

*Implementation Plan adopted Market Regulation and Consumer Affairs (D) Committee –  
Implementation Plan adopted by the Market Regulation Certification (D) Working Group –  
Guidelines and Checklist adopted by the Market Regulation and Consumer Affairs (D) Committee –  
Guidelines and Checklist adopted by the Market Regulation Certification (D) Working Group –*

# Voluntary Market Regulation Certification Program Self-Assessment Guidelines, and Checklist Tool

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## Purpose

The mission of the NAIC Market Regulation Certification Program is to establish and maintain minimum standards that promote sound practices relating to the market conduct examination, market analysis and related continuum activity functions performed for insurance consumer protection. Inasmuch as the program is anticipated to evolve and improve over time, it is anticipated that additional functions necessary for sound consumer protection may be developed in the future. The certification program is designed to provide an initial process that facilitates each jurisdiction's ability to conduct self-evaluation. An ultimate goal is to develop measurable and meaningful standards that can be independently evaluated and monitored.

Program standards, assessment checklist items and guidelines should:

- Provide a roadmap regarding resources, abilities and functions for jurisdictions wishing to build, maintain, or improve upon, their market regulation program.
- Promote consistency while respecting individual jurisdictional differences and circumstances by promoting use of NAIC resources.
- Demonstrate accountability and responsiveness to those impacted by the business of insurance, and to others that are charged with evaluating and assessing the effectiveness of state-based insurance regulation.
- Promote an environment of continuous process improvement for enhancing outcomes relating to insurance consumer protection.
- Improve predictability and understanding of processes for regulated entities.
- Enhance jurisdictional coordination and information-sharing.
- Enhance protection of insurance consumers through promotion of sound market regulation processes.

## Definitions

When referenced in this document, the following terms mean:

- **Chief Market Regulator** is either elected or appointed and is the Commissioner of Insurance, Superintendent, Director, Secretary of Commerce, or other chief who oversees the regulation of insurance in each state or jurisdiction.
- **Department** is the chief governmental office invested with the responsibility of regulating the insurance industry within a jurisdiction.
- **Jurisdiction** is the territory within which power can be exercised. Within this document, jurisdiction will include but is not limited to: Departments of Insurance, Insurance Divisions, and other state specific agency titles which may include terms such as: Administration, Bureau, Commerce, Financial Services, Business Regulation, and Other Departments/Divisions that include the regulation of insurance. For example: Department of Professional and Financial Regulation, Office of Consumer Affairs and Business Regulation, Business and Industry, Banking and Insurance.

NOTE: When responding to checklist items for each requirement, if the response is N/A (not applicable), please provide an explanation for the "N/A" response in the comments.

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# Voluntary Market Regulation Certification Guidelines and Checklists

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## Requirement 1 – Department’s Authority

The jurisdiction or department shall have the statutory authority to conduct market regulation activities, including market analysis; comprehensive and targeted market conduct examinations; the continuum of market regulation actions, including enforcement; and collaboration and coordination with other regulatory jurisdictions.

### Objective

The objective of this requirement is to ensure the department has the statutory authority to effectively fulfill its market regulation responsibilities.

### Measurement

To evaluate whether the jurisdiction “passes” Requirement 1, the jurisdiction must have the general authority to collect and analyze information and have authority to coordinate with other jurisdictions. If the jurisdiction does not have the authority to coordinate with other jurisdictions, it will not pass this requirement. Additionally, a jurisdiction should have authority to conduct analysis, examinations, and enforcement. Requirements to have reasonable cause to conduct an examination does not negatively impact the evaluation. Ability to perform these items without having the ability to perform continuum actions should be considered as “marginally passing but with strong recommendations for additional authority.”

### Guidelines

When determining the department’s authority for conducting market regulation activities, several different considerations should be evaluated. Direct legal authority may exist in the jurisdiction’s insurance code or within its regulations. Insurer examination acts, specific market regulation acts, acts that outline the authority and duties of the department are all potential items to review. Generally, such authority is cited when requesting documents from an insurer. Jurisdictions may also have broad oversight authority within other consumer protection laws.

Additional authority may be implied or may exist on a less direct basis. Examples could include insurance consumer protection-related insurance laws or regulations and their associated enforcement provisions. Other potential areas of authority are activities performed pursuant to the powers or orders of the insurance commissioner, director, or superintendent (i.e., the applicable chief insurance regulator of the jurisdiction).

When evaluating checklist items for Requirement 1, it may be beneficial to look beyond the mere capability to perform the listed functions. If not directly addressed within the insurance code or regulations, consider whether direct authority for all mentioned items would be desirable (most continuum items would fall under examination, investigation, or analysis categories). Having direct authority may provide valuable guidance on such issues as application of administrative procedure act requirements, status of examination, investigational or analysis records, handling of associated costs, etc.

Consider which consumer protections model laws and regulations have been adopted in the jurisdiction. Investigation, subpoena, and cease and desist powers are found in most unfair trade and producer laws. Most chief insurance regulators also have a general powers statute that may contain similar enforcement authorities.

The key basic models or similar versions should include:

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- *Unfair Trade Practices Act (#880)*
- *Unfair Claims Settlement Practices Act (#900)*
- *Health Carrier Grievance Procedure Model Act (#72)*
- *Uniform Health Carrier External Review Model Act (#76)*
- *Producer Licensing Model Act (#218)*
- *Suitability in Annuity Transactions Model Regulation (#275)*
- *Life Insurance Illustrations Model Regulation (#582)*
- *Life Insurance and Annuities Replacement Model Regulation (#613)*
- *Standard Nonforfeiture Law for Life Insurance (#808)*
- *Standard Nonforfeiture Law for Individual Deferred Annuities (#805)*
- *Unfair Discrimination Against Subjects of Abuse in Health Benefit Plans Model Act (#895)*
- *Unfair Discrimination Against Subjects of Abuse in Life Insurance Model Act (#896)*
- *Unfair Discrimination Against Subjects of Abuse in Disability Income Insurance Model Act (#897)*
- *Unfair Discrimination Against Subjects of Abuse in Property and Casualty Insurance Model Act (#898)*
- *Model Law on Examinations (#390) or Market Conduct Surveillance Model Law (#693)*

