



Division of Insurance Market Regulation

30 June 2022

Superintendent Russell Toal, Chair
Market Regulation Certification (D) Working Group
c/o Randy Helder, Assistant Director of Market Regulation
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

Via Email
RHelder@naic.org

Re: Market Regulation Certification Program

Dear Superintendent Toal,

Thank you very much for the opportunity to provide input on the continued development of the Market Regulation Certification Program (the Program). We offer the following comments and suggestions to the Working Group for consideration.

Proposal for Implementation

Given the delay in moving forward with the implementation of the Program, we would encourage the Working Group to revisit the current draft of the implementation plan to 1) confirm that the structure is still applicable (or amend as needed) and 2) update the implementation timelines accordingly.

Self-Assessment Guidelines and Checklist Tool

General Observations

The document is inconsistent in how it refers to a department. In some areas it is directed at the reader and uses terms such as 'you' and 'your'. Other areas use more generic terms such as 'the'. For consistency, we'd suggest replacing the references to 'you' and 'your' with the more general reference to 'the' department.

The document is also inconsistent in how it refers to participating jurisdictions, in that the terms state and jurisdiction are used interchangeably. For consistency purposes, we'd suggest that the broader term jurisdiction be used throughout the document and all references to a state or states be amended accordingly.



Several of the Checklist Items include generic statements such as ‘Briefly explain’. It would be helpful if these statements could be expanded on and provide more information about what should be explained. It may also be helpful to include the requirement for an explanation directly below the item to be explained, rather than grouping it into a single item at the end of the checklist.

Finally we noticed little consistency in how each requirement is organized. This makes it more difficult for the reader to interpret and apply. To aid in readability and understanding, we suggest standardizing the structure used for each requirement. Specifically, we recommend that each requirement be organized as follows:

Requirement	A statement of the requirement(s)
Objective	The objective(s) of the requirement
Measurement	Information on how the requirement will be measured
Guidelines	Guidance on how to interpret the requirements
Checklist	The checklist for jurisdictions completed to assess achievement of the requirement
Comments	An area for the jurisdiction to provide additional information related its assessment of the requirement

Purpose

We believe that the established shards should be viewed as minimum standards. To achieve this, we recommend amending the first sentence to read “to establish and maintain minimum standards...”.

The first bullet point provides that the guidelines should be used as a roadmap for building or improving on a department’s market conduct program. We believe the guidelines would also be useful for maintaining a program. We suggest that the first bullet point be updated to read “... wishing to build, maintain or improve upon, ...”.

Requirement 1 – Department’s Authority

The purpose of the Program “is promote sound practices relating to the market conduct examination, market analysis and related continuum activity functions performed for insurance consumer protection”. The purpose does not appear to extend to the need for a jurisdiction to have adopted specific consumer protections. In order to keep the Program in line with its stated purpose, we suggest that the requirement and any discussion related to the adoption of key consumer protection laws be deleted.

However, it if it the intent of this program to ensure that a minimum level of key consumer protections are in place, we would recommend revising the purpose statement for the program itself and creating a separate requirement to cover the key consumer protection items.

Checklist Item 1b.: For clarity, we suggest that the item be revised to specifically list the activities of interest (i.e. market analysis, comprehensive and targeted market conduct examinations and the continuum of market regulation actions, including enforcement).

Requirement 2 – Department’s Authority Regarding the Market Regulation Handbook

This item requires that a jurisdiction have the authority to use of the most recent version of the *Market Regulation Handbook (Handbook)* and that the version of the *Handbook* in effect at the time an examination is initiated be utilized.

We agree that for ‘process’ related items (such as reporting writing, sampling, and exam planning processes) should be based on the version in effect at the time the examination is initiated. However, it isn’t always the best choice when it comes to applying individual examination standards. Depending on the period under review, there are times where it may be more appropriate to use review standards from an older version of the *Handbook*. This is especially true when the *Handbook* has been updated to reflect changes in model laws, however the laws/regulations of the jurisdiction differ from the current version of the NAIC model. We would like to see the requirement and guidelines clarified to address these types of situations.

