

**Title 20—DEPARTMENT OF INSURANCE
Division 100—Insurer Conduct
Chapter 8—Market Conduct Examinations**

PROPOSED RULE

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 insurers or other a company's market share during the last year;

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, such as published advertising materials or private causes of action; or
4. Information obtained from any other 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.

(E) A warrant shall:

1. Be in writing and in the name of the department;
2. Be directed to the division of insurance market regulation;
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 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 NAIC. The division of insurance market regulation 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 374.185, RSMo (Supp. 2000).

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed rule at 10 a.m. on June 12, 2008. The public hearing will be held at the Harry S Truman State Office Building, Room 530,

301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed rule, until 5:00 p.m. on June 12, 2008. Written statements shall be sent to Tamara W. Kopp, Department of Insurance, Financial Institutions and Professional Registration, PO Box 690, Jefferson City, MO 65102.

SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-6798 or (573) 751-2619 at least five (5) working days prior to the hearing.