



Rules of
Department of Commerce and
Insurance
Division 100—Insurer Conduct
Chapter 8—Market Conduct Examination

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**Title 20—DEPARTMENT OF
COMMERCE AND INSURANCE
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 are to be read together with Chapter 536, RSMo, and sections 374.202 to 374.207, RSMo.

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

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

(B) “Complaint,” has the same meaning as in section 375.936(3), RSMo;

(C) “Confirmed Complaint,” a complaint in which the state department of insurance determines:

1. The insurer, licensee, producer, or other regulated entity committed any violation of:

A. An applicable state insurance law or regulation;

B. A federal requirement that the state department of insurance has the authority to enforce; or

C. The term/condition of an insurance policy or certificate; or

2. The complaint and entity's response, considered together, indicate that the entity was in error;

(D) “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, nonforfeitures, policy forms and filings, claim handling, and other state-specific requirements;

(E) “Department,” the Department of Commerce and Insurance;

(F) “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;

(G) “Director,” the director of the Department of Commerce and Insurance;

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

(I) “Examination warrant,” a document issued by the director or the director's designee appointing one (1) or more examiners to perform a market conduct examination and instructing them as to the scope of the examination;

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

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

(L) “Market analysis,” a process whereby market conduct surveillance personnel collect and analyze information from filed schedules, surveys, 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;

(M) “Market conduct action,” any of the full range of activities that the director may initiate to assess and address 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;

(N) “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;

(O) “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;

(P) “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;

(Q) “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;

(R) “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.

(S) “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;

(T) “On-site examination,” an examination conducted at the company's home office or the location where the records under review are stored;

(U) “Qualified contract examiner,” a person under contract to the department, who is qualified by education, experience, and, where applicable, professional designations, to perform market conduct actions; and

(V) “Targeted examination,” a focused exam, based on the results of market analysis indicating the need to review either a specific line of business or specific business practices, including, but not limited to, underwriting and rating, marketing and sales, complaint handling, operations or management, advertising materials, licensing, policyholder services, nonforfeitures, claims handling, policy forms and filings, or any other area of review in the NAIC Market Regulation Handbook. A targeted examination may be conducted by desk examination or by an on-site examination.

AUTHORITY: sections 374.045, 374.185, and 374.202–374.207, RSMo 2016. Original rule filed April 1, 2008, effective Nov. 30, 2008. Amended: Filed Dec. 13, 2018, effective July 30, 2019. Non-substantive change filed Sept. 11, 2019, published Oct. 31, 2019.*

**Original authority: 374.045, RSMo 1967, amended 1993, 1995, 2008; 374.185, RSMo 2007, amended 2016; 374.202, RSMo 2002, amended 2008; 374.205, RSMo 1992, amended 1997, 1999, 2016; and 374.207, RSMo 1992.*

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 examination 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 will utilize market conduct actions, including market analysis, investigation, desk examinations, targeted examinations, and comprehensive examinations of insurers or other companies. Such actions will be pursued by the division in a manner consistent with the purposes of section 374.185, RSMo.

(2) A market conduct examination will be conducted only upon the issuance of an examination 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 examination warrants for market conduct examinations, the director will apply the following standards in evaluating factual support for a market conduct examination warrant:

(A) A request for an examination warrant need not be verified by oath, but will contain the signature of the chief market conduct examiner, and state facts sufficient to support the director's reasonable belief of cause as set forth in subsection (2)(B);

(B) The director may issue an examination 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, will be derived from the following sources:

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

2. Confirmed complaint(s) against the company indicating a particular practice or a complaint ratio that deviates significantly from the norm;

3. Information obtained from other objective sources; or

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

(D) An examination warrant shall be based on cause and will be reasonably limited in scope to the specific line(s) of business, the specific business practice(s), and the time period to be examined, as identified in the examination warrant. If additional cause is discovered, which leads the examiner to believe additional lines of business, additional business practices, or additional time periods need to be examined, or if the examiner believes a different method of examination needs to be employed, a request to modify or expand the previously issued examination warrant or for a new examination warrant will be made to the director who may issue a new or modified warrant. The identification of additional laws violated does not necessitate a request to modify or expand a previously issued warrant; and