**Checklist**

**Please provide the statutory reference(s) the department relies on for the following:**

- |  | <b>YES</b> | <b>NO</b> |
|--|------------|-----------|
| 1a. Does the department have the general authority to collect and analyze information whenever it is deemed necessary?   | _____      | _____     |
| <b>REFERENCE</b> _____   |            |           |
| 1b. Does the department have the authority to collaborate and coordinate with other regulatory agencies?   | _____      | _____     |
| <b>REFERENCE</b> _____   |            |           |
| 1c. Is the department’s authority broad enough to cover market analysis, comprehensive and targeted market conduct examinations and the continuum of market regulation actions, including enforcement? |            |           |

If yes, provide the citation reference(s) in the table below

	<b>Citation</b>
Market analysis	
Comprehensive and targeted market conduct exams	
Continuum of market regulation actions (including enforcement)	

Complete the following if this is an Interim Annual Review:

- |  | <b>YES</b> | <b>NO</b> |
|--|------------|-----------|
| Have there been any significant changes to the procedures since last year’s review? If “Yes,” please provide an explanation. | _____      | _____     |

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

The department shall have sufficient authority by appropriate statute, regulation, rule, or other authority to utilize the most recent version of the *Market Regulation Handbook*. When a department initiates a market conduct examination or continuum activity, it shall be guided by the version of the *Market Regulation Handbook* in effect at the time the examination was initiated.

### **Objective**

The objective of this requirement is to promote guidance and consistent handling of examination processes and continuum activities through the use of the *Market Regulation Handbook*. Additionally, this promotes guidance and consistent handling of examination processes and continuum activities within each jurisdiction on an individual basis when it is deemed appropriate to deviate from the *Market Regulation Handbook*.

### **Measurement**

To evaluate whether the jurisdiction “passes” Requirement 2, the jurisdiction must at a minimum have sufficient authority by appropriate statute, regulation, rule, or other authority to utilize the most recent version of the *Market Regulation Handbook*, and be able to demonstrate when conducting examinations or continuum activities their use of applicable *Market Regulation Handbook* review standards and related materials to the extent they are consistent with jurisdictional law. The department’s policies and procedures should properly reference the use of those materials set forth in the *Market Regulation Handbook*.

### **Guidelines**

When determining the department’s authority by appropriate statute, regulation, rule, or other authority to utilize the most recent version of the *Market Regulation Handbook*, the department should identify the statute, regulation, rule, or other authority to use the *Market Regulation Handbook* within their response.

When evaluating checklist items for Requirement 2, a jurisdiction should be able to demonstrate, on an individual basis, when it is deemed appropriate to deviate from, or necessary to use an earlier version of, the *Market Regulation Handbook*. The jurisdiction must also be able to demonstrate that it has followed its own established policies and procedures for adopting processes that deviate from the *Market Regulation Handbook*.

### **Checklist**

	<b>YES</b>	<b>NO</b>
2a. Does the department have authority by statute, rule or other authority to utilize the <i>Market Regulation Handbook</i> ?	_____	_____

**REFERENCE** \_\_\_\_\_

2b. When conducting examinations or continuum activities, does the department incorporate applicable <i>Market Regulation Handbook</i> review standards and related materials to the extent they are consistent with state laws?	_____	_____
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2c. Does the department have examination-specific policies and procedures in addition to those guidelines set forth in the *Market Regulation Handbook*? \_\_\_\_\_

2d. If the answer to item 2c. is “Yes”, is the jurisdiction able to demonstrate that it has followed its own established policies and procedures in adopting any process that deviates from the *Market Regulation Handbook*? \_\_\_\_\_

Complete the following if this is an Interim Annual Review:

Have there been any significant changes to the procedures since last year’s review? If “Yes,” please provide an explanation. \_\_\_\_\_

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## **Requirement 3 – Department Staffing: Resources**

The department must have either, or a combination of:

- Its own staff sufficient to perform market regulation work, including market analysis, examinations and other continuum actions.
- Statutory authority sufficient to engage competent contractors on an as-needed basis and appropriate department staff to oversee and manage such contractors.

### **Objective**

The objective of this requirement is to ensure the department has sufficient resources to meet the needs of the department’s market regulation activities.

### **Measurement**

To evaluate whether the jurisdiction “passes” Requirement 3, the jurisdiction, must be able to respond “Yes” to each of the following checklist items:

- Item 3a.
- Item 3d. and/or 3e.
- Item 3n.

Furthermore, if the answer to checklist item 3e. is “Yes”, then a “Yes” response is required for item 3k., item 3l., and item 3m.

All remaining Requirement 3 checklist items should be collected and evaluated from year-to-year to evaluate the jurisdiction’s abilities.

### **Guidelines**

Requirement 3 provides guidance on whether a jurisdiction has resources and capabilities to conduct market analysis, market conduct examinations and/or continuum activities. The standard recognizes that some jurisdictions use contracted services to perform these functions. In the event that contracted services are used, the standard inquires if the jurisdiction has the authority to hire contractors, established processes for selecting contractors and whether the jurisdiction engages in oversight of the contracted services. It is understood that jurisdictions vary in their usage of examinations versus continuum activities.

This requirement anticipates that some data will be obtained through the *Insurance Department Resources Report*. Those results should be reviewed in the event that classifications differ. Additionally, it is anticipated that each jurisdiction will evaluate changes in its level of resources from year to year.

The number of staff listed below should be expressed in terms of full-time equivalent (FTE) positions. The use of FTEs recognizes that most employees perform multiple functions within a department, for example, if two employees each spend half their time doing market analysis that would equate to 1 full-time equivalent position.

To evaluate its own status regarding the checklist for Requirement 3, each jurisdiction determines its specific appropriate level of staffing and or use of contracted services. Levels will vary from jurisdiction to jurisdiction. Factors such as population size, premium volume, complexity of insurance issues with a particular jurisdiction, complaints, legal requirements, directives for conducting market conduct activities and ability to keep abreast of emerging market issues are valid factors when evaluating the jurisdiction’s needs. Jurisdictions are encouraged to establish resource levels that permit them to meet their obligations or needs for market analysis, market conduct examinations and/or continuum actions.