The objective stated in the requirement indicates that the goal is to promote internal consistency across examinations. While internal consistency is important, we believe consistency across jurisdictions should also be an objective of this requirement. As such we would suggest the Working Group consider clarifying the requirement to clearly include consistency across departments.

This requirement can be satisfied when the department has “authority by statute, rule or other authority” to use the *Handbook*. It would be helpful if the Guidance provided some information on what ‘other authority’ would be considered acceptable in order to meet this requirement.

Checklist Item 2a.: The current draft removes the requirement to list the reference related to the authority. We are not in favor of eliminating this from the checklist. We believe including this item would be helpful in documenting the actual authority on which the jurisdiction is basing its response.

Requirement 3 – Department Staffing

This requirement is aimed at having sufficient resources on staff and/or the ability to hire contractors. Requirement Number 4 applies to the qualifications of the resources. To clearly distinguish it from Requirement Number 4, we recommend changing the name of the requirement to “Department Staffing – Resources”. We also suggest removing all references to the experience and/or qualifications of the resources in order to avoid overlap between the two requirements.

The fifth paragraph of the Guidelines should include analysis and continuum activities. It currently only addresses the use of contractors for examination purposes.

Checklist Item 3c: Staff and/or contractor counts should be based on full-time equivalent (FTE) positions to take into account the variations in how departments are organized. For example, in Missouri team members responsible for doing market analysis have responsibilities in addition to market analysis. Reporting the actual number of team members tasked with market analysis would

result an overestimation of the actual resources used to conduct analysis. Reporting on an FTE basis would provide for a more accurate representation of the resources.

Checklist Item 3c.: We are unclear what the ‘value-add’ would be for collecting the number of supervisors independently from the number of analysts. For consistency, we recommend that supervisors be counted in the same way they are being counted for examinations/continuum actions. We also recommend that the table used to report staff counts be structured the same as it is for examinations/continuum actions (staff vs contractors).

New Checklist Item: To provide clear documentation to support the need to respond to the current checklist item 3b., we recommend adding the following additional item before the current item 3b:

Does the department have utilize contract analysts to conduct market analysis of insurers doing business in the jurisdiction?

We support prior comments made by California related removing the requirement to report analysis activities broken down by single-state/multistate and L&H/P&C.

Checklist Item 3g.: Department staff should be counted in terms of full-time equivalent (FTE) positions to account for variations in how departments are organized.

Written Premium Volume: We echo the concerns expressed by California as it relates to the value and relationship written premium has to this process and agree that it should not be included.

Checklist Item 3h.: We agree with California. Detailed information on staff/contractors and their qualifications is not pertinent in the context of determining if the department has sufficient resources.

Requirement 4 – Department Staffing - Qualifications

This requirement contains several references to the number of years of service and provides in some instances that the sheer number of years of service equates to some level of qualification or expectation of achievement.

We believe the use of an unqualified number of years of service isn’t always appropriate. We often promote from within. A long term employee may have in excess of 5 years of service with the department; however, if all but one of those years were in an unrelated capacity it isn’t realistic to expect that individual would have the designations outlined or deemed qualified on the basis of overall service. We suggest that the years of service should only be considered if they are relevant to the position.

Requirement 5 – Confidentiality and Information Sharing

The first bullet of this requirement applies strictly to examination workpapers. As states continue to increase their use of non-examination methods for investigating and resolving issues, we

encourage the Working Group to consider expanding it to cover market analysis and continuum actions.

Checklist Item 5b.: We would like to see this item expanded or a new item created requiring departments to have written policies/procedures and to communicate such policies/procedures to staff related to the sharing of information under the multi-state agreement.

Checklist Item 5d.: The requirement to have a records retention schedule does not appear to be addressed in the Requirement or the guidance provided. We believe all items in the checklist should be a part of the requirement and guidance be provided on how to meet the item.

Requirement 6 – Collaboration with Other Jurisdictions

Checklist Item 6a.: The requirement calls for departments to follow the referral or reporting procedures outlined in the Market Actions (D) Working Group Policies and Procedures. However the checklist item appears to set a higher standard by requiring departments to ‘adopt’ those procedures and the *Market Regulation Handbook*. We recommend revising this item to more closely align with the requirement itself.

