

Draft: 8/18/25

Market Regulation Certification (D) Working Group  
Virtual Meeting  
August 6, 2025

The Market Regulation Certification (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee met Aug. 6, 2025. The following Working Group members participated: Bryan Stevens, Chair (WY); T.J. Patton, Vice Chair (MN); Chelsy Maller and Molly Nollette (AK); Chris Heisler (IL); Mary Lou Moran (MA); Mary Kwei (MD); Jo A. LeDuc (MO); Shane Quinlan and Tracy Biehn (NC); Ralph Boeckman and Erin Porter (NJ); Don Layson (OH); Landon Hubbard (OK); Gary Jones (PA); Rachel Moore (SC); Tracy Klausmeier and Kelly Christensen (UT); Andrea Baytop (VA); Karla NuiSSL (VT); and Allan L. McVey (WV). Also participating were: Pam O'Connell and Don McKinley (CA); Victoria Hastings (IN); Lori Cunningham and Patrick Smith (KY); Danielle Torres (MI); and Brett Bache (RI).

1. Adopted its May 21 Minutes

The Working Group met May 21 and took the following action: 1) discussed its Spring National Meeting session; and 2) discussed drafting a market analysis certification requirement.

Patton made a motion, seconded by Moran, to adopt the Working Group's May 21 minutes (Attachment XX). The motion passed unanimously.

2. Discussed Drafting a New Market Analysis Certification Requirement

Stevens said that he and Patton drafted a market analysis certification requirement proposal that was circulated at the beginning of June. He reminded the Working Group that the request for a market analysis requirement came from the Market Analysis Procedures (D) Working Group during its discussions of the minimum requirements for the number of Market Analysis Review System (MARS) Level 1 reviews that all jurisdictions should complete annually.

Stevens said the proposal considers different types of market analysis in addition to MARS reviews and the value of shared analyses to all jurisdictions. He said the Working Group received 10 comments on the proposal.

Quinlan asked if the six reviews per market regulation employee proposal considers all market regulation employees or just market analysts. Stevens said it was all employees in the market conduct department. He said that in his state, he is the only one in the market conduct department. Quinlan said there is a hard line between examiners and analysts in North Carolina. He said that analysts do not do exams, and examiners do not do analysis.

McKinley said the California department has 35 examiners and analysts, and as written in the proposal, California would be required to do over 200 market analyses. He suggested a cap on the number of market analysis reviews required. Stevens said the Working Group should consider whether the requirement should be analyses per number of market analysts. LeDuc said Missouri would support that. She said the proposal should be number of analyses per full-time equivalent, not full-time employee. Patton supported the use of full-time equivalent.

NuiSSL asked whether only MARS Level 1 analyses would be counted toward meeting the requirement if the language changes to "full-time equivalent" market analysts. LeDuc said the current requirement counts both Level 1 and Level 2 reviews toward completion of the requirement. She said Level 2 reviews should be included in the benchmark.

Bache said Rhode Island uses Level 2 reviews to input results from interrogatories and data calls. He said Rhode Island does not make entries into the Market Action Tracking System (MATS). He said Rhode Island's Level 1 reviews do full complaint analyses that do not need to be repeated in the Level 2 review. Quinlan said North Carolina inputs its continuum actions into State Based Systems (SBS). He said there is an NAIC initiative to link MATS and SBS.

Cunningham asked whether a state with no full-time equivalent analysts would have a market analysis requirement. Stevens said that if an examiner does market analysis, that examiner's percentage of time doing analysis would count toward the full-time equivalent. He said, for example, that five examiners who each spend 20% of their time doing analysis would count as one full-time equivalent, and the requirement would then be six shared analyses for that state. Stevens asked Cunningham if Kentucky follows up its baseline analyses with Level 1 or Level 2 analyses. She said they do not because the baseline gives them enough information, and doing Level 1 and Level 2 analyses in addition to the baseline would be a large undertaking for her state. Stevens said a state with zero full-time equivalent market analysts would be required to do zero analyses. Patton said the certification program has to be flexible.

LeDuc said that "full-time equivalent" should be defined in the certification program. She said it is about how many people are doing market analysis in the state. If the state has half of a full-time equivalent employee doing market analysis, then three market analyses would be required. Baytop noted that the term "full-time equivalent" is already used in the program on page 8.

Hastings asked if the requirement is just for market analysis and not for examinations. Stevens said it was just for market analysis. Hastings said that Indiana does data calls, but the results are not uploaded. LeDuc said the requirement's original intent was for a minimum amount of market analysis so that states were not just being reactive to market conduct issues as they arose.

Quinlan asked if investigations and examinations are the same. LeDuc said they are not and that contact with companies should be entered in MATS. Quinlan said that would be a duplicative effort for states that input their contacts in SBS. Torres said Michigan uses MATS for any additional investigation after a Level 1 analysis.