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During each jurisdiction’s evaluation of its staffing levels, it may also be helpful to determine what NAIC resources are relied upon for market regulation functions and how the use of those resources has changed over time. If additional NAIC resources are identified that may be beneficial, it is a good idea to bring forth those suggestions to NAIC staff. This will help to provide opportunities and diagnostic tools for improvement.

Where independent contractors are used to fulfill staffing needs, the department must be engaged and responsible throughout the examination and be responsive to issues and concerns that might arise.

## Checklist

### **Sufficient Staff and Resources (Market Analysis)**

The department should have the resources to analyze effectively on a periodic basis the market behavior of insurers doing business in the jurisdiction.

	YES	NO
3a. Does the department have analysts on staff or under contract whose responsibility is to conduct market analysis of insurers doing business in the jurisdiction?	_____	_____
3b. If the department utilizes contract analysts, please describe in a separate attachment the manner and extent of utilization in the department’s recent activities.	_____	_____
3c. Indicate below the number of FTE contract and staff analysts for each of the last three years.	_____	_____

	In-house Market Analysts	Contract Market Analysts
Current Year (CY)		
CY-1		
CY-2		

Indicate below the number of market analysis reviews for which market analysis was performed in the prior review period. Market analysis means formal review of a company through existing processes (e.g., Level 1, Level 2).

	Total Reviews
Current Year (CY)	
CY-1	
CY-2	

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**Sufficient Staff and Resources (Examinations and/or Continuum Actions)**

The department should have resources to effectively examine and/or conduct continuum actions of insurers as deemed appropriate by the department based upon its market analysis or as prescribed by jurisdiction laws.

- |  | YES   | NO    |
|--|-------|-------|
| 3d. Does the department have examiners on staff whose responsibility is to examine and/or conduct continuum actions of insurance companies as indicated by the department’s market analysis or as prescribed by jurisdiction laws? | _____ | _____ |
| 3e. Does the department utilize contract examiners to examine and/or conduct continuum actions of insurance companies as indicated by the department’s market analysis or as prescribed by jurisdiction laws?                      | _____ | _____ |
| 3f. If the department utilizes contract examiners, please describe in a separate attachment the manner and extent of utilization in the department’s recent activities.  |       |       |
| 3g. Indicate below the number of FTE market examiners, including supervisory personnel on the department’s staff and/or the number of individual contract examiners used compared to the last three years.                         |       |       |

	In-House Examiners	Contract Examiners	
Current Year (CY)			
CY-1			
CY-2			

- |  | YES   | NO    |
|--|-------|-------|
| 3h. Has the department performed any targeted exams or market continuum actions in the prior two years?  | _____ | _____ |
| 3i. If the answer to item 3h. is “Yes,” please provide a list of such exams or market continuum actions and the scope of the exams/actions.  |       |       |
| 3j. If the answer to item 3h. is “No,” does the department have the on-staff resources or the ability to contract additional resources to perform targeted exams/actions, if deemed necessary? | _____ | _____ |

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**Sufficient Staff and Resources (Contractor Selection and Oversight)**

- |  | <b>YES</b> | <b>NO</b> |
|--|------------|-----------|
| 3k. Does the department have the authority to hire contractors as specialists to perform market regulation?  | _____      | _____     |
| 3l. If the department has authority to hire contractors, does it have either a statewide or departmental established process it follows for selecting contractors for market regulation purposes? Briefly explain. |            |           |
| 3m. Does the department oversee and manage contractors? Briefly explain.   |            |           |

**Policies & Procedures and Output**

- |   |       |       |
|---|-------|-------|
| 3n. Does the department have policies and procedures, subject to periodic review and updates, for identifying and addressing market conduct issues using market analysis and market conduct continuum activities, including examinations? | _____ | _____ |
| 3o. If the answer to item 3n. is “Yes,” what quantitative and subjective measurements are available to evaluate whether the department is adhering to its policies and procedures?  |       |       |
| 3p. Based on the review of staff resources, please provide an explanation of any significant changes in resources and/or workload over the three-year period covered in the data above.   |       |       |

Complete the following if this is an Interim Annual Review:

- |  | <b>YES</b> | <b>NO</b> |
|--|------------|-----------|
| Have there been any significant changes to the procedures since last year’s review? If “Yes,” please provide an explanation. | _____      | _____     |

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## **Requirement 4 – Department Staffing: Qualifications**

With respect to qualifications, the department:

- Shall ensure market regulation staff and contractors are qualified by establishing qualifications consistent with the standards for experience, education (including designations) and licenses in the *Market Regulation Handbook Core Competencies* (“Appendix D – Core Competencies – Resources – Staff and Training, Standard 2” and Appendix D – Core Competencies – Resources – Contractor Examiner, Standard 2” or successor documents).
- Should have a policy that encourages the professional development of all staff involved with market regulation through job-related college courses, professional designation programs or other training programs.

### **Objective**

The objective of this requirement is to ensure the department staff is properly qualified to perform the market regulation functions for which they are responsible and have access to training and professional development opportunities.

### **Measurement**

In order to successfully meet this requirement, the department must have policies and procedures in place regarding the appropriate credentials or minimum educational and experience requirements for selecting and hiring contractors. Furthermore the department should be able to demonstrate that it supports the hiring qualified staff and contractors; that it encourages and supports educational and training pursuits; that Examiners-in-Charge possess or are making progress toward completing appropriate designations; that the department recognizes licenses and other highly technical credentials of professionals and experts to perform certain market regulation activities where appropriate; and that it has a succession plan in place to ensure the maintenance of skills and records.

### **Guidelines**

#### **Notes to Evaluators:**

- Equivalent substitutions may be considered with appropriate justification.
- Employees are exempt from this requirement if they have more than 20 years of service with the department or are less than five years from retirement.
- If collective bargaining or jurisdictional personnel policies prohibit any portion of such requirements, the department must show evidence that it has made good faith attempts to include such requirements.
- Evidence of good faith activities include, but are not limited to, the following:
  - The department adopts procedures to include a statement encouraging professional education.
  - The department has made arrangements to be a testing location for organizations such as Life Office Management Association (LOMA) or The Institutes.
  - The department attempts to secure funds for the professional development of market regulation personnel.

