

Draft: 2/22/23

Market Regulation Certification (D) Working Group

E-Vote

December 9, 2022

The Market Regulation Certification (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee conducted an e-vote that concluded Dec. 9, 2022. The following Working Group members participated: Russell Toal, Chair (NM); John Haworth, Vice Chair (WA); Lori K. Wing-Heier (AK); Kathleen A. Birrane (MD); Grace Arnold (MN); Chlora Lindley-Myers (MO); Mike Causey (NC); Martin Swanson (NE); Chris Nicolopoulos (NH); Michael Humphreys (PA); Michael Wise (SC); Tanji J. Northrup (UT); Don Beatty (VA); Kevin Gaffney (VT); Allan L. McVey (WV); and Bill Cole (WY).

1. Adopted the Market Regulation Certification Program Implementation Plan

The Working Group considered adoption of the Market Regulation Certification Program Implementation Plan.

A majority of the Working Group members voted in favor of adopting the implementation plan (Attachment 1). The motion passed.

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

SharePoint/NAIC Support Staff Hub/Meetings/D CMTE/2023 Spring /MRCWG/1209/12-MRCWG T.docx

Draft Pending Adoption

Draft: 12/1/22

Market Regulation Certification (D) Working Group
Virtual Meeting (*in lieu of meeting at the 2022 Fall National Meeting*)
November 28, 2022

The Market Regulation Certification (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee met Nov. 28, 2022. The following Working Group members participated: Russell Toal, Chair (NM); John Haworth, Vice Chair (WA); Lori K. Wing-Heier represented by Sarah Bailey (AK); Alan McClain represented by Crystal Phelps (AR); Erica Weyhenmeyer (IL); Kathleen A. Birrane represented by Mary Kwei (MD); Chlora Lindley-Myers and Jo LeDuc (MO); Mike Causey represented by Tracy Biehn (NC); Martin Swanson (NE); Marlene Caride represented by Erin Porter (NJ); Judith L. French represented by Rodney Beetch (OH); Glen Mulready represented by Landon Hubbart and Shelly Scott (OK); Andrew R. Stolfi represented by Colette Hittner (OR); Michael Humphreys represented by David Buono and Gary Jones (PA); Tanji J. Northrup (UT); Don Beatty, Katie Johnson, and Julie Fairbanks (VA); Kevin Gaffney represented by Karla Nuissl (VT); and Bill Cole (WY).

1. Adopted its Oct. 27 Minutes

Superintendent Toal said the Working Group met Oct. 27 and took the following action: 1) heard an update on the revisions to the Market Regulation Certification Program requirements; and 2) discussed revisions to the implementation plan.

Haworth made a motion, seconded by Northrup, to adopt the Working Group's Oct. 27 minutes (Attachment A). The motion passed unanimously.

2. Reviewed the Pilot Program Suggested Revisions to the Market Regulation Certification Program

Haworth said the drafting group met three times since the last Working Group meeting. He said the drafting group has completed going through the requirements. During its last meeting on Nov. 21, it completed the review of the scoring matrix to ensure it aligns with the requirements' guidelines, measurements, and checklists. Haworth said the drafting group will meet one more time on Dec. 5 to finish its work.

Haworth said the revisions were primarily in line with recommendations received by the jurisdictions that piloted the Market Regulation Certification Program. However, the drafting group also came up with some revisions it felt were important.

Haworth said among the revisions and suggestions are:

- 1) The drafting group added an "Objective" and a "Measurement" section to each requirement. Much of the redline is simply cutting paragraphs from the "Guidelines" section to the new sections.
- 2) On requirements 3 and 4, the drafting group clarified that requirement 3 measures staffing resources, and requirement 4 measures staffing qualifications.
- 3) Recognizing that employees often have multiple responsibilities, the drafting group changed "full-time employee" to "full-time equivalent employee."

