

1 Public Protection Cabinet

2 Department of Insurance

3 Financial Standards and Examinations Division

4 (Amendment)

5 806 KAR 37:010. Insurance holding company systems.

6 RELATES TO: KRS 304.1-050, 304.6, 304.24-390, 304.24-400, 304.24-415, 304.33,

7 304.37-010, 304.37-020, 304.37-030, 304.37-110, 304.37-120, 304.37-130

8 STATUTORY AUTHORITY: KRS 304.2-110, 304.37-060

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the
10 Commissioner of Insurance may make reasonable administrative regulations necessary for or as
11 an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304.

12 KRS 304.37-060 authorizes the commissioner to promulgate administrative regulations as maybe
13 necessary to carry out KRS Chapter 304 Subtitle 37 [~~37~~]. This administrative regulation
14 establishes procedural requirements necessary to carry out the provisions of KRS Chapter 304
15 Subtitle 37 [~~37~~], insurance holding company systems, and statutes relating to the merger and
16 acquisition of domestic insurers.

17 Section 1. Definitions.

18 (1) "Commissioner" is defined by KRS 304.1-050(1).

1 (2) "Department" is defined by KRS 304.1-050(2).

2 (3) "Ultimate controlling person" means that person which is not controlled by any other
3 person.

4 Section 2. Forms - General Requirements. (1)(a) Forms A, B, C, D, E, and F shall specify
5 the information required to be provided in the preparation of the statements required by KRS
6 304.37-120, 304.37-020 and 304.37-030. In addition, Form A shall be used as to mergers and
7 acquisitions of domestic insurers referred to in KRS 304.24-390. They are not intended to be
8 blank forms which are to be filled in.

9 (b) Filed statements shall contain the numbers and captions of all items, but the text of
10 the items may be omitted if the answers are prepared in a manner that [as to] clearly indicates
11 [indicate clearly] the scope and coverage of the items.

12 (c) All instructions, whether appearing under the items of the form or elsewhere, shall be
13 omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer is in the
14 negative, a statement to that effect shall be made.

15 (2)(a) Duplicate originals of each statement, including exhibits and all other papers and
16 documents filed as a part of the statement, shall be filed with the commissioner by personal
17 delivery or mail addressed to: Financial Standards and Examination Division, Kentucky
18 Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602.

19 (b) A copy of Form C shall be filed in each state in which an insurer may do business, if
20 the insurance regulatory official of that state has notified the insurer of its request in writing, in
21 which case the insurer has fifteen (15) days from receipt of the notice to file the form.

1 (c) The duplicate original shall be [~~manually~~] signed in the manner prescribed on the
2 form.

3 (d) Unsigned copies shall be conformed.

4 (e) If the signature of any person is affixed pursuant to a power of attorney or other
5 similar authority, a copy of the power of attorney or other authority shall also be filed with the
6 statement.

7 (3) If an applicant requests a hearing under KRS 304.37-120(4)(b), in addition to filing
8 the Form A with the commissioner, the applicant shall file a copy of the Form A with the
9 National Association of Insurance Commissioners in electronic form.

10 (4) Statements shall be prepared electronically. All copies of any statements, financial
11 statements, or exhibits shall be easily readable and suitable for review and reproduction. Debits
12 in credit categories and credits in debit categories shall be designated so as to be clearly
13 distinguishable on photocopies. Statements shall be in the English language and monetary values
14 shall be stated in United States currency. If any exhibit or other paper or document filed with the
15 statement is in a foreign language, it shall be accompanied by a translation into the English
16 language and any monetary value shown in a foreign currency normally shall be converted into
17 United States currency.

18 Section 3. Forms - Incorporation by Reference, Summaries, and Omissions. (1)(a)
19 Information required by any item on Forms A, B, D, E, or F may be incorporated by reference in
20 answer or partial answer to any other item.

21 (b) Information contained in any financial statement, annual report, proxy statement,
22 statement filed with a governmental authority, or any other document may be incorporated by

1 reference in answer or partial answer to any item on Forms A, B, D, E, or F if the document or
2 paper is filed as an exhibit to the statement. Excerpts of documents may be filed as exhibits if the
3 documents are extensive.

4 (c) Documents currently on file with the commissioner which were filed within three (3)
5 years of the current filing shall not be attached as exhibits. References to information contained
6 in exhibits or in documents already on file shall clearly identify the material and shall
7 specifically indicate that the material is to be incorporated by reference in an answer to the
8 applicable item.