Checklist Item 6d.: The example reasonable explanations provided in the guidelines do not appear applicable to all of the items covered by this item. We would like to see additional clarification added to the guidance to address this issue. In addition, Item 6d. should be removed from the list of items that require an explanation if the response is No.

Checklist Item 6e.: This item is unclear. We believe it is meant to cover all declinations, however, that isn’t clearly expressed. We recommend clarifying the item to indicate that a response needs to be provided to the Market Actions (D) Working Group for each action in which a jurisdiction declines to participate.

Requirement 7 – Market Conduct Annual Statement

Checklist Items 7a., 7b. and 7c.: We believe that for a department to be able to say that it participates in the centralized collection of the Market Conduct Annual Statement (MCAS) they must meet all three of these items. Therefore it does not seem necessary to break the items into three. We recommend amending item 7a to reflect this and deleting items 7b. and 7c.

If the purpose of the separating the items into three steps is to allow states not participating in MCAS to achieve a ‘marginal pass’ the independent collection and utilization similar data in their market analysis process, a requirement a checklist items specific to that activity should be added to the checklist as an independent item.

Requirement 8 – Electronic Data Entry with the NAIC

We recommend clarifying that the requirement to enter continuum actions into MATS when the action is initiated applies to only non-examination actions. We support Maryland’s prior comments

related to establishing an error tolerance ratio and a more clearly defined timeframe in which non-examination actions must be entered.

The Guidelines reference an explicit version and sections of the *Market Regulation Handbook*. We suggest that the guidelines be re-worded in such a way that the document does not need to be updated each time the *Handbook* is updated.

Checklist Item 8c.: We suggest that this item be updated to reflect that it applies to non-examination continuum action items. In addition, we agree with Idaho's earlier comments related to the NAIC systems that should be referenced in this item. The RIRS system contains finalized/adjudicated actions. It is not possible to report a continuum action into RIRS at the time it is initiated. The only system that should be referenced in this item is MATS.

Requirement 9 – Participation in all NAIC Market Conduct and Market Analysis Working Groups

Missouri supports the desire expressed by both California and Maryland to clarify and better define what is meant by 'participate', including adding a quantitative metric for measuring success.

Requirement 10 – Collaborative Action Designee

It is our understanding that not all MAWG meetings are open to the CADs and/or CAD alternates. We suggest the requirement, guidelines and checklist be updated to reflect that the only meetings to be included in determining if the 50% attendance measure is met are those meetings open to the CADs and the alternates.

Checklist Item 10d.: We also support Maryland's prior suggestion that 'actively monitor' be more clearly defined and that the CAD/alternate be allowed to designate other individuals to monitor the discussions.

Requirement 11 – Collaboration – National Analysis

We echo California's concerns regarding how this requirement is currently constructed and measured. The current national analysis process does not offer sufficient opportunities for jurisdiction to successfully pass this requirement, especially for jurisdictions that are not represented on MAWG.

Requirement 12 – Interdivisional Collaboration

Checklist Item 12d.: The objective of this requirement is to establish a systematic procedure for internal, interdivisional communication. This checklist item does not further or support the stated purpose of internal communication amongst divisions within the department. As such, we recommend deleting it from this requirement. If the Working Group believes it should be a part of the Program, we'd suggest considering placing it under Requirement 6 – Collaboration with Other Jurisdictions.

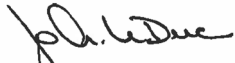
Scoring Matrix

We noticed several inconsistencies between the scoring matrix and the requirements listed in the Self-Assessment Guidelines and Checklist Tool. To ensure that the two documents are aligned, it may be helpful for the Working Group consider both documents simultaneously as it works through the requirements one by one.

Thank you again for allowing us the opportunity to provide comments and suggestions on the Program. As we continue to move through this process, Missouri stands ready to assist the Working Group in any way needed.

Please let us know if you have any questions or require additional information regarding our comments.

Sincerely,



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