Draft Pending Adoption

Attachment --

Market Regulation and Consumer Affairs (D) Committee

12/15/22

- 4) The drafting group believes the requirement 4 measurements of “unqualified pass” and “provisional pass” create confusion. The drafting group will be asking the Working Group to decide whether those measurements should be replaced with a simple description of what is required to pass.
- 5) The drafting group will also be proposing to the Working Group that requirements 6 and 11 should be merged. Requirement 6 concerns collaboration, and requirement 11 concerns the Market Actions (D) Working Group’s national analysis process. Because national analysis is a collaborative process, the drafting group believes it should be included with requirement 6. Also, because the national analysis process itself changes frequently, as the Working Group tries to make it more effective, it should not be its own requirement within the Market Regulation Certification Program.
- 6) For requirement 7 regarding the Market Conduct Annual Statement (MCAS), the drafting group removed question 7c about requiring companies to file using a format acceptable to the NAIC. There are really no alternatives.
- 7) Requirement 8 concerns electronic data entry with the NAIC. The drafting group will be asking the Market Regulation Certification (D) Working Group to consider simplifying the requirement to only the actual submission of Complaints Database System (CDS), Regulatory Information Retrieval System (RIRS), and Market Actions Tracking System (MATS) data to the NAIC. The drafting group will be suggesting that the timeliness of the submissions be moved from the requirement itself to the checklist and measurement sections of the requirement.
- 8) For requirement 8, the drafting group will be asking the Working Group to consider building in tolerances (e.g., a jurisdiction could fulfill the requirement if it submits data in a timely manner 75% of the time).
- 9) In requirement 10 regarding Collaborative Action Designees (CADs), the drafting group will be asking that the Working Group alter the language of the requirement slightly to make it clear that the CAD needs to attend only 50% of the Market Actions (D) Working Group meetings they are eligible to attend, because there are Working Group meetings that are only open to the Working Group members.
- 10) On the scoring matrix, the drafting group inserted the revised checklist questions and changed some of the red, yellow, and green scoring to match the language in the requirements.

Haworth said the drafting group plans to have the finalized redline version of the Market Regulation Certification Program requirements completed and exposed prior to the next Market Regulation Certification (D) Working Group meeting. He said the scoring matrix will have to be re-considered for adoption since the drafting group is recommending several changes to it based on the review of the requirements.

Superintendent Toal thanked Haworth and the members of the drafting group for all their hard work.

3. Reviewed the Market Regulation Certification Program Implementation Plan

Superintendent Toal said the current redline version of the implementation plan includes the changes to the three-year self-certification period that the Working Group adopted in September. He thanked Haworth for leading the discussion in October on the implementation of the full Market Regulation Certification Program.

Superintendent Toal said the Working Group received two sets of comments from LeDuc and Andrea Baytop (VA).

Draft Pending Adoption

LeDuc said she was not involved in the original drafting of the Market Regulation Certification Program in 2016, and it is not her intention to rehash anything for which a conscious decision was made when originally drafted. She said some of her comments are made to make the implementation plan more enduring and not outdated after the first few years of the Market Regulation Certification Program.

LeDuc recommended that references to “three-year” periods be removed since the intention is for the Market Regulation Certification Program to last longer than three years, and self-certification is an option available even after the Market Regulation Certification Program is fully implemented. She said some states may decide to only be provisionally certified even when full certification becomes available. She said specific years should not be referenced in the document, and they should perhaps be replaced with more generic language such as, “in the year following adoption”

LeDuc noted that in the second bullet point of the self-certification period, the responsibility to assess the self-certifications is placed on the Market Regulation and Consumer Affairs (D) Committee, but in other places, the Committee is allowed to delegate. She said the ability to delegate should be noted wherever the Committee’s responsibilities are referenced.

LeDuc said in the implementation plan, seasoned state insurance regulators are required to have market conduct examination experience. She recommended that market analysis experience also be included. She also said the document says either NAIC staff or a review team will do the verification of full certifications. She said it should be clarified who will do the verification of full certification applications.

LeDuc said the implementation plan only allows for full certifications to begin after the first three years. She said states should be able to apply for full certification as soon as the certification committee and review team is set up. Superintendent Toal agreed that full certifications should begin as soon as possible after adoption.

Fairbanks said she would speak for Baytop on Virginia’s comments. She said most of the comments are questions for clarification. She said her first suggestion supports LeDuc’s suggestion to make the dates in the document more generic.