9 (d) Material shall not be incorporated by reference if the incorporation may render the
10 statement incomplete, unclear, or confusing.

11 (2)(a) If an item requires a summary or outline of the provisions of any document, only a
12 brief statement shall be made as to the pertinent provisions of the document.

13 (b) In addition to the statement, the summary or outline may incorporate by reference
14 particular parts of any exhibit or document currently on file with the commissioner which was
15 filed within three (3) years of the current filing and may be qualified in its entirety by the
16 reference.

17 (c) If two (2) or more documents required to be filed as exhibits are substantially
18 identical in all material respects except as to the parties, the dates of execution, or other details, a
19 copy of only one (1) of the documents shall be filed, with a schedule identifying the omitted
20 documents and setting forth the material details in which the documents differ from the filed
21 documents.

1 Section 4. Forms - Information Unknown or Unavailable and Extension of Time to
2 Furnish.

3 (1) If it is impractical to furnish any required information, document, or report when it is
4 required to be filed, there shall be filed with the commissioner a separate document that:

5 (a) Identifies the information, document, or report in question;

6 (b) States why its filing [~~when required~~] is impractical; and

7 (c) Requests an extension of time for filing the information, document, or report to a
8 specified date.

9 (2) The request for extension shall be granted unless the commissioner, within sixty (60)
10 days after receipt of the request, enters an order denying the request.

11 Section 5. Forms - Additional Information and Exhibits. (1) In addition to the information
12 expressly required to be included in Forms A, B, C, D, E, and F, the commissioner may request
13 further material information as may be necessary to make the information contained in the filing
14 not misleading, and which may include supplemental financial information, supporting contracts
15 and agreements, and filings with other regulatory bodies.

16 (2) The person filing may also file exhibits in addition to those expressly required by the
17 statement. These exhibits shall clearly indicate the subject matters to which they refer.

18 (3) Changes to Forms A, B, C, D, E, or F shall include, on the top of the cover page, the
19 phrase: "Change No. (insert number) to" and shall indicate the date of the change and not the
20 date of the original filing.

1 Section 6. Subsidiaries of Domestic Insurers. The authority to invest in subsidiaries under
2 KRS 304.37-110 shall be in addition to any authority to invest in subsidiaries which may be
3 contained in any other provision of the Insurance Code, KRS Chapter 304, and corresponding
4 administrative regulations.

5 Section 7. Acquisition of Control - Statement Filing. A person required to file a statement
6 pursuant to KRS 304.24-390 or 304.37-120 shall furnish the required information on Form A,
7 and on Form E, in accordance with Section 10 of this administrative regulation.

8 Section 8. Amendments to Form A. The applicant shall promptly advise the
9 commissioner of any changes in the information furnished on Form A arising subsequent to the
10 date upon which the information was furnished, but prior to the commissioner's disposition of
11 the application.

12 Section 9. Acquisition of Certain Insurers. (1) If the person being acquired is a "domestic
13 insurer" solely because of the provisions of KRS 304.37-120(1)(a), the name of the domestic
14 insurer on the cover page shall be indicated, in the following format, [~~as follows~~]: "ABC
15 Insurance Company, a subsidiary of XYZ Holding Company".

16 (2) If an insurer referred to in subsection (1) of this section is being acquired, references
17 to "the insurer" contained in Form A shall refer to both the domestic subsidiary insurer and the
18 person being acquired.

19 Section 10. Pre-Acquisition Notification. (1) If a domestic insurer, including any person
20 controlling a domestic insurer, is proposing a merger or acquisition pursuant to KRS 304.37-120,
21 that person shall file a pre-acquisition notification form, Form E.

1 (2) If a non-domiciliary insurer licensed to do business in the Commonwealth is
2 proposing a merger or acquisition pursuant to KRS 304.37-130, that insurer shall file a pre-
3 acquisition notification form, Form E. A pre-acquisition notification form shall not be filed if the
4 acquisition meets the requirements of KRS 304.37-130(2)(b).

5 (3) In addition to the information required by Form E, the commissioner may require an
6 expert opinion as to the competitive impact of the proposed acquisition.

7 Section 11. Annual Registration of Insurers - Statement Filing. (1) An insurer required to
8 file an annual registration statement pursuant to KRS 304.37-020 shall furnish the required
9 information on Form B.

