

February 26, 2016

Colorado Department of Regulatory Agencies  
Division of Insurance  
Commissioner Marguerite Salazar  
1560 Broadway, Suite 850  
Denver, CO 80202

*sent via email to:*  
[matt.mortier@state.co.us](mailto:matt.mortier@state.co.us)

**RE: Proposed Market Conduct Legislation (Third Draft) - NAMIC's Written Comments**

Dear Commissioner Salazar:

Thank you for affording the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written comments on the Third Draft of the Proposed Market Conduct Legislation.

NAMIC is the largest property/casualty insurance trade association in the country, with more than 1,400 member companies representing 40 percent of the total market. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers.

NAMIC member companies serve more than 170 million policyholders and write nearly \$225 billion in annual premiums. Our members account for 54 percent of homeowners, 43 percent of automobile, and 32 percent of the business insurance markets. NAMIC has 163 members who write property/casualty and workers' compensation insurance in the State of Colorado, which represents 45% of the insurance marketplace.

NAMIC appreciates the Division of Insurance's (DOI) collaborative approach to this proposed legislative project and all of the time the DOI has invested into soliciting and considering stakeholder feedback on the language of the proposed legislation. Thank you for addressing in the Third Draft of the Proposed Market Conduct Legislation a number of the key concerns articulated by NAMIC in its first two sets of written comments.

Overall, NAMIC's members are pleased with the scope and structure of the draft proposed legislation. We commend the DOI on its commitment to drafting legislation that is consistent with the key provisions of the NCOIL Market Conduct Surveillance Model Law and which respectfully balances the regulatory needs of the DOI with the pro-consumer market competition needs of insurers.

In the spirit of continued cooperation, NAMIC respectfully tenders the following comments and suggested revisions:

**1) 10-1-305. Market conduct examinations rules – Subsection 6**

- The proposed legislation states that a “company must respond with written submissions or rebuttals within thirty days *of the date* of the draft report”. [Emphasis added]. So if the draft report is mailed to the insurer on the same day it is finalized and dated, the insurer will receive it, via U.S. mail, two or three days later. This means that the insurer will have less than a full month to respond. NAMIC believes that, at a minimum, the insurer should have the full thirty days to respond to the draft report. We recommend that the language be revised to read: “company must respond with written submissions or rebuttals within thirty days *of receipt* of the draft report”. [Emphasis added].

Since an insurer must contest specific issues stated in the draft report or lose the right to later challenge the issue when it is memorialized in the final report, the draft report response deadline should be long enough to provide an insurer with reasonable time to evaluate and investigate all of the examiner’s contentions and draft a meaningful response for the DOI. Consequently, NAMIC respectfully requests that the deadline be extended to forty-five days from *date of receipt* of the draft report, so that insurers have appropriate time to review the draft report and provide a thorough and complete response to the DOI. An extra two weeks to respond could be very important to smaller insurers, who rely upon a limited size staff to handle regulatory projects. If one of the insurer’s key staff employees necessary to complete the response is out for a week or two, an insurer could have a difficult time complying with the thirty days deadline. It is in the best interest of both insurers and the regulator to have a comprehensive response to the draft report from the insurer.

If the DOI is opposed to extending the response deadline to forty-five days, NAMIC respectfully requests that there be an expressed provision in the legislation authorizing an insurer to request an extension of time to respond to the draft report, especially since an insurer’s failure to raise a specific concern within the allotted response time prejudices the insurer’s legal right to appeal that specific concern. Adding a provision to the legislation that expressly authorizes the DOI to grant an insurer an extension of time to respond to the draft report will provide the department with greater discretionary flexibility to address the legitimate needs of insurers on a case by case basis. Moreover, since the proposed language in this section already specifically authorizes an extension of time, upon mutual agreement, for the DOI to issue the final report later than the stated deadline, it makes sense for this same professional courtesy to be extended to insurers in responding to the draft report.

Additionally, the NAIC Market Conduct Model Act specifically provides insurers with an opportunity to secure a reasonable and appropriate extension of time to respond. The NAIC Model Act states:

*A company may request, consistent with the terms of the NAIC Market Conduct Handbook, a reasonable extension of time with respect to a scheduled examination based on the volume of other state examinations the company is currently responding to, as well as the limited number of dedicated personnel and/or resources being utilized to respond to such examinations.*

- The proposed legislation states that a company shall have an “opportunity” to respond to issues raised in the final report that were not listed in the draft report. NAMIC respectfully requests that the legislation expressly state that the insurer has thirty days (preferably forty-five days) from the date of receipt of the final report to respond with written submissions or rebuttals to the new issues raised in the final report. Since the insurer would have originally had this specific amount of time to respond to the new contested issues had they been included in the draft report, it is only fair that the insurer be afforded this same period of time to respond.
- As discussed during the February 19<sup>th</sup> meeting on the Proposed Market Conduct Legislation, there is still some confusion as to which forum an insurer should file its appeal. Therefore, NAMIC respectfully requests that the language in the section on appeals of final DOI agency actions be clarified so that it is clear that appeals start at the District Court as opposed to the Court of Appeals.

## **2) 10-1-310, Fines and Penalties**

The proposed legislation only addresses the process and deadline for appealing the examination report. There is no detailed statement or reference to a specific statute pertaining to the process and deadline for contesting a fine or penalty. NAMIC respectfully requests that this issue be addressed to avoid confusion.

Thank you for your time and consideration of NAMIC’s written comments. NAMIC looks forward to our continued participation in this collaborative endeavor. Please feel free to contact me at 303.907.0587 or at [crataj@namic.org](mailto:crataj@namic.org), if you have any questions pertaining to my written testimony.

Respectfully,



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