Fairbanks said the implementation plan should define what provisional certification means and its importance on a jurisdiction’s certification status. Randy Helder (NAIC) said provisional was the descriptor used in the plan to indicate that the certification is not the same as full certification because jurisdiction can self-certify at any time, and because self-certification is not audited by a review team, full certification would carry more weight.

Fairbanks asked if a jurisdiction would have to submit self-certification every year during the initial three-year period, even if it would already qualify for full certification. Helder said it would per bullet point 2. He said full certification would not be available until a certification committee and review team are set up. Fairbanks said a jurisdiction should be able to apply for full certification prior to the third year since there is no clear benefit of doing self-certification three times if the jurisdiction already appears to be fully certified.

Fairbanks noted that the implementation plan does not provide a timeline for the Committee to finish assessing self-certifications. Helder said the Committee would accept the jurisdiction’s word if the jurisdiction says it meets the certification requirements and decides to self-certify. Fairbanks said there should be more clarity on how the Committee will treat full certifications and provisional certifications.

Draft Pending Adoption

Fairbanks said the implementation plan does not state if and how results of the reviews would be communicated to the jurisdictions. She recommended that jurisdictions receive feedback from the Committee review before the full certification is due two weeks before Spring National Meeting. She said this allows jurisdictions to determine if they should apply for full certification or continue with self-certification. She asked if there would be a list of provisionally and fully certified jurisdictions. Helder said there would likely be a list, and it would probably be public.

Fairbanks said in year one, the implementation plan says the self-certifications are submitted to NAIC staff; however, in years two and three, the self-certification is submitted to the Committee. Helder said this was inadvertent; it is likely that all self-certifications would come through NAIC staff on behalf of the Committee.

Fairbanks recommended that changes to the implementation plan should be included in the feedback that jurisdictions can provide to the Working Group.

Fairbanks noted that jurisdictions would submit full certification applications prior to the Spring National Meeting, while self-certifications are submitted two weeks prior to the Fall National Meeting. She asked if this is to allow jurisdictions that fail full certification to still apply for self-certification. Helder said it was written this way because it is expected that full-certification reviews will take considerably longer than self-certifications, but the ability to self-certify is also a benefit of the timing.

Fairbanks asked if it is the intent that full certification uses the same self-certification criteria as the three-year self-certification program. Helder said they both rely on the same set of requirements and measurements.

Fairbanks asked if the application for full certification and the self-assessment audit have been drafted. Helder said the full-certification application has not been drafted, but the annual self-assessment audit would be the checklist and scoring matrix.

Fairbanks recommended that the self-assessment be completed every two years after full certification is achieved, instead of every year, or the submission of a self-assessment halfway through the five-year period, similar to financial accreditation.

Fairbanks noted that it may take more than five years for all initial full-certification applications to be reviewed, depending on when the jurisdictions start to apply, and it is not clear what part of the process from the three-year self-certification would apply to full-certification. She recommended that because no more than 12 reviews are conducted each year, all jurisdictions that apply for full certification should be provisionally certified by the Committee until their application for full certification is reviewed and a decision on the application is made by the Committee.

Superintendent Toal asked LeDuc, Fairbanks, Baytop, and Haworth to work together to coordinate their suggested revisions and prepare a redlined implementation plan by Dec. 5. He said the revised implementation plan will be circulated to the Working Group to conduct an e-vote prior to the Fall National Meeting on whether to adopt it.

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

SharePoint/NAIC Support Staff Hub/Member Meetings/D Cmte/2022 Fall National Meeting/MRCWG/1128/11 MRCWG T

MARKET REGULATION CERTIFICATION (D) WORKING GROUP

2023 Adopted Charge

- Develop a formal market regulation certification proposal for consideration by the NAIC membership that provides recommendations for the following:
 - 1) certification standards;
 - 2) a process for the state implementation of the standards;
 - 3) a process to measure the states' compliance with the standards;
 - 4) a process for future revisions to the standards; and
 - 5) assistance for jurisdictions to achieve certification.