#### **Hiring of Staff and Contractors**

This area evaluates the effort of the department as it relates to the hiring of qualified staff and/or contractors. The department should have a policy or procedure in place on necessary credentials or minimum educational and experience requirements for selecting and hiring staff and contractors.

- The policies/procedures of the department should call for the inclusion of preferences for relevant experience, education and credentials in its job announcements/descriptions. In addition, the department should include in its specifications in requests for proposals (RFPs) requirements that contracted personnel (*with emphasis on supervisory personnel*) have relevant experience, and credentials.

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Relevant credentials would include a Market Conduct Management (MCM)<sup>1</sup> designation and any of the following designations:

- Certified Insurance Examiner (CIE)
- Accredited Insurance Examiner (AIE)
- Chartered Life Underwriter (CLU)
- Fellow, Life Management Institute (FLMI)
- Chartered Property Casualty Underwriter (CPCU)
- Certified Insurance Counselor (CIC)
- Fellow, Academy for Healthcare Management (FAHM)
- Professional in Insurance Regulation (PIR)
- Chartered Healthcare Consultant (ChHC)

### **Staff Development**

The department should have a staff development program that encourages and supports educational and training pursuits, including training, courses, webinars, and certifications offered by the NAIC. Successful completion of this aspect of the requirement varies depending on an employee's length of service in insurance regulation.

#### **(1) Staff Examiners/Analysts with More than Five Years of Service in Insurance Regulation**

Examiners and analysts with more than five years of service with the department are “presumed qualified” and should be rated as a pass if they meet either of the following:

- Hold a juris doctor degree (J.D.) and an MCM designation.
- Hold an MCM designation and either an AIE or CIE designation.

Examiners and analysts with more than five years of service in the position of market conduct analyst or market conduct examiner specialize in a particular line of business are “presumed qualified” and should be rated as a pass if they meet either of the following:

- Hold an MCM designation and either a CLU, FLMI, CPCU, CIC, FAHM or ChHC designation.
- Hold an MCM designation, a PIR designation and an associate's level designation from either The American College of Financial Services, The Institutes, America's Health Insurance Plans (AHIP) or similar organization such as LOMA or the Society of Financial Examiners (SOFE).

If all examiners and analysts with more than five years of service do not have the above qualifications, rate a pass if:

- The department has a training policy and/or job specifications that require completion and/or experience to attain the next highest level in their job classification series.
- The department has a policy that allows voluntary access to NAIC designation programs, and the department must show good faith attempts for encouragement and budgetary allowances to provide for voluntary training

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<sup>1</sup> NAIC market conduct examination training may substitute for an MCM designation.

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at other sources of professional education such as the Insurance Regulatory Examiners Society (IRES), The American College of Financial Services, The Institutes, LOMA or AHIP.

**(2) Staff Examiners/Analysts with Less than Five Years of Service**

When the department has staff with less than five years of service, the department should:

- Have a formal training program whereby new personnel have a clear requirement to attain, within five years, an MCM designation and either a CIE, AIE, CLU, FLMI, CPCU, CIC, FAHM, PIR or ChHC designation.
  - Personnel with a J.D. and five years of regulatory experience are exempt, with the exception they must earn an MCM designation or complete NAIC market conduct examination training.
- The department must have a policy that allows voluntary access to NAIC designation programs and the department must show good faith attempts for encouragement and budget allowances to provide for voluntary training at other sources of professional education such as IRES, The American College of Financial Services, The Institutes, LOMA or AHIP.

**Examiner-in-Charge Qualifications**

Examiners-in-Charge (EICs) should possess (or be making progress towards completion of) relevant designations. Relevant designations would include a Market Conduct Management (MCM) designation *and* any of the following designations as appropriate by lines of business:

- CIE
- AIE
- CLU
- FLMI
- CPCU
- CIC
- FAHM
- PIR
- ChHC

When an EIC with specific qualifications is not available, other qualifications are acceptable so long as the department is compliant with checklist item 4c. (development program).

**Recognition of Licenses & Technical Credentials of Professionals & Experts**

The department should recognize licenses and other highly technical credentials of professionals and experts such as attorneys, actuaries, cybersecurity experts, certified public accountants, IT experts and other professionals and specialists as qualified to perform certain market regulation activities.

In evaluating this aspect of the requirement, it is important to determine if the department retained and utilized appropriate staff or contractors with highly technical credentials when appropriate. Note: it is possible that no examinations or continuum activities requiring highly technical specialties were conducted during the review period.

**Succession Plan**

The department should have a succession plan in place to ensure maintenance of skills and records. At a minimum, the department should maintain written procedure manuals and cross-train employees.

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**Checklist**

	<b>YES</b>	<b>NO</b>
4a. Does the department have policy and procedures in place on necessary credentials or minimum educational and experience requirements for selecting and hiring staff consistent with the detailed credentials listed in the Certification guidelines?	_____	_____
4b. Does the department have policy and procedures in place on necessary credentials or minimum educational and experience requirements for selecting and hiring contractors consistent with the detailed credentials listed in the Certification guidelines?	_____	_____
4c. Does the department have a staff development program that encourages and supports educational and training pursuits, including training, courses, webinars and certifications offered by the NAIC?	_____	_____
4d. Does each Examiner-in-Charge possess or is the Examiner-in-Charge making progress towards completion of noted designations?	_____	_____
4e. Does the department recognize licenses and other highly technical credentials of professionals and experts such as attorneys, actuaries, cybersecurity experts, certified public accountants, information technology (IT) experts and other professionals and specialists as qualified to perform certain market regulation activities?	_____	_____
4f. Does the department maintain written procedure manuals to demonstrate a succession plan?	_____	_____
4g. As a separate attachment, provide a list of market analysts/examiners that includes the following: name; professional designation(s); title; years employed by the department (include functional area); type of college degree; and prior regulatory or insurance experience. Also indicate those market conduct analysts/examiners that are contractual and whether each is full-time with the department.		