LeDuc said the question to be answered is the purpose of the requirement. She asked whether it is meant to capture just analyses or if all market conduct actions need to be included. Stevens said the proposal uses "actions," but it was geared toward market analysis. LeDuc said, however, that actions are intended for companies that do certain things that are not analyses. She asked if there should be a minimum level of analysis across all states. She said the original intent of the requirement was to get states to be more proactive and not just concentrate on the same large companies. Stevens said it is sometimes difficult to draw a line between analyses, actions, and investigations. LeDuc suggested describing the distinction in the certification program for the purposes of this requirement. Hastings said that for Indiana, data calls often follow up on complaints received. Stevens said it was the same for Wyoming. He also said he agreed with the need to be proactive. Quinlan said baseline prioritization was also meant to avoid focusing on the same large companies.

Baytop agreed with LeDuc that the Working Group needs to answer the question of the purpose of the requirement. If the purpose is to just be sure each certified state is doing market analysis, then the Working Group should just set a number of analyses to be done. O'Connell said the proposal includes the requirement in the examination section of the certification program. She said if the purpose is to ensure market analyses are done, then it should be in the market analysis section of the program, and the examination section should remain as it is.

Baytop said that if there is a disagreement on the appropriate number of market analyses, then perhaps it should not be a mandatory “red” requirement, but an aspirational “yellow” requirement. She said a number of states seem to be unable to comply with the requirement of 30 analyses. Stevens agreed and said Wyoming cannot reach 30.

Stevens raised the question of whether the requirement is appropriate for the market regulation certification program. Cunningham asked if there was a market analysis requirement prior to the Working Group considering this one. Stevens said there was, and it was forwarded to the Working Group because it seemed appropriate for the certification program. Cunningham asked if the market analysis has to be a MARS Level 1 review. Kentucky does market analysis, just not in MARS.

Stevens said the Working Group will put together an independent ad hoc group to consider the proposal and make revisions. LeDuc, Smith, O’Connell, Hastings, Patton, and Baytop volunteered to join the group.

Having no further business, the Market Regulation Certification (D) Working Group adjourned.

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# Minimum Market Analysis Requirement

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# Definition of Market Analysis

The department should conduct market analysis in a systematic way to identify potential issues. It should routinely collect and analyze data to understand the normal operating patterns within a market and identify companies whose practices deviate significantly from the market norm and may pose a risk to consumers.

Each jurisdiction will decide which line(s) of business and type(s) of analysis to conduct, but priority will be given to the lines of business and issues that have the highest potential for significant consumer harm.

When assessing whether the department has achieved the minimum level of market analysis activities, the following activities are regarded as fulfilling an activity for the purpose of satisfying this requirement.

- Baseline Analysis
- Level 1 Review
- Level 2 Review
- General Market Analysis Projects

## Baseline analysis

Baseline analysis utilized data as a benchmark from which deviations and comparisons are measured. It should be a systematic process whereby basic parameters are used to evaluate the entire marketplace for a specific line of business in order to identify those companies that may require a more detailed and thorough review.

It is to be conducted using the NAIC's Market Analysis Prioritization Tool and/or the MCAS-Market Analysis Prioritization Tool as the basis for the review. A baseline analysis that incorporates either of the MAPT tools into a jurisdiction's proprietary process/tool would also count as a baseline analysis.

To be counted, the baseline analysis must be completed during the calendar year being evaluated. Each line of business reviewed will count as one review. In the absence of a business reason, reviews should be conducted using the most current data year available when the data is downloaded.

## Level 1/Level 2 Reviews

Level 1 or Level 2 Reviews can be Level 1, Level 2 or a combination of both. The review must be entered into the NAIC MARS database and completed during the calendar year being evaluated.

Each line of business reviewed per insurer will count as one review. For example, if a review includes both Homeowner and Private Passenger Auto for a particular insurer, it counts as two reviews. A review that included three lines of business would count as three reviews.

In the absence of a business reason, reviews should be conducted using the most current data year available when the review was created in MARS.

## General Market Analysis Projects

General market analysis projects include departmental analysis activities that involve analyzing general market conditions but are outside the scope of Baseline Analysis, Level 1 Reviews or Level 2 Reviews.

These could take many forms and may include special projects or studies undertaken at the request of senior management to understand a specific market practice and/or to identify potential outliers. Examples of special market analysis projects include, but are not limited to:

- Special data calls and studies related to current and emerging issues .
- Market-wide survey designed to gather information for the purpose of understanding a specific market practice
- Interrogatories sent to significant portions of a market to collect/analyze information regarding certain practices
- Market reviews regarding the industry's implementation of new laws.
- Studies of emerging issues

To be counted, the market analysis project must be completed during the calendar year being evaluated. It may be a one-time project or a periodically recurring initiative.

The minimum number of market analysis activities varies by jurisdiction. The number is based on the: **To be determined.**

# Current Requirement

## Market Analysis Review System (MARS)

### Minimum Annual Number of Reviews

The Market Analysis Procedures (D) Working Group (MAP) was asked by the Market Regulation Accreditation (D) Working Group to consider minimum MARS review counts for each state. This document outlines the minimum MARS reviews by state, as adopted by MAP.