(E) An examination warrant will—

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(s) of business, the specific business practice(s) to be examined, and the time period to be reviewed during the examination;

4. Identify the law(s) the director reasonably believes were violated and the cause that supports the director's determination to issue the examination warrant. The division is not precluded from pursuing or citing to

other violations of law through the course of an examination that are not specified under the originally issued warrant. In identifying the cause, the examination warrant need only indicate a general category(ies) of information relied upon, including, but not limited to, complaint(s), complaint indices, market conduct annual statement(s), market share(s), financial examination(s), information from other states, legal referral(s), premium shift in line(s) of business, statistical information, market conduct examination results, new operation(s), reexamination(s), and/or evaluation(s) of new laws;

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

6. Be signed by the director.

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

(4) In conducting the examination, the examiner will observe those guidelines and procedures set forth in the Market Regulation Handbook adopted by the National Association of Insurance Commissioners (NAIC).

AUTHORITY: sections 374.045, 374.185, and 374.202–274.207, RSMo 2016. Original rule filed April 1, 2008, effective Nov. 30, 2008. Amended: Filed Dec. 13, 2018, effective July 30, 2019.*

**Original authority: 374.045, RSMo 1967, amended 1993, 1995, 2008; 374.185, RSMo 2007, amended 2016; 374.202, RSMo 2002, amended 2008; 374.205, RSMo 1992, amended 1997, 1999, 2016; and 374.207, RSMo 1992.*

20 CSR 100-8.008 Hearing on Examination Warrants

PURPOSE: This rule 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 an examination warrant may request a hearing before the director within fifteen (15) days of the date of service of the examination warrant. If a hearing is requested, the director will schedule an expedited hearing within twenty (20) days of the request to review whether the director a) had a reasonable belief of cause to issue the examination warrant; or b) had a reasonable belief supporting the time period set forth in the examination warrant, if longer than three (3) years. The director may issue orders necessary to protect



the identity of a confidential source. The director may vacate, set aside, modify, or affirm the examination warrant.

(2) If the director fails to make a final determination within twenty (20) days of the hearing, the examination 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 pursuant to section 536.100, RSMo, but during the pendency of judicial review, the execution of the examination warrant shall not be delayed and is enforceable, unless stayed by a reviewing court pursuant to section 536.120, RSMo.

AUTHORITY: sections 374.045, 374.205, and 374.207, RSMo 2016. Original rule filed April 1, 2008, effective Nov. 30, 2008. Amended: Filed Dec. 13, 2018, effective July 30, 2019.*

**Original authority: 374.045, RSMo 1967, amended 1993, 1995, 2008; 374.205, RSMo 1992, amended 1997, 1999, 2016; and 374.207, RSMo 1992.*

20 CSR 100-8.010 Standards of Examination

(Rescinded July 30, 2019)

AUTHORITY: section 374.045, RSMo 2000. Original rule filed Nov. 1, 2007, effective July 30, 2008. Rescinded: Filed Dec. 13, 2018, effective July 30, 2019.

20 CSR 100-8.012 Timing of Examinations

(Rescinded July 30, 2019)

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. Rescinded: Filed Dec. 13, 2018, effective July 30, 2019.

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 will 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 an examination 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 will accept a report of the examination prepared by the insurance commissioner to whom the responsibility has been delegated;

(B) In lieu of requesting an examination warrant by the director and conducting a market conduct examination of a company, the division will 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 set forth 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 an examination 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 modification of a specific practice or procedure, the director will accept documentation that the com-

pany 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 will 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, will 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, 374.185, 374.205, and 374.207, RSMo 2016. Original rule filed April 1, 2008, effective Nov. 30, 2008. Amended: Filed Dec. 13, 2018, effective July 30, 2019.*

**Original authority: 374.045, RSMo 1967, amended 1993, 1995, 2008; 374.185, RSMo 2007, amended 2016; 374.205, RSMo 1992, amended 1997, 1999, 2016; and 374.207, RSMo 1992.*

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 a market conduct examination to the insurer and reporting the examination warrant to the National Association of Insurance Commissioners (NAIC).



(1) The notice of examination and the examination warrant issued under 20 CSR 100-8.005 will be provided to the insurer at least 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.

- (2) The notice of examination will 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.