Complete the following if this is an Interim Annual Review:

	<b>YES</b>	<b>NO</b>
Have there been any significant changes to the procedures since last year’s review? If “Yes,” please provide an explanation.	_____	_____

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## Requirement 5 – Confidentiality and Information-Sharing

The department shall have the authority and capability to:

- Request, hold and produce examination, investigation, and continuum workpapers, on a confidential basis and protect it from subpoena, as permitted by jurisdictional law.
- Maintain confidentiality of confidential information shared by other jurisdictional or federal agencies; and only share confidential information with jurisdictional and federal agencies that agree, in writing, to adequately protect such confidential information.

### Objective

The objective of this requirement is to ensure the department is able to maintain the confidentiality of its own work product and the work product of jurisdictions with which it collaborates. This is foundational to all collaborative efforts.

### Measurement

To evaluate whether the jurisdiction “passes” Requirement 5, the jurisdiction must answer “Yes” to checklist item 5a., item 5b., item 5c and item 5d.

### Guidelines

The jurisdiction’s treatment of examination, investigation, and continuum workpapers and information shared by or with other jurisdictions has a significant impact on the various jurisdictions’ ability to communicate and collaborate on confidential matters. The provisions within each jurisdiction’s laws, regulations or case law may vary regarding the extent to which workpapers are confidential or to timing which such information becomes a public document. Some laws may extend beyond workpapers and apply to examination reports, as well. Research and documentation of the applicable jurisdiction’s confidentiality provisions should provide clear guidance for individuals within the market regulation division. Checklist item 5a. does not anticipate a uniform confidentiality framework among jurisdictions, but rather is viewed as a necessity to adequately fulfill the requirements of checklist item 5c.

Entering into the Multi-State Information-Sharing Agreement with other jurisdictions and the NAIC is also a necessary part of being able to adequately maintain confidentiality of information shared by other jurisdictions.

### Checklist

	YES	NO
5a. Does the jurisdiction have laws, regulations or case law that specify how the confidentiality of market conduct examination workpapers is to be handled?	_____	_____

REFERENCE \_\_\_\_\_

5b. Has the department entered into the Multi-State Information-Sharing Agreement with other departments and the NAIC and does the department have written policies/procedures and communicate such policies/procedures to staff?	_____	_____
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5c. Does the department have written policies and procedures and communicated such policies and procedures to employees relating to the protection of confidential information which includes PII and PHI, handling of public records requests and requirements for confidentiality agreements when it becomes necessary to share confidential information with other federal and international regulatory or law enforcement agencies, not otherwise covered by the multi-state agreement? \_\_\_\_\_

5d. Does the department have a records retention schedule which outlines plans for secure storage and timeline for destruction of work papers? \_\_\_\_\_

Information-sharing agreements with federal or international regulatory agencies or law enforcement agencies may be handled either on a case-by-case basis or by way of properly executed memorandums of mutual understanding.

Complete the following if this is an Interim Annual Review:

Have there been any significant changes to the procedures since last year’s review? If “Yes,” please provide an explanation. **YES** **NO**  
\_\_\_\_\_

**COMMENTS:**

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## **Requirement 6 – Collaboration with Other Jurisdictions**

The department participates in collaborative actions with other jurisdictions.

The department follows the referral or reporting procedures outlined in the Market Actions (D) Working Group’s Policies and Procedures for any material action that has a potential for collaborative action. In order to determine if a referral or reporting to the Market Actions (D) Working Group is necessary, the department will notify all other Collaborative Action Designees (CADs) via meeting, bulletin board, or other method, of proposed activities that have the potential for collaboration.

In addition, the Market Analysis Chief (MAC), MAWG member, CAD and/or CAD alternate shall actively monitor the Market Regulation and Market Analysis Bulletin Boards.

The department will consider joining called Market Actions (D) Working Group collaborative actions relevant to its jurisdiction and provide a response indicating whether or not it will join the collaborative action.

[Collaboration-National Analysis. Formerly Req. 11] The department participates\* in the review of national analysis data annually.

\*Participation means either performing analysis on one of the selected companies or participating in the selection process. Please note if none of the selected companies wrote business in the jurisdiction. It should be noted that the national analysis process is subject to change. Therefore, it is understood that in the future it may be necessary to revisit what it means to “participate.”

### **Objective**

The objective of this requirement is to encourage collaboration with other jurisdictions to help to keep market regulation more effective and efficient by preventing duplication of effort. Sharing of key information among jurisdictions helps to identify marketplace issues as they arise. By encouraging a multi-jurisdictional response to issues when practical, jurisdictions can more effectively direct their resources. Also, this requirement promotes collaboration and the sharing of perspectives and approaches to analyzing data among jurisdictions.

### **Measurement**

To evaluate whether the jurisdiction “passes” Requirement 6, the jurisdiction must answer “Yes” to checklist item 6a. The jurisdiction should answer yes to item 6b. and item 6c., and item 6e. and item 6f. unless there is an applicable explanation given in checklist item 6g.

When evaluating checklist items for the MAWG national analysis process, it is important to remember that participation means either performing analysis on one of the selected companies or participating in the selection process.

To evaluate whether the jurisdiction “passes” the national analysis portion of this requirement, the jurisdiction should answer “Yes” to checklist item 6i., in addition to providing a name of the individual (or individuals) who participate in the annual national analysis project .

**Drafting Note:** Assumes at least one company to be reviewed is licensed or conducting business in the jurisdiction.

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## Guidelines

The first portion of Requirement 6 relates to participation in the Market Actions (D) Working Group and is followed by checklist item 6a., item 6b., item 6c. and item 6d. The second portion of Requirement 6 relates to how the jurisdiction joins or considers joining Market Actions (D) Working Group actions and is followed by checklist item 6e., item 6f. and item 6g.

For regulators to fully adhere with Requirement 6, especially as it relates to handling of referrals, it is important to become familiar with both the *Market Regulation Handbook*, Chapter 6—Collaborative Actions, and the Market Actions (D) Working Group’s Policies and Procedures.

