



**Rules of
Department of Insurance,
Financial Institutions and
Professional Registration**

Division 100—Insurer Conduct

Chapter 8—Market Conduct Examination

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**Title 20—DEPARTMENT OF
INSURANCE, FINANCIAL
INSTITUTIONS AND
PROFESSIONAL REGISTRATION**

Division 100—Insurer Conduct
Chapter 8—Market Conduct Examination

20 CSR 100-8.002 Scope and Definitions

PURPOSE: This rule sets out the scope of the rules in this chapter and provides definitions to aid in the interpretation of the rules in this chapter.

(1) **Applicability of Rules.** The rules in this chapter apply to insurers and other companies transacting business in the state and examiners, analysts, and other staff within the division engaged in market conduct actions, and shall be read together with Chapter 536, RSMo.

(2) **Definitions.** As used in this chapter, the following terms shall mean:

(A) “Company,” any person as defined by section 374.202.2(1), RSMo;

(B) “Complaint,” a written or documented oral communication, received by the department, primarily expressing a grievance, meaning an expression of dissatisfaction with a specific insurance company or producer;

(C) “Comprehensive market conduct examination,” a full-scope examination that generally involves a review of the company’s operations/management, complaint handling, marketing and sales, advertising materials, licensing, policyholder service, underwriting and rating, tier classifications, nonforfeitures, policy forms and filings, compliance procedures and policies, claim handling, and other state-specific requirements;

(D) “Department,” the Department of Insurance, Financial Institutions and Professional Registration;

(E) “Desk examination,” an examination that is conducted by an examiner at a location other than the company’s premises. A desk examination is usually performed at the department’s offices with the insurer providing requested documents by hard copy, microfiche, discs, or other electronic media, for review;

(F) “Director,” the director of the Department of Insurance, Financial Institutions and Professional Registration;

(G) “Division,” the Division of Insurance Market Regulation;

(H) “Examiner,” any individual having been authorized by the director to conduct a market conduct examination under sections 374.202 to 374.207, RSMo;

(I) “Insurer,” any person as defined by section 374.202.2(5), RSMo;

(J) “Market analysis,” a process whereby market conduct surveillance personnel collect and analyze information from filed schedules, surveys, required reports, and other sources in order to develop a baseline understanding of the marketplace and to identify patterns or practices of insurers or companies licensed to do business in this state that deviate significantly from the norm or that may pose a potential risk to insurance consumers;

(K) “Market conduct action,” any of the full range of activities that the director may initiate to assess the market and practices of individual insurers or companies, beginning with market analysis and extending to examinations. The director’s activities to resolve an individual consumer complaint or other reports of a specific instance of misconduct are not market conduct actions for the purposes of this chapter;

(L) “Market conduct examination,” the examination of the insurance operations of an insurer or company licensed to do business in this state in order to evaluate compliance with the applicable laws and regulations of this state. A market conduct examination may be either a comprehensive examination or a targeted examination. A market conduct examination conducted under sections 374.202 to 374.207, RSMo, is separate and distinct from a financial examination of an insurer, but may be conducted at the same time;

(M) “Market conduct surveillance personnel,” those individuals employed or contracted by the director to collect, analyze, review, examine, or act on information on the insurance marketplace, which identifies pattern or practices of insurers and other companies;

(N) “National Association of Insurance Commissioners” or “NAIC,” the organization of insurance regulators from the fifty (50) states, the District of Columbia, and the four (4) United States territories;

(O) “NAIC market conduct uniform examination procedures,” the set of guidelines developed and adopted by the NAIC designed to be used by market conduct surveillance personnel in conducting an examination;

(P) “NAIC Market Regulation Handbook,” a handbook, developed and adopted by the NAIC, or successor product, which—

1. Outlines elements and objectives of market analysis and the process by which states can establish and implement market analysis programs; and

2. Establishes guidelines for market conduct surveillance personnel examination practices;

(Q) “NAIC standard data request,” the set of field names and descriptions developed

and adopted by the NAIC for use by market conduct surveillance personnel in an examination;

(R) “On-site examination,” an examination conducted at the company’s home office or the location where the records under review are stored;

(S) “Targeted examination,” a for-cause review of either a specific line of business or specific business practices, including but not limited to underwriting and rating, tier classification, marketing and sales, complaint handling operations or management, advertising materials, licensing, policyholder services, non-forfeitures, claims handling, policy forms and filings, or compliance procedures and policies. A targeted examination may be conducted by desk examination or by an on-site examination; and

(T) “Warrant,” a written order of the director commanding the division to conduct a market conduct examination.

AUTHORITY: sections 374.045 and 374.202–374.207, RSMo 2000 and section 374.185, RSMo Supp. 2007.* Original rule filed April 1, 2008, effective Nov. 30, 2008.

*Original authority: 374.045, RSMo 1967, amended 1993, 1995; 374.185, RSMo 2007; and 374.202–374.207, RSMo see Missouri Revised Statutes.

20 CSR 100-8.005 Examination Warrants

PURPOSE: This rule implements the purposes of section 374.185, RSMo, and establishes uniform standards for the director in applying the discretion authorized in issuing warrants for market conduct examinations pursuant to sections 374.202 to 374.207, RSMo.