(3) The director will post the notice of such examination on the NAIC's Market Actions Tracking System, or successor NAIC system.

(4) 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, 374.185, 374.205, and 374.207, RSMo 2016.* *Original rule filed April 1, 2008, effective Nov. 30, 2008. Amended: Filed Dec. 13, 2018, effective July 30, 2019.*

*Original authority: 374.045, RSMo 1967, amended 1993, 1995, 2008; 374.185, RSMo 2007, amended 2016; 374.205, RSMo 1992, amended 1997, 1999, 2016; and 374.207, RSMo 1992.

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 examination warrants for market conduct examinations pursuant to sections 374.202 to 374.207, RSMo.

(1) Market conduct examinations will 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.

(2) The examiner-in-charge will conduct a pre-examination conference with the company examination coordinator and key personnel to clarify expectations approximately thirty (30) days prior to commencement of the examination.

(3) If the insurer or company believes there is a significant increase from the original work plan's estimates of cost or a significant increase in the amount of data requested, the insurer or company may submit a request, in writing, for a review of the examination costs or data requests. Such request shall be submitted to the market regulation division director or chief examiner. The market regulation division director or chief examiner will provide a written response to the request within twenty (20) business days. Any request or response under this section shall be considered examination workpapers, subject to the confidentiality provisions of section 374.205, RSMo.

(4) If an examination is expanded beyond the scope of the examination warrant the director will modify the examination warrant or issue a new examination warrant and provide written notice to the company explaining the extent of the expansion and the reasons for the expansion. The division will provide a revised work plan to the company before the beginning of any significantly expanded examination, unless extraordinary circumstances indicate immediate action is necessary to avoid a risk to consumers.

(5) Prior to the conclusion of a market conduct examination, the examiner-in-charge will schedule and conduct an exit conference with the company as outlined by the NAIC Market Regulation Handbook.

AUTHORITY: sections 374.045, 374.185, 374.205, and 374.207, RSMo 2016.* *Original*

rule filed April 1, 2008, effective Nov. 30, 2008. Amended: Filed May 13, 2019, effective Nov. 30, 2019.

*Original authority: 374.045, RSMo 1967, amended 1993, 1995, 2008; 374.185, RSMo 2007, 2016; 374.205, RSMo 1992, amended 1997, 1999; and 374.207, RSMo 1992, 1997, 1999, 2016.

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 will 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 and section 374.205, RSMo, the director will adhere to the following timelines and procedures following the completion of an examination, unless the division and the company mutually agree to modify the timeline:

(A) No later than sixty (60) days following completion of the examination, the examiner-in-charge or audit manager will file with the department a verified draft report of examination under oath. Completion of the examination will be defined as the date the examiner-in-charge signs and submits the draft report to the audit manager for approval and signature;

(B) Within ten (10) days of receipt of the verified draft report, the division will send the draft report via certified mail to the company together with a notice which affords 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;

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

(D) The division will make a good faith effort to informally resolve issues and prepare a final report after receipt of the company's written comments, submissions, or rebuttals;

(E) The division may modify the examination findings and finalize the report, as appropriate. Upon determination that the report is final, the division will 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 may, 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 the director to modify the findings with a written request for a confidential investigatory hearing pursuant to section 374.205.3(3)(c). 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. If the company submits a written request for a hearing within the time allowed, a hearing will be held in accordance with the process in section 374.205.3(4), RSMo. Within twenty (20) days of the con-

clusion of the hearing, the director will issue an order pursuant to section 374.205.3(3)(a), RSMo; and

(G) If a hearing pursuant to subsection (1)(F) above is not requested, within thirty (30) days of the end of the period allowed for the receipt of an acceptance or comments by the company, the director will fully consider and review the report, together with any written comments, any relevant portions of the examiner's work papers, and any proposed settlement, and enter an order pursuant to section 374.205.3(3)(a), (b), or (d).