Actively monitoring includes responding to posts or responding directly to the sender of a posting.

Examples of actively monitoring the bulletin boards could include regularly:

- Responding substantively to a bulletin board post.
- Reaching out directly to the poster.
- Communicating with other divisions within the department.
- Raising the issue to the Chief Market Regulator Forum (CMRF).

Examples of reasonable explanations for checklist item 6d. and item 6g. may include, but are not limited to, such justifications as:

- The issue has minimal or no consumer impact.
- The issue is not yet sufficiently defined, investigated, or analyzed.
- There are no known laws or regulations to address the issue.
- There are reasons why expediency to address the matter in the jurisdiction is of utmost concern.
- Significant differences in the jurisdiction’s particular insurance laws or regulations.
- The matter has been previously addressed in a satisfactory manner by the jurisdiction.
- An executive decision made at the chief insurance regulator or general counsel level.

The MAWG national analysis process involves multiple jurisdictions conducting detailed analysis on companies that are shown as outliers. The approach to detailed analysis may differ among jurisdictions; therefore, participation encourages the sharing of ways to analyze data. The national analysis process is an evolving one that uses NAIC staff to provide information to the states. The states that participate in national analysis ultimately decide what to do with companies subject to their national analysis. Their results and recommendations are presented to the Market Actions (D) Working Group.

Additionally, it is important to know that the Market Action (D) Working Group’s annual national analysis process uses the Market Conduct Annual Statement (MCAS) and other existing data to identify companies of national (or multi-jurisdictional) interest that exhibit potential market conduct issues. The goal is to find and address issues common across jurisdictions, while reducing the strain on single jurisdictional resources.

Overall, jurisdictions should work together to test the results of the market analysis process against their findings to refine the process. By doing this, the jurisdictions can develop a more efficient market analysis process that will provide more useful information about companies’ market activities. By working together in this manner, jurisdictions will achieve the goal referenced above.

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**Checklist**

**Participation in the Market Actions (D) Working Group**

**YES**

**NO**

6a. Does the department have procedures for staff to follow when reporting potential collaborative actions to the department’s CAD?

\_\_\_\_\_

\_\_\_\_\_

6b. If the department identified a potential collaborative action, did the department notify all CADs—via meeting, bulletin board or other communication—of the activities identified that may have the potential for collaboration?

\_\_\_\_\_

\_\_\_\_\_

6c. If the department received a positive response to its inquiries to other CADs regarding a potential collaborative action, did the department refer the action to Market Actions (D) Working Group using the reporting procedures outlined in the Market Actions (D) Working Group’s Policies and Procedures, including completing the Request for Review form and submitting the form to the designated NAIC support staff?

\_\_\_\_\_

\_\_\_\_\_

6d. If the answer to item 6b. or item 6c. is “No,” please provide a brief explanation.

Examples of reasonable explanations:

- The issue has minimal/no consumer impact.
- The issue is not yet sufficiently defined, investigated, or analyzed.
- There are no known laws/regulations to address the issue.
- There are reasons why expediency to address the matter in the jurisdiction is of utmost concern.
- Significant differences in the jurisdiction’s insurance laws/regulations.
- The matter has been previously addressed in a satisfactory manner by the jurisdiction.
- An executive decision made at the chief insurance regulator/General Counsel level.

**Consideration of Market Actions (D) Working Group Actions**

**YES**

**NO**

6e. Does the department have written procedures for reviewing and evaluating its participation in potential collaborative actions brought to its attention, either through the Market Actions (D) Working Group or by another department?

\_\_\_\_\_

\_\_\_\_\_

6f. For any collaborative action for which the department declined participation, has the department provided a response to the Market Actions (D) Working Group?

\_\_\_\_\_

\_\_\_\_\_

6g. If the answer to item 6e. or item 6f. is “No,” please provide a brief explanation.

6h. Does the MAC, Market Actions (D) Working Group member, CAD and/or CAD alternate actively monitor the bulletin board discussions?

\_\_\_\_\_

\_\_\_\_\_

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- |  |       |       |
|--|-------|-------|
| 6i. Does the department participate in the review of national analysis data on an annual basis?  | _____ | _____ |
| 6j. If the answer to item 6i is “Yes”, who in the department, by functional title, participates in the annual national analysis project? | _____ | _____ |

Complete the following if this is an Interim Annual Review:	<b>YES</b>	<b>NO</b>
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Have there been any significant changes to the procedures since last year’s review? If “Yes,” please provide an explanation.	_____	_____
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## **Requirement 7 – Market Conduct Annual Statement**

The department participates in the centralized collection of the Market Conduct Annual Statement (MCAS) and utilizes the data in its market analysis process.

### **Objective**

The objective of this requirement is to encourage utilization of the centralized collection of the MCAS to enhance each jurisdiction’s market analysis process. By using the data collected in the MCAS process, departments are able to reduce expenses and resources that would have to be used if data was requested and companies had to submit data to multiple jurisdictions.

### **Measurement**

In order to successfully meet this requirement, jurisdictions should be able to verify that they utilize the data obtained from MCAS for market analysis. This verification can be accomplished by producing evidence of completed baseline analysis and Level 1 analysis which pull data from MCAS. Documentation of completed analysis will ensure usage of the MCAS data.

### **Guidelines**

The department has written procedures that show that the use of MCAS data is a part of their market analysis process and assists in making decisions as to the next step in their regulation process.

In the event the department participates but does not require each line of insurance that is part of the MCAS program, a one-year “grace period” is allowed for newly adopted lines of insurance as being acceptable for a “pass.” Additionally, intention to perform analysis for newly adopted lines that have not yet been reported is acceptable for a “Yes” response to item 7c. If the department participates in MCAS but does not participate in all lines after the one-year grace period has elapsed, consider that the jurisdiction has passed with a strong recommendation to add the additional line(s).

In the event a department conducts its own individualized MCAS program, consider that scenario as marginally passing with a strong recommendation to participate in the standardized NAIC program.