(1) The director is responsible for market regulation of insurers for Missouri policyholder protection and shall utilize market conduct actions, including market analysis, investigation, desk examinations, targeted examinations, and comprehensive examinations of insurers or other companies. Such actions shall be pursued by the division in a manner consistent with the purposes of section 374.185, RSMo.

(2) A market conduct examination shall be conducted only upon the issuance of a warrant by the director or with the written consent of the insurer or company. In furtherance of the purposes of section 374.185, RSMo, and to provide uniform standards designed to avoid arbitrary or capricious use of discretion in issuing warrants for market conduct examinations, the director shall apply the following standards in evaluating



factual support for a market conduct examination warrant:

(A) A request for a warrant need not be verified by oath, but must contain the signature of the chief market conduct examiner, and shall state facts sufficient to support the director's reasonable belief of cause as set forth below;

(B) The director may issue a warrant for—
1. A desk examination, if the director has reason to believe—

A. An insurer or other company may have engaged in, or taken a substantial step toward engaging in, or may have materially aided any other person in engaging in, any practice or course of business in violation of Chapter 287, Chapter 354, or Chapters 374 to 385, RSMo, or any rule adopted pursuant thereto, and the examination is reasonably calculated to provide data or other information relevant to this inquiry;

B. Significant changes have occurred in an insurer's or other company's market share during the last year for which an insurer cannot provide a satisfactory explanation;

C. Significant market changes threaten the availability or affordability of insurance coverage; or

D. An examination is required to be performed by law;

2. An on-site examination, if the director has reason to believe—

A. An insurer or other company has engaged in, is engaging in, has taken a substantial step toward engaging in, or has materially aided any other person in engaging in any practice or course of business in violation of Chapter 287, Chapter 354, or Chapters 374 to 385, RSMo, or any rule adopted pursuant thereto;

B. Significant market changes threaten the availability or affordability of insurance coverage; or

C. An examination is required to be performed by law;

(C) The evidence indicating that an insurer or other company has engaged in, is engaging in, has taken a substantial step toward engaging in, or has materially aided any other person in engaging in any practice or course of business in violation of Chapter 287, Chapter 354, or Chapters 374 to 385, RSMo, or any rule adopted pursuant thereto, shall be derived from the following sources:

1. Information obtained from a market conduct annual statement, market survey, or report of financial examination;

2. A number of complaints against the company indicating a particular practice or a complaint ratio that deviates significantly from the norm (a complaint ratio shall be established for each line of business);

3. Information obtained from other objective sources; or

4. Information obtained from any credible source with direct access to relevant information;

(D) The scope of a warrant shall be reasonably limited by the cause supporting the issuance of the warrant. If additional cause is discovered, and the examiner seeks to expand the scope of the warrant, a request must be made to modify or expand the previously issued warrant or a new warrant must be issued by the director; and

(E) A warrant shall—

1. Be in writing and in the name of the department;

2. Be directed to the division;

3. Identify the scope of the examination by describing the specific line of business or specific business practices to be examined and a reasonable estimate of the duration of the examination;

4. Identify whether the examination will be conducted as a desk examination, an on-site examination, or both; and

5. Be signed by the director.

(3) A warrant shall be served on the insurer or other company prior to commencing the market conduct examination.

(4) The warrant authorizes one (1) or more examiners designated by the director to perform the examination and shall instruct them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the Market Regulation Handbook adopted by the National Association of Insurance Commissioners (NAIC). The division may also employ such other guidelines or procedures as the director may deem appropriate not inconsistent with the provisions of this chapter.

AUTHORITY: sections 374.045 and 374.205, RSMo 2000 and section 374.055, RSMo Supp. 2007. Original rule filed April 1, 2008, effective Nov. 30, 2008.*

**Original authority: 374.045, RSMo 1967, amended 1993, 1995; 374.055, RSMo 2007; and 374.205, RSMo 1992, amended 1997, 1999.*

20 CSR 100-8.008 Hearing on Warrant

PURPOSE: This rule implements the purposes of section 374.055, RSMo, and establishes procedures for a hearing conducted to review cause to issue a market conduct examination warrant pursuant to sections 374.202 to 374.207, RSMo.

(1) Any insurer or other company served with a warrant may request a hearing before the director within fifteen (15) days of the date of service of the warrant. If a hearing is requested, the director shall schedule an expedited hearing within twenty (20) days of the request to review whether the division established cause to issue the warrant. The director may issue orders necessary to protect the identity of a confidential source. The director may vacate, set aside, modify, or affirm the warrant.

(2) If the director fails to make a final determination within twenty (20) days of the hearing, the warrant is deemed affirmed and may be executed, and the administrative determination is final for purposes of review. Any final determination of the director is subject to judicial review under section 374.055, RSMo, Chapter 536, RSMo, and 20 CSR 800-1.100, but during the pendency of judicial review, the execution of the warrant shall not be delayed and is enforceable as provided by law.

AUTHORITY: sections 374.045 and 374.205, RSMo 2000 and section 374.055, RSMo Supp. 2007. Original rule filed April 1, 2008, effective Nov. 30, 2008.*

**Original authority: 374.045, RSMo 1967, amended 1993, 1995; 374.055, RSMo 2007; and 374.205, RSMo 1992, amended 1997, 1999.*

20 CSR 100-8.010 Standards of Examination

PURPOSE: This rule sets out the scope of the rules in this chapter and provides definitions to aid in the interpretation of the rules in this chapter.