A phase in period is provided to allow for training and resources.

**NOTES:**

1. The term “REVIEWS” can be Level 1, Level 2 or a combination of both.
2. To “count”, the review must be entered into the NAIC MARS database and completed during the calendar year.
3. Each line of business reviewed per carrier will count as a MARS review. For example, if an analyst reviews both Homeowner and Private Passenger Auto for a particular carrier, it would count as two MARS reviews.
4. The number of reviews completed by each state will be reported to MAP quarterly, and posted on MyNAIC.

#### *Year 1 (2017):*

Each state conducts a minimum of ten (10) reviews. The line of business and type of carrier reviewed will be at the discretion of each state, but priority given to domestic carriers or foreign carriers involved in issues that are potentially significant to the state.

#### *Year 2 (2018):*

Each state conducts a minimum of fifteen (15) reviews. The line of business and type of carrier reviewed will be at the discretion of each state, but priority given to domestic carriers or foreign carriers involved in issues that are potentially significant to the state.

#### *Year 3 (2019):*

Each state conducts a minimum of twenty (20) reviews. The line of business and type of carrier reviewed will be at the discretion of each state, but priority given to domestic carriers or foreign carriers involved in issues that are potentially significant to the state.

#### *Year 4 (2020):*

Each state conducts a minimum of twenty-five (25) reviews. The line of business and type of carrier reviewed will be at the discretion of each state, but priority given to domestic carriers or foreign carriers involved in issues that are potentially significant to the state.

#### *Year 5 (2021) and beyond:*

Each state conducts a minimum of thirty (30) reviews. The line of business and type of carrier reviewed will be at the discretion of each state, but priority given to domestic carriers or foreign carriers involved in issues that are potentially significant to the state.

# SME Group Summary

The SME Group began by discussing the purpose and reasons for creating and implementing the requirement. It offers the following background to set the stage for its revised proposal.

## Background

The requirement for completing a minimum number of reviews came about at a time when state regulators were being criticized for not having uniform standards to identify market issues, leading to inconsistent responses to market conduct problems. During this time, the Government Accountability Office (GAO) also conducted a study. The primary recommendation coming out of the study was that states should develop standardized procedures for conducting market analysis and coordinating their efforts.

In response to the criticism and the GAO study, the current systematic approach to conducting market analysis was developed. This new system represented a shift away from resource-intensive, on-site market conduct examinations to a structure that allowed regulators to identify potential issues and seek corrective action before problems became widespread. The intent was to provide a data-driven process to more efficiently identify which companies and practices posed the most significant risk to consumers, helping regulators prioritize their resources.

To achieve a more systematic proactive approach to market regulation, the following were created:

- Market Conduct Annual Statement
- Baseline Analysis
- Level 1 Reviews
- Standardized Level 2 Reviews

To enhance consistency and coordination, the NAIC developed and implemented tools like MAPT, MARS, and MATS. However, creating the processes and tools was only half of the response to the criticisms. The other half was to encourage the adoption of the new 'modernized' analysis process and demonstrate that jurisdictions were utilizing it. The demonstration involved each jurisdiction completing a minimum number of Level 1 Reviews.

The initial number of reviews was established using a combination of factors intended to consider the size of each jurisdiction's market. Over the years, the initial benchmarks have been reviewed periodically. Unfortunately, the documentation showing how the minimum number of reviews was determined was not retained. Efforts to recreate were not successful, and the formula was eventually abandoned in favor of the current benchmark, which was adopted by the Market Analysis Procedures Working Group on January 28, 2016.

In discussing the issue, the SME generally agreed that the pressures that existed leading up to and resulting in the development of the current structured market analysis approach are still valid. And that failure to maintain and encourage the use of a more proactive and systematic approach to the identification of market conduct issues would not be in our best interest. As such, the SME agreed that the initial primary purpose of establishing a minimum number of reviews, geared toward demonstrating our commitment to conducting proactive data-driven analysis, is still relevant and should continue to be the goal for establishing a minimum requirement.

The SME also recognized that the requirement, as it currently exists, is not flexible enough to accommodate the various processes used by jurisdictions in monitoring their market.

As such, the **SME recommends that a new requirement be added** to the Certification program that:



- Establishes a **minimum level of required activity** that is directly related to the market size of the individual jurisdiction.
- Not be expanded to include all regulatory actions on the continuum but remains **limited to only those activities associated with market analysis**.
- **Expands the types of market analysis activities**, beyond Level 1 and Level 2 Reviews, that count toward meeting the minimum requirement.

The SME felt that adding a new requirement would be the best approach in the long run, as none of the existing requirements address minimum performance standards. Rather, they focus on core items such as department authority, staffing resources/qualifications, and other process-related items and therefore do not provide a logical place for inserting a minimum performance standard. A new, standalone requirement, on the other hand, would allow for maximum flexibility and create an extendable structure, allowing for future growth in terms of minimum performance requirements.