### **Checklist**

	<b>YES</b>	<b>NO</b>
7a. Does the department require eligible companies to file the MCAS with the NAIC?	_____	_____
7b. Does the department require that the MCAS be prepared in accordance with the NAIC MCAS user guides and instructions?	_____	_____
7c. Does the department utilize the data obtained from the MCAS for market analysis? (Examples of utilization include, but are not limited to, such activities as performing baseline or Level 1 analysis.)	_____	_____

Draft: 4/17/23

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Complete the following if this is an Interim Annual Review:

Have there been any significant changes to the requirements since last year's review? If "Yes," please provide an explanation.

**YES**

**NO**

\_\_\_\_\_

\_\_\_\_\_

**COMMENTS:**

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## **Requirement 8 – Electronic Data Entry with the NAIC**

The department enters data no less frequently than on a quarterly basis (but preferably monthly) to all NAIC systems, including, but not limited to, the Complaint Database System (CDS) and the Regulatory Information Retrieval System (RIRS). Except for immediate concerns as defined in the *Market Regulation Handbook*, the department enters data into the Market Actions Tracking System (MATS) concerning upcoming examinations. Additionally, the department enters continuum actions into MATS when initiating the action.

### **Objective**

The objective of this requirement is to ensure that regulators in other jurisdictions are completely and timely informed of market conduct actions that have occurred, are ongoing, or that are anticipated.

### **Measurement**

To evaluate whether the jurisdiction “passes” Requirement 8, the jurisdiction must answer “Yes” to checklist item 8a., item 8b and 8d., unless there is an applicable explanation, briefly explained, in applicable checklist item 8e. With respect to checklist item 8c., further clarification of what continuum items must be entered will be forthcoming; however, any item resulting in a formal order must be entered into RIRS. Source documents should be reviewed in order to ensure timeliness. Only entries after the certification program is adopted should be measured.

### **Guidelines**

The Market Information Systems Research and Development (D) Working Group report on reporting timeliness, accuracy and completeness will be attached.

- Timeliness, accuracy and completion standards may be implemented upon consideration by the Market Regulation Certification (D) Working Group.
- Only entries after the certification program is adopted should be measured. De minimis variations (i.e., less than five business days) should be given a “pass.”

Any back-end system that auto-populates the referenced NAIC systems will meet this requirement. If a jurisdiction is using a back-end system which does not currently auto-populate the referenced NAIC systems, that jurisdiction must ensure that the information is entered in the NAIC systems. This may require dual entry until such time as the back-end system auto-populates the NAIC systems.

#### ***Significant Market Actions:***

The *Market Regulation Handbook* provides guidance on continuum actions for example, “The continuum of market actions includes such initiatives as office-based information gathering, interview with the company, correspondence, policy and procedure reviews, interrogatories, desk audits, on-site audits, investigations, enforcement actions, company self-audits and voluntary compliance programs.” Such significant actions should be reported in MATS as determined by the department.

- If checklist item 8d. is answered “Yes,” ensure each examination is called 60 days prior to the start of the examination unless there is reason (noted in item 8e.) of “immediate concern” as set forth in the *Market Regulation Handbook*). Examples of immediate concerns include, but are not limited to:
  - Fraud allegations.
  - Imminent consumer harm.
  - Blatant disregard of a department order.
  - Imminent solvency concern.



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**Checklist**

	<b>YES</b>	<b>NO</b>
8a. Does the department enter or transmit data at least quarterly into the CDS?	_____	_____
8b. Does the department enter or transmit data at least quarterly into RIRS?	_____	_____
8c. Does the department enter non-examination continuum actions into MATS when initiated and the resulting applicable final status reports or updates (if applicable) at least quarterly?	_____	_____
8d. Did the department enter at least 75% of examinations into MATS at least 60 days before the start of the examination as set forth in the <i>Market Regulation Handbook</i> ? ( <b>Note:</b> The start of the examination is the date the department began work on the examination materials received from the examined entity.)	_____	_____
8e. If the answer to item 8a., item 8b., item 8c., or item 8d. is “No,” please provide an explanation.		

Complete the following if this is an Interim Annual Review:

	<b>YES</b>	<b>NO</b>
Have there been any significant changes to the requirements since last year’s review? If “Yes,” please provide an explanation.		

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

The department participates in or monitors NAIC market conduct and market analysis-related working groups as a member or interested regulator.

### **Objective**

The objective of this requirement is to ensure jurisdictions are aware of market conduct and market analysis initiatives, and stay abreast of developments and improvements with respect to market analysis and examination tools, techniques and standards so that they can be applied in jurisdictions’ ongoing market regulation efforts.

### **Measurement**

To evaluate whether the jurisdiction “passes” Requirement 9, the jurisdiction must, at a minimum, be able to answer “Yes” to checklist item 9a. and item 9c., as well as document who in the department or jurisdiction participates in or monitors the Market Analysis Procedures (D) Working Group and the Market Conduct Examination Guidelines (D) Working Group.

### **Guidelines**

NAIC market conduct and market analysis-related working groups provide a national forum for jurisdictions to share and coordinate efforts.

When evaluating checklist items for Requirement 9, it is important to remember participation in the working group and task force meetings is tracked through the NAIC. In the absence of the ability to participate in every applicable meeting or conference call, it is anticipated that a passing jurisdiction will monitor the applicable working group activities through a review of available materials, minutes, and regulator materials.

At each jurisdiction’s discretion, consideration may be given to monitoring the Market Information Systems (D) Task Force and applicable working groups, task forces reporting to the Market Regulation and Consumer Affairs (D) Committee and other working groups, task forces and Committee relevant to consumer issues and market regulation.

### **Checklist**

	<b>YES</b>	<b>NO</b>
9a. Does the department participate in or monitor the Market Analysis Procedures (D) Working Group as a working group member or interested regulator either by conference calls or by attending meetings?	_____	_____
9b. If the answer to item 9a. is “Yes”, who in the department, by functional title, participates in or monitors the Market Analysis Procedures (D) Working Group?		
9c. Does the department participate in or monitor the Market Conduct Examination Guidelines (D) Working Group as a working group member or interested regulator either by conference calls or by attending meetings?	_____	_____
9d. If the answer to item 9c. is “Yes”, who in the department, by functional title, participates in or monitors the Market Conduct Examination Guidelines (D) Working Group?		