(1) Examination Protocol. The director shall monitor the market conduct of insurers and producers transacting business in Missouri by using uniform standards of examination developed in consultation with members of the National Association of Insurance Commissioners (NAIC). Uniform state standards may be adopted by review and adoption of the *Market Conduct Examiners Handbook*, the *Market Regulation Handbook*, or other guides adopted by the director.

AUTHORITY: section 374.045, RSMo 2000. Original rule filed Nov. 1, 2007, effective July 30, 2008.*

**Original authority: 374.045, RSMo 1967, amended 1993, 1995.*



20 CSR 100-8.012 Timing of Examinations

PURPOSE: This rule implements the purposes of section 374.185, RSMo, and establishes uniform standards for the timing of market conduct examinations pursuant to sections 374.202 to 374.207, RSMo.

(1) The director is authorized to determine the frequency and timing of market conduct actions. The timing shall depend upon the specific market conduct action to be initiated in accordance with the best practices set out in the National Association of Insurance Commissioners (NAIC) Market Regulation Handbook, unless extraordinary circumstances indicating a risk to consumers require immediate action.

(2) If the director has information that more than one (1) insurer or company is engaged in common practices that may violate statutes or regulations, the director may issue warrants for and coordinate multiple examinations simultaneously.

AUTHORITY: sections 374.045 and 374.205, RSMo 2000 and section 374.185, RSMo Supp. 2007. Original rule filed April 1, 2008, effective Nov. 30, 2008.*

*Original authority: 374.045, RSMo 1967, amended 1993, 1995; 374.185, RSMo 2007; and 374.205, RSMo 1992, amended 1997, 1999.

20 CSR 100-8.014 Collaborative Actions

PURPOSE: This rule implements the purposes of section 374.185, RSMo, and establishes relevant standards for the director in applying the discretion authorized in issuing warrants for market conduct examinations pursuant to sections 374.202 to 374.207, RSMo, when other states are considering a market conduct examination regarding the same company or have recently issued a market conduct report regarding the same company.

(1) To provide uniform standards designed to avoid arbitrary or capricious use of discretion in issuing warrants for market conduct examinations, the director shall apply the following standards in evaluating factual support for a warrant when another jurisdiction is considering conducting a market conduct examination or has issued a market conduct report for an examination that has been conducted within the last three (3) years:

(A) In lieu of issuing a warrant for a market conduct examination, the director may delegate responsibility for conducting an examination of a domestic company, foreign

company, or an affiliate of a company to the insurance commissioner of another jurisdiction if that insurance commissioner agrees to accept the delegated responsibility for the examination, and the domestic company, foreign company, or affiliate has a significant number of policies or significant premium volume in that jurisdiction. If the director elects to delegate responsibility for examining a company, the division shall accept a report of the examination prepared by the insurance commissioner to whom the responsibility has been delegated;

(B) In lieu of requesting a warrant by the director and conducting a market conduct examination of a company, the division shall accept a report of a market conduct examination on such company prepared by the insurance commissioner of the company's jurisdiction or state of domicile or another jurisdiction state if the director has determined—

1. The laws of that jurisdiction applicable to the subject of the examination are substantially similar to those of this state;

2. The examining jurisdiction has a market conduct analysis and examination system comparable to the system required under Chapter 7 of this division; and

3. The examination from the other jurisdiction's commissioner has been conducted within the past three (3) years; and

(C) Notwithstanding the above provisions, if the insurance commissioner to whom the examination responsibility was delegated, or the report of a market conduct examination prepared by the insurance commissioner of another jurisdiction, did not evaluate the specific area or issue of concern to the director or a specific requirement of Missouri law, the director may issue a warrant for a targeted examination to evaluate that specific area or issue of concern.

(2) Subject to a determination under this rule, if a market conduct examination conducted by another jurisdiction results in a finding that an insurer or other company should modify a specific practice or procedure, the director shall accept documentation that the company has made a similar modification in this state, in lieu of initiating a market conduct action or examination related to that practice or procedure. In order to protect the interests of consumers, policyholders, and claimants of this state, the director may initiate such other enforcement action as is necessary to assure compliance with the laws and regulations of this state. The director may require other or additional practice or procedure modifications as are necessary to achieve compliance with specific state laws or regulations, which

differ substantially from those of the examining jurisdiction.

(3) If at any time prior to or during an examination it is brought to the attention of the examiner-in-charge that the insurer or other company has modified such practice or procedure as a result of a market conduct action taken by the commissioner of another jurisdiction, the examiner-in-charge shall accept documentation that the company has satisfactorily modified the practice or procedure and made similar modification to such practice or procedure in this state. In order to protect the interests of consumers, policyholders, and claimants of this state, the director may initiate such other enforcement action as is necessary to assure compliance with the laws and regulations of this state.

(4) If the insurer or other company to be examined is not a domestic company, the director, upon issuance of an examination warrant, shall communicate with and may coordinate the examination with the insurance commissioner of the jurisdiction or state in which the company is domiciled.

AUTHORITY: sections 374.045 and 374.205, RSMo 2000 and section 374.185, RSMo Supp. 2007. Original rule filed April 1, 2008, effective Nov. 30, 2008.*

*Original authority: 374.045, RSMo 1967, amended 1993, 1995; 374.185, RSMo 2007; and 374.205, RSMo 1992, amended 1997, 1999.