Draft: 2/24/23

*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

Contents

Purpose	3
Requirement 1 – Department’s Authority.....	5
Objective	5
Measurement.....	5
Guidelines.....	5
Checklist	6
Requirement 2 – Department’s Authority Regarding the Market Regulation Handbook.....	8
Objective	8
Measurement.....	8
Guidelines.....	8
Checklist	8
Requirement 3 – Department Staffing: Resources	10
Objective	10
Measurement.....	10
Guidelines.....	10
Checklist	11
Requirement 4 – Department Staffing: Qualifications	14
Objective	14
Measurement and Guidelines	14
Checklist	17
Requirement 5 – Confidentiality and Information-Sharing	18
Objective	18
Measurement.....	18
Guidelines.....	18
Checklist	18
Requirement 6 – Collaboration with Other Jurisdictions	20
Objective	20
Measurement.....	20

Draft: 2/24/23

*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 –*

Guidelines.....	20
Checklist	22
Requirement 7 – Market Conduct Annual Statement	24
Objective	24
Measurement.....	24
Guidelines.....	24
Checklist	24
Requirement 8 – Electronic Data Entry with the NAIC	26
Objective	26
Measurement.....	26
Guidelines.....	26
Checklist	27
Requirement 9 – Participation in all NAIC Market Conduct and Market Analysis Working Groups	28
Objective	28
Measurement.....	28
Guidelines.....	28
Checklist	28
Requirement 10 – Collaborative Action Designee	30
Objective	30
Measurement.....	30
Guidelines.....	30
Checklist	30
Requirement 11 – Interdivisional Collaboration.....	31
Objective	31
Measurement.....	31
Guidelines.....	31
Checklist	31
Glossary.....	Error! Bookmark not defined.
Chief Market Regulator	Error! Bookmark not defined.
Department.....	Error! Bookmark not defined.
Jurisdiction	Error! Bookmark not defined.

Draft: 2/24/23

*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 –*

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, 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**
- 
- **Jurisdiction** - The territory within which power can be exercised. It will include Departments of, Insurance Divisions, Administration, Commerce, Financial Services, Business Regulation, and Other Departments/Divisions that include Insurance such as but not limited to: Department of Professional and Financial Regulation, Office of Consumer Affairs and Business Regulation, Business and Industry, and Banking and Insurance.

Draft: 2/24/23

*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 –*

-

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.



Draft: 2/24/23

*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 Guidelines and Checklists

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:

- *Unfair Trade Practices Act* (#880)

Draft: 2/24/23

*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 –*

- *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:

	YES	NO
1a. Does the department have the general authority to collect and analyze information whenever it is deemed necessary?	_____	_____

REFERENCE _____

1b. Does the department have the authority to collaborate and coordinate with other regulatory agencies?	_____	_____
--	-------	-------

REFERENCE _____

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

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

COMMENTS:

Draft: 2/24/23

*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 –*

Draft: 2/24/23

*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 –*

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

	YES	NO
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?	_____	_____
2c. Does the department have examination-specific policies and procedures in addition to those guidelines set forth in the <i>Market Regulation Handbook</i> ?	_____	_____

Draft: 2/24/23

*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 –*

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*?

COMMENTS:

Draft: 2/24/23

*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 –*

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 3h.

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

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.

Draft: 2/24/23

*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 –*

During each jurisdiction’s evaluation of its staffing levels, it may also be helpful to determine what NAIC resources are relied upon for market conduct 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 One, Level Two).

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

Draft: 2/24/23

*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 –*

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. of



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



3j. Has the department performed any targeted exams or market continuum actions in the prior two years?



3k. If the answer to item 3j. is “Yes,” please provide a list of such exams or market continuum actions and the scope of the exams/actions.

3l. If the answer to item 3j. 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?

Sufficient Staff and Resources (Contractor Selection and Oversight)

Draft: 2/24/23

*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 –*

3m. Does the department have the authority to hire contractors as specialists to perform market regulation?

3n. 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.

3o. Does the department oversee and manage contractors? Briefly explain.

Policies & Procedures and Output

3h. 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? , , , ,

, , , ,

, , YES , , NO

3i. If the answer to item 3h. 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.

COMMENTS:



Draft: 2/24/23

*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 –*

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.

Draft: 2/24/23

*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 –*

Relevant credentials would include a Market Conduct Management (MCM)¹ 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

¹ NAIC market conduct examination training may substitute for an MCM designation.