(2) Ten (10) days after adoption of the final examination report pursuant to section 374.205.3(3)(a), the department will make available written and electronic versions of the final report. Both versions of the final report will include any written response of the company, at its option, 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 section 374.205.3(3)(a) under subsections (1)(F) or (1)(G) will be accompanied by findings and conclusions resulting from the director's consideration and review of the examination report, relevant examiner work papers, and any written submissions, rebuttals, or comments submitted by the company. Any order issued pursuant to section 374.205.3(3)(b), (c), or (d) under subsections (1)(F) or (1)(G) will not be considered a final order. Any order issued pursuant to section 374.205.3(3)(a) under subsections (1)(F) or (1)(G) will be considered a final administrative decision and may be appealed pursuant to section 536.150, RSMo, and will be served upon the company by certified mail, together with a copy of the final examination report.

AUTHORITY: sections 374.045, 374.185, 374.205, and 374.207, RSMo 2016. Original rule filed April 1, 2008, effective Nov. 30, 2008. Amended: Filed Dec. 13, 2018, effective July 30, 2019.*

**Original authority: 374.045, RSMo 1967, amended 1993, 1995, 2008; 374.185, RSMo 2007, amended 2016; 374.205, RSMo 1992, amended 1997, 1999, 2016; and 374.207, RSMo 1992.*

20 CSR 100-8.020 Sampling and Error Rates
(Rescinded July 30, 2019)

AUTHORITY: sections 374.045, 375.948 and

375.1018, RSMo 2000. Original rule filed Nov. 1, 2007, effective July 30, 2008. Rescinded: Filed Dec. 13, 2018, effective July 30, 2019.

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, 374.205, 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" also includes any evidence of coverage issued by a health maintenance organization to an enrollee.

(2) Records Maintenance. 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. Nothing in this regulation requires an insurer to create records that never existed; however, the division may request the creation of such records if it believes doing so will reduce examination costs.

(3) Records to be Maintained. An insurer that maintains its records in accordance with the following standards will be considered in compliance with Missouri law:

(A) A Missouri policy record file for each Missouri policy issued 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 set forth 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 con-

duct examination of a single copy of each of the above will be considered satisfactory. 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, where the insurer utilizes the credit procedure contained in section 144.027, RSMo, for reimbursement of sales tax, 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; 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. Notwith-

standing the definition of "claim" at subsection 20 CSR 100-1.010(1)(B), the time standards 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 maintained pursuant to section 375.936(3), RSMo, shall include the actual written complaints, the insurer's responses and any materials referenced in an insurer's response that are not otherwise maintained by the insurer, along with a complaint log or register that shows 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, the disposition of each complaint, and 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, and an identifier key will be provided to the examiners at the time of an examination; and

(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" means 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.

(4) Form of Record.

(A) Any record to be maintained by an insurer pursuant to Missouri law, 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 necessitating 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) Once a record has been finalized, either for internal or external transmission or for file documentation purposes, or once an electronic record or database is finalized for permanent retention purposes, it shall be maintained in a computer-based format that is archival in nature, so as to preclude any alteration of the record after the initial transfer to archival format. All records shall be maintained according to written procedures developed and adhered to by the insurer. The written procedures shall be made available upon examiner request.

(C) Photographs, microfilms, or other image-processing reproductions of records are deemed the equivalent of 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 to be maintained by an insurer pursuant to Missouri law shall be kept in a location which will allow the records to be produced for examination within the time period set out under section (6) of this rule. When, under normal circumstances, someone other than the insurer maintains a 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, with a copy maintained by the insurer and made available to the examiners for purposes of examination.

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

(A) Pursuant to section 374.205.2(2), RSMo, 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 nonproduction is deemed a violation of section 374.205.2(2), RSMo, and 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 is 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 provided during a market conduct examination will 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 become a part of the work papers of the examination. Section 374.205, RSMo, and regulation 20 CSR 10-2.400 govern the public access to the work papers of the examination.

AUTHORITY: sections 374.045, 374.205, 374.207, and 375.948, RSMo 2016. Original rule filed Nov. 1, 2007, effective July 30, 2008. Emergency amendment filed June 23, 2008, effective July 30, 2008, expired Feb. 26, 2009. Amended: Filed June 23, 2008, effective Jan. 30, 2009. Amended: Filed May 13, 2019, effective Nov. 30, 2019.*

**Original authority: 374.045, RSMo 1967, amended 1993, 1995, 2008; 374.205, RSMo 1992, amended 1997, 1999, 2016; 374.207, RSMo 1992; and 375.948, RSMo 1959, amended 1978, 1991.*