20 CSR 100-8.015 Notice of Examination

PURPOSE: This rule implements the purposes of section 374.185, RSMo, and establishes uniform standards for providing notice of an on-site market conduct examination to the insurer and reporting the examination warrant to the National Association of Insurance Commissioners (NAIC), along with a procedure for encouraging resolution prior to incurring unnecessary examination expenses.

(1) The director shall announce to the applicable company an examination and shall post an announcement of such examination on the National Association of Insurance Commissioners (NAIC's) examination tracking system, or comparable NAIC product, as determined by the director, subject to the NAIC's technological constraints, as soon as possible, but in no case later than sixty (60) days before the estimated commencement of the examination. The director may reduce the sixty (60)-day notice if the director has determined that the company has engaged in or is



engaging in any practice or course of business in violation of Chapter 287, Chapter 354, or Chapters 374 to 385, RSMo, and the sixty (60)-day notice would result in continuing injury to consumers. In the event that the notice period is reduced to less than sixty (60) days, the company is entitled to an expedited hearing as allowed by 20 CSR 100-8.008. A warrant issued under 20 CSR 100-8.005 may be incorporated to provide some of the information required in this notice, but such announcement shall contain—

- (A) The name and address of the insurer or company being examined;
- (B) The name and contact information of the audit manager;
- (C) The reason for and the scope of the examination;
- (D) The date the examination is scheduled to begin;
- (E) Identification of any personnel not employed by the department who will assist in the examination, if known at the time the notice is prepared;
- (F) A time estimate for the examination;
- (G) A budget and work plan for the examination and identification of reasonable and necessary costs and fees that will be included in the bill, if the cost of the examination is billed to the insurer company; and
- (H) A request for the insurer company to name its examination coordinator.

(2) The company shall be notified of any practice or procedure which is to be the subject of an examination warrant. Prior to commencing any examination, the company shall be given an opportunity to resolve such matters that arise as a result of a market analysis to the satisfaction of the director through informal resolution, settlement agreement, curative order, or other formal resolution under sections 374.046 to 374.049, RSMo.

AUTHORITY: sections 374.045 and 374.205, RSMo 2000 and section 374.185, RSMo Supp. 2007. Original rule filed April 1, 2008, effective Nov. 30, 2008.*

*Original authority: 374.045, RSMo 1967, amended 1993, 1995; 374.185, RSMo 2007; and 374.205, RSMo 1992, amended 1997, 1999.

20 CSR 100-8.016 Examination Procedures

PURPOSE: This rule implements the purposes of section 374.185, RSMo, and establishes uniform standards for the director in applying the discretion authorized in issuing warrants for market conduct examinations pursuant to sections 374.202 to 374.207, RSMo.

- (1) Prior to commencement of an on-site market conduct examination, market conduct surveillance personnel shall prepare a work plan and proposed budget and provide the work plan and proposed budget to the company under examination.
- (2) Market conduct examinations shall, to the extent feasible, utilize desk examinations and data requests prior to commencing on-site examination activity.
- (3) Market conduct examinations shall be conducted in accordance with the provisions set forth in the National Association of Insurance Commissioners (NAIC) Market Regulation Handbook, or in department regulations, if inconsistent with the NAIC Market Regulation Handbook, for the type of examination being conducted.
- (4) The examiner-in-charge shall conduct a pre-examination conference with the company examination coordinator and key personnel to clarify expectations thirty (30) days prior to commencement of the examination.
- (5) If a targeted examination is expanded beyond the scope of the warrant and the reasons provided to the company in the notice of the examination required under this section, the director shall modify the warrant or issue a new warrant and provide written notice to the company explaining the extent of the expansion and the reasons for the expansion. The division shall provide a revised work plan to the company before the beginning of any significantly expanded examination, unless extraordinary circumstances indicating a risk to consumers require immediate action.
- (6) Prior to the conclusion of a market conduct examination, the examiner-in-charge shall schedule and conduct an exit conference with the company as outlined by the NAIC Market Regulation Handbook.

AUTHORITY: sections 374.045 and 374.205, RSMo 2000 and section 374.185, RSMo Supp. 2007. Original rule filed April 1, 2008, effective Nov. 30, 2008.*

*Original authority: 374.045, RSMo 1967, amended 1993, 1995; 374.185, RSMo 2007; and 374.205, RSMo 1992, amended 1997, 1999.

20 CSR 100-8.017 Contract Examiners

PURPOSE: This rule implements the purposes of section 374.185, RSMo, and establishes uniform standards for the director appointing contract examiners to perform or assist in market conduct examinations pursuant to sections 374.202 to 374.207, RSMo.

- (1) In any contract with qualified examiners necessary to perform a market conduct examination, the director shall specify—

- (A) The functions to be subject to the outsourcing;
- (B) The timelines for completion of the outsourced review;
- (C) Requirements for disclosure of the examiners' recommendations; and
- (D) Requirements for disclosure of the terms of the contracts with the outside consultants participating in the examination, including costs and fees/rates to be assessed to the company.

- (2) The director may contract pursuant to applicable state contracting procedures for such qualified contract examiners and actuaries and shall contract to provide reasonable compensation. All procurements must be awarded to the lowest and best bid as defined in section 34.040, RSMo.

