliance Review and Interpretations Committee. No sooner than 31 days after submission of the findings to the member state, the Compliance Review and Interpretations Committee shall determine if further action is warranted.~~
- ~~c. If the Compliance Review and Certification Committee finds that a member state is in compliance with the Agreement, the committee shall report such findings to the Governing Board. If the Compliance Review and Interpretations Committee determines that a member state is not in compliance with the Agreement, the committee shall submit such findings to the Governing Board.~~

C. CRIC Evaluation and Report

1. On or before September 20th of the recertification year, CRIC (and/or any designees that the chair of CRIC appoints to provide assistance) shall (1) review all statements and accompanying documents, (2) hold one or more public meetings, (3) conduct a state by state review of each state's compliance with the Agreement and (4) issue an initial written report on each member state's compliance. For any state not found to be in compliance, CRIC shall include a statement opining on the severity of a state's non-compliance in such report and all subsequent reports.
2. On or before October 10th of the recertification year, any member state found by CRIC to have a potential compliance issue shall respond in writing to the CRIC's findings. The public may provide any written comments on a member state's compliance by that date. Such responses and comments shall be delivered to the Executive Director who shall

notify the public of their filing and publish those documents on the Governing Board's website.

3. On or before November 1st of the recertification year, CRIC shall (1) review the responses from the states and the comments from the public, (2) hold at least one meeting for public comments and (3) issue its preliminary report.
4. On or before November 10th of the recertification year, the member states and the public may comment with respect to issues either raised in the preliminary report or brought to CRIC's attention by the October 10th due date.
5. On or before November 20th of the recertification year, CRIC shall hold a public meeting accepting comments from any person and vote on its findings of compliance with a separate vote taken for each member state. No CRIC member shall vote on its own state's compliance.
6. On or before November 30th of the recertification year, CRIC shall issue its final report to the Governing Board. Such report shall: (1) summarize, as practical, the comments received from the member states and the public, (2) describe how CRIC addressed those comments and (3) state how each CRIC member voted.
7. The CRIC chair, for due cause shown, may extend the above dates for not more than ten (10) days. If any date provided in this rule falls on a weekend day, federal holiday or a banking holiday in a member state, such date shall be the next day that is not a weekend day, federal holiday or a banking holiday in a member state.

D. Review Standards

1. **Scope of Review.** The member states' annual recertification of compliance covers all aspects of the Agreement, including any applicable rules and interpretations, and is not limited to changes made in the prior year.
2. **Determination of Compliance.** (a) A member state is presumed to be in compliance. Except as provided in subparagraph b of this paragraph, if documentation is provided to CRIC indicating a state is not in compliance, such state has an affirmative duty to explain how it is in compliance. If there is doubt or questions over whether a state is clearly in compliance, the conflict should be resolved towards the member state not being found in compliance.
(b). If an issue of a state's compliance has previously been raised against a state for which it was found in compliance that was the subject of a prior unsuccessful challenge under this paragraph, such state need only respond that it previously was held in compliance on that same issue. CRIC and the Governing Board, however, must take into consideration any documentation that supports such state is not in compliance.
3. **Reliance.** The determination of a member state being in compliance shall be based only on a review of the state's laws, regulations and/or written policies; such provisions listed in order of preference and reliance. Legislation shall be relied upon only if it has passed both legislative chambers (or the legislative chamber for a unicameral state) and there is no threat of a Governor's veto. A regulation shall be relied upon only if it has been fully adopted. A written policy shall be relied upon only if it is publicly accessible through the state revenue agency's website.

Sanctions. Determination of appropriate sanctions shall be based on the severity of a member state's noncompliance. The severity of a state's noncompliance shall be measured by the burden the noncompliance places on sellers and purchasers.

E. C. Public Notice. The Executive Director shall provide notice and copies ~~a copy of a~~ any statements ~~statement~~ of noncompliance received by a ~~from the~~ member state and any findings of noncompliance by the ~~Compliance Review and Interpretations Committee~~ CRIC to, and shall solicit comments from, the following parties:

1. the authorized representative of each member state;
2. the Chair of the State and Local Advisory ~~Council~~ Committee;
3. the Chair of the Business Advisory Council; and
4. the general public as provided in Rule 806.2.

~~**B. Agenda.** No sooner than 60 days after the solicitation of comment, the statement of noncompliance from the member state and any findings of noncompliance by the Compliance Review and Interpretations Committee, the issue as to whether the member state is in compliance with the Agreement shall be placed on the agenda of the Governing Board for either a regular meeting or a special meeting. If a member state is found to be out of compliance by the Governing Board, the member state shall be subject to sanctions as authorized under Section 809 of the Agreement.~~

F. Governing Board Action. The Governing Board shall take action in a regular or special session meeting on CRIC's final report on or before January 31 following the recertification year. Regardless of whether CRIC determined that a state was not in compliance, the Governing Board shall separately vote as specified in Section 809 of the Agreement on whether each member state is not in compliance. Immediately prior to the Governing Board taking a vote on each state, the state and the public shall have the opportunity to make comments on that respective state's compliance or noncompliance. At the same meeting and following the Governing Board votes on whether each member state is not in compliance, those member states found not in compliance by the Governing Board shall be subject to sanctions.

G. E. Appeal. ~~If the subject state~~ If any person disagrees with the Governing Board's determination, ~~the subject state~~ that person may invoke the appeals issue resolution process provided for in Section 1002 of the Agreement.

H. F. Publication of the Decisions Decision. Once the decision of the Governing Board becomes final, either because ~~no appeal is filed or the appeal procedures have been exhausted,~~ the decision shall be sent to the subject state and a copy of the decision shall be posted on the Web. The Governing Board's website shall list for the past five years each state and whether the state was in compliance or not in compliance. For a state found not in compliance, the website shall provide (1) the date it was found not in compliance, (2) the noncompliance issue(s), (3) the sanction(s) imposed with any timeframes, and (4) the date it returned to compliance.