10 (2) a. An amendment to Form B shall be filed within fifteen (15) days after the end of
11 any month in which there is a material change to the information provided in the annual
12 registration statement.

13 b. Amendments shall be filed in the Form B format with only those items which are
14 being amended reported. Each amendment shall include at the top of the cover page
15 “Amendment No. [insert number] to Form B for [insert year]” and shall indicate the date of the
16 change and not the date of the original filings.

17 Section 12. Summary of Registration - Statement Filing. An insurer required to file an
18 annual registration statement pursuant to KRS 304.37-020 shall also furnish information required
19 on Form C. An insurer shall file a copy of Form C in each state in which the insurer is authorized
20 to do business, if requested by the insurance regulatory official of that state.

21 Section 13. Alternative and Consolidated Registrations. (1) Any authorized insurer may
22 file a registration statement on behalf of any affiliated insurer or insurers which are required to

1 register under KRS 304.37-020. A registration statement may include information not required
2 by KRS Chapter 304 Subtitle 37~~[.37]~~ regarding any insurer in the insurance holding company
3 system even if the insurer is not authorized to do business in Kentucky. In lieu of filing a
4 registration statement on Form B, the authorized insurer may file a copy of the registration
5 statement or similar report which it is required to file in its state of domicile if:

6 (a) The statement or report contains substantially similar information required to be
7 furnished on Form B; and

8 (b) The filing insurer is the principal insurance company in the insurance holding
9 company system.

10 (2) ~~[The question of whether the filing insurer shall be the principal insurance company~~
11 ~~in the insurance holding company system shall be a question of fact.]~~ An insurer filing a
12 registration statement or report in lieu of Form B on behalf of an affiliated insurer shall set forth
13 a brief statement of facts which substantiates the filing insurer's claim that it is the principal
14 insurer in the insurance holding company system.

15 (3) With the prior approval of the commissioner, an unauthorized insurer may follow any
16 of the procedures which may be done by an authorized insurer under subsection (1) of this
17 section.

18 (4) Any insurer may take advantage of the provisions of KRS 304.37-020(9) or (10)
19 without obtaining the prior approval of the commissioner. However, the commissioner may
20 require individual filings if consolidation renders the material incomplete, unclear, or confusing.

21 Section 14. Disclaimers and Termination of Registration. (1) A disclaimer of affiliation
22 or a request for termination of registration claiming that a person shall not, or will not, upon the

1 taking of some proposed action, control another person, referred to as the subject, shall contain
2 the following information:

3 (a) The number of authorized, issued, and outstanding voting securities of the subject;

4 (b) With respect to the person whose control is denied and all affiliates of this person, the
5 number and percentage of shares of the subject's voting securities which are held of record or
6 known to be owned beneficially, and the number of these shares ~~concerning~~ in which there is a
7 right to acquire, directly or indirectly;

8 (c) All material relationships and bases for affiliation between the subject and the person
9 whose control is denied and all affiliates of this person; and

10 (d) A statement explaining why the person shall not be considered to control the subject.

11 (2) A request for termination of registration shall be granted unless the commissioner, within
12 thirty (30) days after he or she receives the request, notifies the registrant otherwise.

13 Section 15. Transactions Subject to Prior Notice - Notice Filing. (1) An insurer required
14 to give notice of a proposed transaction pursuant to KRS 304.37-030 shall furnish the required
15 information on Form D.

16 (2) Agreements for cost sharing services and management services shall, at a minimum
17 and as applicable:

18 (a) Identify the person providing services and the nature of the services;

19 (b) Set forth the methods to allocate costs;

20 (c) Require timely settlement at least on a quarterly basis and in compliance with KRS
21 Chapter 304 Subtitle 6 [-6];

1 (d) Prohibit advancement of funds by the insurer to the affiliate except to pay for services
2 defined in the agreement;

3 (e) State that the insurer will maintain oversight for functions provided to the insurer by
4 the affiliate and that the insurer will monitor services annually for quality assurance;

5 (f) Define books and records of the insurer to include all books and records developed or
6 maintained under or related to the agreement;

7 (g) Specify that all books and records of the insurer are and remain the property of the
8 insurer and are subject to control of the insurer;

9 (h) State that all funds and invested assets of the insurer are the exclusive property of the
10 insurer, held for the benefit of the insurer, and are subject to the control of the insurer;