AUTHORITY: sections 374.045 and 374.205, RSMo 2000 and section 374.185, RSMo Supp. 2007. Original rule filed April 1, 2008, effective Nov. 30, 2008.*

*Original authority: 374.045, RSMo 1967, amended 1993, 1995; 374.185, RSMo 2007; and 374.205, RSMo 1992, amended 1997, 1999.

20 CSR 100-8.018 Post-Examination Procedure

PURPOSE: This rule implements the purposes of section 374.185, RSMo, and establishes uniform post-examination standards for the director and the company following a market conduct examination pursuant to sections 374.202 to 374.207, RSMo.

- (1) The post-examination procedure shall be conducted in a manner consistent with the purposes of section 374.185, RSMo. In accordance with the National Association of Insurance Commissioners (NAIC) market conduct uniform examination procedures, the director shall require the following timelines and procedures following the completion of an examination:

- (A) No later than sixty (60) days following completion of the examination, the examiner-in-charge or audit manager shall file with the department a verified draft report of examination under oath. Within ten (10) days of receipt of the verified draft report, the department shall send the draft report via certified mail to the company together with a notice which shall afford the company examined a reasonable opportunity to respond with written comments or make a written submission



or rebuttal with respect to any matter contained in the examination report;

(B) Completion of the examination shall be defined as the date the examiner-in-charge signs and submits the draft report to the audit manager for approval and signature;

(C) The company is not obligated to submit written comments, submissions, or rebuttals to the draft report as allowed in subsection (1)(A) of this rule. However, if the company chooses to do so, it shall respond with written comments within thirty (30) days of receipt of the draft report, unless a mutual agreement is reached with the department to extend the deadline;

(D) The division shall make a good faith effort to resolve issues and prepare a final report within thirty (30) days of receipt of the company's written comments, submissions, or rebuttals, unless a mutual agreement is reached to extend the deadline;

(E) The division may modify the examination findings and finalize the report, as appropriate. Upon determination that the report is final, the division shall forward a copy of the final report to the company along with a notice apprising the company of its rights under subsection (1)(F), below;

(F) The company shall, within thirty (30) days of receipt of the final report, accept the final report, accept the findings of the report, file written comments, or petition to modify the findings with a request for hearing. The company is not obligated to submit a response to the final report. The director may allow an additional thirty (30) days if requested by the company. Any petition to modify the findings with a hearing request shall be made in writing, and a hearing shall be held. After a hearing the director shall issue final examination findings; and

(G) Within thirty (30) days of the end of the period allowed for the receipt of an acceptance or comments by the company or following a hearing, the director shall fully consider and review the report, together with any written comments and any relevant portions of the examiner's work papers and enter an order:

1. Accepting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation, or prior order of the director, the director may issue an order for any legal or regulatory action as the director deems appropriate, provided that this order shall be a confidential internal order directing the department to take certain action, or the company and the division may negotiate a consent order, curative order, or settlement agree-

ment. Any such order or agreement shall be final once issued or approved by the director;

2. Rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional documents, data, information, and requiring the submission of either a new report or a supplemental report; or

3. For an investigatory hearing with no less than twenty (20) days' notice to the company for purposes of obtaining additional documents, data, information, and testimony.

- (2) Once all administrative proceedings regarding the examination pursuant to subsections (1)(F) and (1)(G) are final, the department shall make available written and electronic versions of the final report. Both versions of the final report shall include the company's written response, if any, and any negotiated text of the examination report and the concluding document, whether that is an administrative order of the director, curative order of the director, or a stipulation of settlement and order.

- (3) All orders entered pursuant to subsection (1)(G) shall be accompanied by findings and conclusions resulting from the director's consideration and review of the examination report, relevant examiner work papers, and written submissions, rebuttals, or comments, if any submitted by the company. A finding issued under subsection (1)(F) shall not be considered a final order. Any order issued under paragraph (1)(G)1. shall be considered a final administrative decision and may be appealed pursuant to section 374.055, RSMo, Chapter 536, RSMo, and 20 CSR 800-1.100 and shall be served upon the company by certified mail, together with a copy of the final examination report. Within thirty (30) days of the issuance of the final findings, as outlined in subsection (1)(G), the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the final report and related orders.

- (4) In conducting an investigatory hearing pursuant to paragraph (1)(G)3.—

- (A) The hearing shall proceed expeditiously with discovery by the company limited to the examiner's work papers which tend to substantiate any assertions set forth in any written submission or rebuttal.

- (B) The director may issue subpoenas for the attendance of any witnesses or the production of any documents deemed relevant to the investigation whether under the control of the department, the company, or other persons. The documents produced shall be

included in the record, and testimony taken by the director shall be under oath and preserved for the record.

(C) The provisions of this section shall not require the director to disclose any information or records which would indicate or show the existence of any investigation or activity of a criminal justice agency.

(D) The division shall proceed with evidence, including representatives of the company. Thereafter, the company may present testimony relevant to the investigation.

(E) The company and the division shall be permitted to make closing statements.

AUTHORITY: sections 374.045 and 374.205, RSMo 2000 and section 374.185, RSMo Supp. 2007.* Original rule filed April 1, 2008, effective Nov. 30, 2008.