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- 9e. List any other market conduct or market analysis-related working groups and/or task forces that the department participates in or monitors.

Complete the following if this is an Interim Annual Review:

Have there been any significant changes to the procedures since last year’s review? If “Yes,” please provide an explanation.

**YES**

**NO**

\_\_\_\_\_

\_\_\_\_\_

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## **Requirement 10 – Collaborative Action Designee**

The department appoints a collaborative action designee (CAD). The department’s Market Actions (D) Working Group member, CAD and/or CAD alternate attends at least 50% of the discussions, either telephonically or in person, of the Market Actions (D) Working Group meetings they are eligible to attend every year.

### **Objective**

The objective of this requirement is to promote collaboration with other CADs.

### **Measurement**

To evaluate whether a jurisdiction “passes” Requirement 10, the jurisdiction must answer “Yes” to checklist item 10a., and item 10c. If the answer to item 10b is “No,” the jurisdiction is strongly encouraged to appoint a CAD alternative when possible.

### **Guidelines**

When evaluating checklist items for Requirement 10, it is important to remember that the CAD is the one contact identified by the chief insurance regulator of each jurisdiction to have full responsibility for all communications related to collaborative efforts, including, but not limited to, multi-jurisdictional issues. This includes participating in, or assigning a designee to participate in, certain meetings or conference calls of the Market Actions (D) Working Group. While the market analysis chief (MAC) oversees the internal jurisdictional process of identifying entities with potential market regulatory issues, the CAD oversees the process of communicating about those entities and collaborating with other CADs, potentially through the Market Actions (D) Working Group.

The CAD is the person identified with authority to receive information regarding collaborative actions from the Market Actions (D) Working Group. Additionally, the department’s Market Actions (D) Working Group member, CAD or CAD alternate must attend at least 50% of the discussions, either telephonically or in person, of the Market Actions (D) Working Group meetings they are eligible to attend every year.

### **Checklist**

	<b>YES</b>	<b>NO</b>
10a. Has the department appointed a CAD?	_____	_____
10b. Has the department appointed a CAD alternate?	_____	_____
10c. Does the CAD and/or CAD alternate attend at least 50% of all meetings and conference calls of the Market Actions (D) Working Group they are eligible to attend?	_____	_____

Complete the following if this is an Interim Annual Review:

Have there been any significant changes to the procedures since last year’s review? If “Yes,” please provide an explanation.	_____	_____
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## **Requirement 11 – Interdivisional Collaboration**

The Department of Insurance has established and follows a systematic procedure for interdivisional communication (as referenced in the *Market Regulation Handbook*).

### **Objective**

The objective is to establish and maintain a systematic procedure for interdivisional communication, as well as specific guidance regarding which requirements govern or define interdivisional collaboration. This includes identifying warning signs that all staff should share with the market analysis chief (MAC). In particular, all insurance department staff should report to the MAC when information of concern that may result in consumer harm is received in the department.

### **Measurement**

To evaluate whether the jurisdiction “passes” Requirement 11, the jurisdiction must answer “Yes” to checklist item 11a., item 11b., and item 11c.

### **Guidelines**

Insurance department staff should effectively communicate and coordinate with various areas within the department or other jurisdiction agencies/legislature, as appropriate. Such communication should consist of information shared by other areas of the department as well as key findings resulting from research conducted by the staff. Evidence of this communication should be clearly documented. The communication process should include a formal method that allows for pertinent information from other areas (e.g. legal, rates and forms, actuarial, etc.) within the department that could impact market conduct to be shared with the staff. Examples may include regularly scheduled department head meetings, department managers’ meetings, information requests to other areas of the department, etc.

As a means of improving the sharing of information among the jurisdictions, at the conclusion of an investigation that resulted from interdivisional communication, all jurisdictions are encouraged to contact the jurisdiction’s market analysis chief (MAC) in an affected jurisdiction and inform them of the results of the investigation.

When evaluating checklist items for Requirement 11, it is important to remember that market conduct problems do not occur in a vacuum. Complaint activity, legal issues, financial concerns or irregularities in rate and form filings often accompany them. At the same time, market conduct problems may be an early warning sign of other problems with a company, so it is essential for information to be shared and discussed between the MAC and other department staff. This should be done on a systematic basis, including, at a minimum, a quarterly meeting or questionnaire requesting other work areas within the department to report unusual activity that may be of interest to the MAC, such as patterns of adverse financial data, consumer complaints, policy termination activity, producer misconduct or use of noncompliant forms or rates.

### **Checklist**

	<b>YES</b>	<b>NO</b>
11a. Has the department established procedures for the market analysis chief (MAC), or appropriate designee, to communicate interdepartmentally with the appropriate staff, either through written channels or by sufficient demonstration of action (such as regularly scheduled department head meetings, department managers’ meetings, or information requests to other areas of the department?)	_____	_____

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11b. Does the MAC, or appropriate designee provide the appropriate interdepartmental staff with market concerns such as, but not limited to, financial data, consumer complaints, policy termination activity, producer misconduct or use of noncompliant forms or rates, related to the following functional areas:

- i. Consumer Services \_\_\_\_\_
- ii. Enforcement \_\_\_\_\_
- iii. Legal \_\_\_\_\_
- iv. Forms and Filing \_\_\_\_\_
- v. Financial \_\_\_\_\_
- vi. Market Analysis \_\_\_\_\_
- vii. Market Conduct \_\_\_\_\_

11c. On a quarterly basis, does the MAC, or appropriate designee, solicit information from the above functional areas regarding adverse patterns on, but not limited to, financial data, consumer complaints, policy termination activity, producer misconduct, or use of noncompliant forms or rates?

\_\_\_\_\_

Complete the following if this is an Interim Annual Review:

Have there been any significant changes to the procedures since last year’s review?  
If “Yes,” please provide an explanation.

\_\_\_\_\_

**COMMENTS:**