Draft: 2/24/23

*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 –*

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.

Draft: 2/24/23

*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 –*

Checklist

	YES	NO
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.		

COMMENTS:

Draft: 2/24/23

*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 –*

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 jurisdiction entered into the Multi-State Information-Sharing Agreement with other jurisdictions and the NAIC and does the department have written policies/procedures and communicate such policies/procedures to staff?

Draft: 2/24/23

*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 –*

5c. Does the jurisdiction 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 jurisdiction 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.

COMMENTS:



Draft: 2/24/23

*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 –*

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 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. 5] 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., and item 6h. unless there is an applicable explanation briefly explained in applicable checklist item 6d. or item 6g. The jurisdiction should answer yes to item 6b., item 6c., item 6e. item 6f.,

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. and item 6k., 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.

Guidelines

Draft: 2/24/23

*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 –*

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 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 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 process includes the review of the following lines of business: 1) private passenger automobile; 2) homeowners; 3) individual life; 4) individual annuity; 5) group accident and health; and 6) individual accident and health. The lines of business are generally segregated into property/casualty; life and annuity; and health teams. The goal is to find and address issues common across jurisdictions, while reducing the strain on single jurisdictional resources.

The Market Actions (D) Working Group selects a team lead for each of the teams to facilitate the selection of a minimum of five companies for each of the six lines of business. Market Actions (D) Working Group volunteers can be chosen to work with the leaders to identify the companies that will require more in-depth analysis.

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.

Draft: 2/24/23

*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 –*

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 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?

Draft: 2/24/23

*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 –*

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?

6k. Does the jurisdiction participate in one national analysis team at least every other year?

6l. If the answer to item 6k. Is “Yes”, who in the department, by functional title, participates on a national analysis team at least every other year?

Complete the following if this is an Interim Annual Review:

YES

NO

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

COMMENTS:



Draft: 2/24/23

*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 –*

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 must 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 1s 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

	YES	NO
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: 2/24/23

*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 –*

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:

Draft: 2/24/23

*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 –*

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. and item 8b., 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 in Chapter 2 and is further explained in Chapter 11 of the 2019 edition as “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 Chapter 12 of the *Market Regulation Handbook*). Examples of immediate concerns include, but are not limited to:
 - Fraud allegations.

Draft: 2/24/23

*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 –*

- Imminent consumer harm.
- Blatant disregard of a department order.
- Imminent solvency concern.

Checklist

	YES	NO
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> ? (Note: 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:

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

YES **NO**

COMMENTS:

Draft: 2/24/23

*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 –*

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 make sure jurisdictions are fully aware of market conduct and market analysis initiatives, staying abreast of what is happening in other jurisdictions, assisting in keeping other jurisdictions of what is happening other jurisdictions and promoting collaboration amongst jurisdictions.

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 9b., 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 teleconferences are tracked through registration and attendance of conference calls through the NAIC’s conference call vendor, as well as the roll call for regulators who are members of the different working groups and task forces. 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

	YES	NO
<div style="display: flex; align-items: flex-start;"> <div style="margin-right: 10px;"> </div> <div> <p>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?</p> </div> </div>	_____	_____
<p>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?</p>	_____	_____
<p>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?</p>	_____	_____

Draft: 2/24/23

*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 –*

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?

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

COMMENTS:

Draft: 2/24/23

*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 –*

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, as well as communication with other jurisdictions’ insurance departments via the NAIC Market Regulation and Market Analysis electronic forums (bulletin boards).



Measurement

To evaluate whether a jurisdiction “passes” Requirement 10, the jurisdiction must answer “Yes” to checklist item 10a., item 10b, 10c.

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

	YES	NO
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?	_____	_____

COMMENTS:

Draft: 2/24/23

*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 –*

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., item 11c. and item 11d.

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 coordinator 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

	YES	NO
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?)	_____	_____

Draft: 2/24/23

*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 –*

- 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?



- 11d. Does the MAC participate in communication with other insurance departments regarding market analysis by posting and responding to NAIC Market Regulation and Market Analysis Electronic Bulletin Board inquiries?

COMMENTS:

Draft: 2/24/23

*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 –*