*Original authority: 374.045, RSMo 1967, amended 1993, 1995; 374.185, RSMo 2007; and 374.205, RSMo 1992, amended 1997, 1999.

20 CSR 100-8.020 Sampling and Error Rates

PURPOSE: This rule effectuates and aids in the interpretation of sections 375.1007, 375.445 and 375.936(6), RSMo regarding detection of frequency to indicate a business practice under the Unfair Claims Settlement Practices Act or conducting business fraudulently, not in good faith or in a manner constituting misrepresentations or false advertising.

(1) Unfair Claims Settlement Rates.

(A) As used in section (1), the terms and phrases mean as follows:

1. "Time error rate," any one (1) of the following:

- A. Acknowledgment time error rate, the percentage of claims in which the insurer has performed an act described in section 375.1007(2), RSMo or violated 20 CSR 100-1.030;

- B. Investigation time error rate, the percentage of claims in which the insurer has performed an act described in section 375.1007(3), RSMo or violated 20 CSR 200-1.040; and

- C. Determination time error rate, the percentage of claims in which the insurer has performed an act described in section 375.1007(7), RSMo or violated 20 CSR 200-1.050(1)(A).

2. "Unfair settlement rate," the percentage of claims in which the insurer has performed an act described in section 375.1007(1), (5), (6), (8), (15), RSMo or



violated 20 CSR 200-1.020 and 20 CSR 200-1.050(1)(B) or 20 CSR 200-1.050(2).

(B) The time error rates and unfair settlement rate will be important in determining whether the insurer has engaged in an unfair settlement practice as that phrase is used in section 375.1007, RSMo; however, other relevant factors will be considered in making the determinations. No attempt is made in this regulation to list other relevant factors because these factors depend on the facts of each case and no exhaustive or comprehensive list of other factors can be made.

(C) The time error rates and unfair settlement rate may be established by census or by an appropriate random sample. Whether a random sample was appropriate will be determined on a case-by-case basis.

(2) Unfair, Fraudulent, or Bad Faith Conduct in Claims Settlement.

(A) As used in section (2), the terms and phrases mean as follows:

1. "Insurance law," any statutory provision in Chapters 354 or 374 through 385, RSMo or any regulation promulgated thereunder;

2. "Claims error rate," the percentage of claims in which the insurer violated any insurance law, except section 375.1007, RSMo or 20 CSR 100-1.010, 20 CSR 100-1.020, 20 CSR 100-1.030, 20 CSR 100-1.040, 20 CSR 100-1.050, 20 CSR 100-1.100, section (1) of this rule and 20 CSR 300-2.100 or accepted or denied claims other than in accordance with the terms of an applicable policy, contract, certificate, endorsement or rider except where that acceptance or denial has already been included in the claims error rate as a violation of an insurance law;

3. "Cancelled, Non-Renewed, Declined (CND) error rate," the percentage of cancelled and non-renewed policies and declined policy applications in which the insurer cancelled, non-renewed or declined in violation of any insurance law or the terms of the insurer's policy, contract, certificate, endorsement or rider, or underwriting manuals or guidelines on file with the director;

4. "Post-claims underwriting index," in life or accident or health insurance, means the ratio which the contestable policies or certificates which are rescinded by an insurer after a claim has been made or in which a claim has been resisted on the grounds of misrepresentation as divided by the total contestable policies or certificates on which claims have been made bears to the applications for insurance declined or rejected by the insurer as divided by the total applications for insurance;

5. "Quotation error rate," the percentage of personal lines property and casualty policies, contracts, certificates, endorsements or riders in which the premium quoted by the agent of the insurer is more than five dollars (\$5) different than the premium actually charged by the insurer, excluding policies, contracts, certificates, endorsements or riders in which the information relied on by the agent is substantially different than the information relied on by the insurer; and

6. "Rating error rate," the percentage of policies, contracts, certificates, endorsements or riders in which the premium actually charged the insured is more than five dollars (\$5) different than the premium which should have been charged had the insurer calculated the premium in accordance with its policies, contracts, certificates, endorsements, riders and rating manuals or schedules on file with the director.

(B) The rates and index set forth in this regulation will be important in determining whether a violation of section 375.445, RSMo has occurred and the quotation error rate may also be considered in determining whether misrepresentations and false advertising of insurance policies within the meaning of section 375.936(6), RSMo has occurred. However, other relevant factors will be considered in making these determinations. No attempt is made in this regulation to list other relevant factors because other factors depend on the facts of each case and no exhaustive or comprehensive list of other relevant factors can be made.

(C) The rates or index may be established by census or by an appropriate random sample. Whether a random sample was appropriate will be determined on a case-by-case basis to ensure that the sample reflects a true random selection from the group as a whole and not so constricted by location, types, or time frame as to provide an inaccurate depiction of the overall group.

AUTHORITY: sections 374.045, 375.948 and 375.1018, RSMo 2000.* Original rule filed Nov. 1, 2007, effective July 30, 2008.

*Original authority: 374.045, RSMo 1967, amended 1993, 1995; 375.948, RSMo 1959, amended 1978, 1991; and 375.1018, RSMo 1991.

20 CSR 100-8.040 Insurer Record Retention

PURPOSE: This rule describes the requirements for record keeping for insurers and related entities doing business in this state. This regulation was adopted pursuant to the provisions of section 374.045, RSMo and to

implement sections 287.350, 354.190, 354.465, 374.190, 374.210, 375.158, 379.343 and 379.475, RSMo and 144.027, 354.149, 354.717, 375.022, 375.150, 375.151, 375.926, 375.932, 375.938, 375.1002 and 375.1009, RSMo.

(1) As used in this rule, the terms and phrases mean as follows:

(A) "Application," any written or electronic application form, any enrollment form, any document used to add coverage under any existing policy, any questionnaire, telephone interview form, paramedical interview form, or any other document used to question or underwrite an applicant for any policy issued by an insurer or for any declination of coverage by an insurer. "Application" does not include documents, questionnaires or notes generated in response to a request for a premium quote which did not result in an application for coverage;

(B) "Business entity," as that term is defined in section 375.012.1(1), RSMo;

(C) "Claim," as that term is defined in section 20 CSR 100-1.010(1)(B);

(D) "Examiner," a market conduct examiner authorized by the director to conduct an examination pursuant to section 374.202.2(4), RSMo;

(E) "Inquiry," a specific question, criticism or request made in writing to an insurer by a market conduct examiner duly appointed by the director;

(F) "Insurer," as that term is defined in section 375.932 or 375.1002, RSMo; and

(G) "Policy," as that term is defined in section 375.932(5), RSMo. The term "policy" shall also include any evidence of coverage issued by a health maintenance organization to an enrollee.

(2) **Records Required.** Every insurer transacting business in this state shall maintain its books, records, documents and other business records in a manner so that the following practices of the insurer may be readily ascertained during market conduct examinations: claims handling and payment, complaint handling, termination, rating, underwriting and marketing.

(3) **Records to be Maintained.** The following records shall be maintained:

(A) A Missouri policy record file shall be maintained for each Missouri policy issued, and shall be maintained for the duration of the current policy term plus two (2) calendar years. Missouri policy records shall be maintained so as to show clearly the policy period, basis for rating and any imposition of additional exclusions from or exceptions to



coverage. Missouri policy records need not be segregated from the policy records of other states so long as they are readily available to Missouri market conduct examiners as required under this rule. Missouri policy records shall include the following:

1. The actual, completed application for each contract.

A. The application shall bear the signature of the applicant whenever the insurer intends to retain any right to contest any warranty, representation or condition contained in the application.

B. The application shall bear a clearly legible means by which an examiner can identify any insurance producer involved in the transaction. The examiners shall be provided with any information needed to determine the identity of said insurance producer;

2. Any declaration pages (the initial page and any subsequent pages), the insurance contract, any certificates evidencing coverage under a group contract, any endorsements or riders associated with a policy, and any written or electronic correspondence to or from the insured pertaining to the coverage. If any of these records has already been filed with the department, a separate copy of the record need not be maintained in the individual policy files to which the record pertains, provided it is clear from the insurer's other records or systems that the record applies to a particular policy and that any data contained in the record relating to that policy can be retrieved or recreated;

3. Any binder with terms and conditions that differ from the terms and conditions of the policy subsequently issued; and

4. Any guidelines, manuals or other information necessary for the reconstruction of the rating and underwriting of the policy. The maintenance at the site of a market conduct examination of a single copy of each of the above shall satisfy this requirement. If any such rating or underwriting record is computer based, the records used to input the information into the computer system shall also be available to the examiners;

(B) A Missouri claim file shall be maintained for the calendar year in which the claim is closed plus three (3) years. The claim file shall be maintained so as to show clearly the inception, handling, and disposition of each claim. The claim file(s) shall be sufficiently clear and specific so that pertinent events and dates of these events can be reconstructed. A Missouri claim file(s) shall include the following:

1. Any notification of claim, proof of loss, claim form(s), proof of claim payment check/draft, notes, contract, declaration pages, certificates evidencing coverage under

a group contract, endorsements or riders, work papers, any written communication, and any documented or recorded telephone communication related to the handling of a claim, including the investigation, payment and/or denial of the claim, and any claim manual(s) or other information necessary for reviewing the claim. Where a particular document pertains to more than one (1) file, insurers may satisfy the requirements of this paragraph by making available, at the site of a market conduct examination, a single copy of each document;

2. Documents in a claim file received from an insured, the insured's insurance producer, a claimant, the department or any other insurer shall bear the initial date of receipt date-stamped by the insurer in a legible form in ink or some other permanent manner. Unless the company provides the examiners with written procedures to the contrary, the earliest date stamped on a document will be considered the initial date of receipt;

3. In cases of a total loss on property claims for a motor vehicle, trailer, boat or outboard motor, the claim file shall contain a copy of the certification described in section 144.027, RSMo attesting to the amount of the insurance proceeds and any deductible obligation paid by the claimant regarding the loss. The certification shall contain a statement informing the claimant that the sales tax credit is valid for only one hundred eighty (180) days; and

4. If an insurer, as its regular business practice, places the responsibility for handling certain types of claims upon company personnel other than its claims personnel, the insurer need not duplicate its files for maintenance by claims personnel. These claims records must be maintained as part of the records of the insurer's operations and must be readily available to examiners. Notwithstanding the definition of "claim" at subsection 20 CSR 100-1.010(1)(B), the time requirements for the retention of records for policy files stated at section 374.205.2(2), RSMo, apply to claims handled by the company's personnel who typically handle policy files;

(C) Records to be maintained relating to the insurer's compliance with Missouri's licensing requirements shall include the Missouri licensing records of each insurance producer associated with the insurer. Licensing records shall be maintained so as to show clearly the dates of the appointment and terminations of each insurance producer. In accordance with the provisions of section 375.158, RSMo, insurers must have procedures in place to request, review, and document current licenses of each insurance producer to whom a commission will be paid or

to validate the producer's licensure status prior to the payment of this commission. Upon request by the director, insurers shall provide documentation that such license verification procedures were followed. The date of the receipt by the insurer of the copy of the license shall be indicated by a date-stamp placed on the license. Unless the company provides the examiners with written procedures to the contrary, the earliest date stamped on a document will be considered the initial date of receipt;

(D) The Missouri complaint records required to be maintained under section 375.936(3), RSMo shall include a complaint log or register in addition to the actual written complaints. The complaint log or register shall show clearly the total number of complaints for a period of not less than the immediately preceding three (3) years, the classification of each complaint by line of insurance, the nature of each complaint, and the disposition of each complaint. The complaint log or register shall also contain a reference to the location of the file to which each complaint corresponds. If the insurer maintains the file in a computer format, the reference in the complaint log or register for locating such documentation shall be an identifier such as the policy number or other code. Such codes shall be provided to the examiners at the time of an examination;

(E) The insurer shall retain declined underwriting files for a period of three (3) years from the date of declination. The term "declined underwriting file" shall mean all written or electronic records concerning a policy for which an application for insurance coverage has been completed and submitted to the insurer or its insurance producer but the insurer has made a determination not to issue a policy or not to add additional coverage when requested. A declined underwriting file shall include an application, any documentation substantiating the decision to decline an issuance of a policy, any binder issued without the insurer issuing a policy, any documentation substantiating the decision not to add additional coverage when requested and, if required by law, any declination notification. Notes regarding requests for quotations which do not result in a completed application for coverage need not be maintained for purposes of this regulation; and

(F) The insurer shall retain claim files for a period of three (3) years from the date of the claim determination. These files shall contain all notes and work papers pertaining to the claim in such detail that pertinent events and the dates of these events can be reconstructed. Documentary material which



is pertinent to the investigation and/or denial of a claim shall be legibly date stamped with the date of receipt whether it is from an insured, his/her agent, a claimant, the department or any other insurer.

(4) Form of Record.

(A) Any record required to be maintained by an insurer, may be in the form of paper; photograph; computer; magnetic, mechanical or electronic medium; or any process which accurately forms a durable reproduction of the record, so long as the record is capable of duplication to a hard copy that is as legible as the original document. Documents that require the signature(s) of the insured and/or insurer's insurance producer, shall be maintained in any format as listed above provided evidence of the signature(s) is preserved in that format.

(B) The maintenance of records in a computer-based format shall be archival in nature only, so as to preclude, to the extent reasonable, the alteration of the record after the initial transfer to a computer format. Upon request of an examiner all records shall be capable of duplication to a hard copy that is as legible as the original document. Such records shall be maintained according to written procedures developed and adhered to by the insurer. Said written procedures shall be made available to the department's market conduct examiners in accordance with section (6) below.

(C) Photographs, microfilms or other image-processing reproductions of records shall be equivalent to the originals and may be certified as the same in actions or proceedings before the department unless inconsistent with 20 CSR 800-1.100.

(5) Location of Files. All records required to be maintained under this rule shall be kept in a location which will allow the records to be produced for examination within the time period required under section (6) of this rule. When, under normal circumstances, someone other than the insurer maintains a required record or type of record, the other person's or entity's responsibility to maintain the records shall be set forth in a written agreement, a copy of which shall be maintained by the insurer and shall be available to the examiners for purposes of examination.

(6) Time Limits to Provide Records and to Respond to Examiners.

(A) An insurer shall provide any record requested by any examiner within ten (10) calendar days. When the requested record is not or cannot be produced by the insurer within ten (10) calendar days, this nonpro-

duction shall be deemed a violation of this rule, unless the insurer can demonstrate to the satisfaction of the director that the requested record cannot reasonably be provided within ten (10) calendar days of the request.

(B) As a means to facilitate the examination and to aid in the examination in accordance with section 374.205.2(2), RSMo, an insurer shall provide a written response to any inquiry submitted by any examiner within ten (10) calendar days. When the requested information is not provided by the insurer within ten (10) calendar days, a violation shall be deemed to have occurred, unless the insurer can demonstrate to the satisfaction of the director that the requested response cannot reasonably be provided within ten (10) calendar days of the inquiry.

(7) Examination Work Papers. Records required to be provided during a market conduct examination shall be returned to the insurer following the examination, unless such records relate to an inquiry made by a department examiner. Records related to an inquiry shall become a part of the work papers of the examination. Regulation 20 CSR 10-2.400 shall govern the public access to the work papers of the examination.

AUTHORITY: sections 374.045 and 375.948, RSMo 2000. Original rule filed Nov. 1, 2007, effective July 30, 2008.*

*Original authority: 374.045, RSMo 1967, amended 1993, 1995 and 375.948, RSMo 1959, amended 1978, 1991.