11 (i) Include standards for termination of the agreement with and without cause;

12 (j) Include provisions for indemnification of the insurer in the event of gross negligence
13 or willful misconduct on the part of the affiliate providing the services;

14 (k) Specify that, if the insurer is placed in receivership or seized by the commissioner
15 under KRS Chapter 304 Subtitle 33 [~~33~~]:

16 1. All of the rights of the insurer under the agreement extend to the receiver or
17 commissioner; and

18 2. All books and records will immediately be made available to the receiver or the
19 commissioner, and shall be turned over to the receiver or commissioner immediately upon the
20 receiver or the commissioner's request;

1 (l) Specify that the affiliate has no automatic right to terminate the agreement if the
2 insurer is placed in receivership pursuant to KRS Chapter 304 Subtitle 33 [~~33~~]; and

3 (m) Specify that the affiliate will continue to maintain any systems, programs, or other
4 infrastructure notwithstanding a seizure by the commissioner under KRS Chapter 304 Subtitle 33
5 [~~33~~], and will make these available to the receiver for as long as the affiliate continues to receive
6 timely payment for services rendered.

7 Section 16. Enterprise Risk Report. The ultimate controlling person of an insurer required
8 to file an enterprise risk report pursuant to KRS 304.37-020(13) shall furnish the required
9 information on Form F.

10 Section 17. Extraordinary Dividends and Other Distributions. (1) Requests for approval
11 of extraordinary dividends or any other extraordinary distribution to shareholders shall include
12 the following:

13 (a) The amount of the proposed dividend;

14 (b) The date established for payment of the dividend;

15 (c) A statement as to whether the dividend is to be in cash or other property and, if in
16 property, a description of the property, its cost, and its fair market value together with an
17 explanation of the basis for valuation;

18 (d) A copy of the calculations determining that the proposed dividend is extraordinary,
19 which shall include the following information:

20 1. The amounts, dates, and form of payment of all dividends or distributions, including
21 regular dividends but excluding distributions of the insurer's own securities, paid within the

1 period of twelve (12) consecutive months ending on the date fixed for payment of the proposed
2 dividend for which approval is sought and commencing on the day after the same day of the
3 same month in the last preceding year.

4 2. Surplus as regards to policyholders, total capital and surplus, as of the 31st day of
5 December next preceding;

6 3. If the insurer is a life insurer, the net gain from operations for the twelve (12) month
7 period ending the 31st day of December next preceding;

8 4. If the insurer is not a life insurer, the net income less realized capital gains for the
9 twelve (12) month period ending the 31st day of December next preceding and the two (2)
10 preceding twelve (12) month periods; and

11 5. If the insurer is not a life insurer, the dividends paid to stockholders excluding
12 distributions of the insurer's own securities in the preceding two (2) calendar years.

13 (e) A balance sheet and statement of income for the period intervening from the last
14 annual statement filed with the commissioner and the end of the month preceding the month in
15 which the request for dividend approval is submitted; and

16 (f) A brief statement as to the effect of the proposed dividend upon the insurer's surplus
17 and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the
18 adequacy of surplus relative to the insurer's financial needs.

19 (2) Subject to KRS 304.37-030(2), each registered insurer shall report to the
20 commissioner all dividends and other distributions to shareholders within fifteen (15) business

1 days following the declaration, including the same information required by subsection (1)(d) of
2 this section.

3 Section 18. Adequacy of Surplus. (1) In determining the adequacy and reasonableness of
4 an insurer's surplus pursuant to KRS 304.37-030(4), no single factor shall be controlling. The
5 commissioner shall consider the net effect of all of these factors plus other factors bearing on the
6 financial condition of the insurer.

7 (2) In comparing the surplus maintained by other insurers, the Commissioner shall
8 consider the extent to which each of these factors varies from insurer to insurer, and in
9 determining the quality and liquidity of investments in subsidiaries, the Commissioner shall
10 consider the individual subsidiary and may discount or disallow its valuation to the extent that
11 the individual investments so warrant.

12 Section 19. Incorporated by Reference. (1) The following material is incorporated by
13 reference:

14 (a) "Form A Statement Regarding the Acquisition of Control of or Merger With a
15 Domestic Insurer," October 2014;

16 (b) "Form B Insurance Holding Company System Annual Registration Statement,"
17 August 2014;

18 (c) "Form C Summary of Changes to Registration Statement," August 2014;

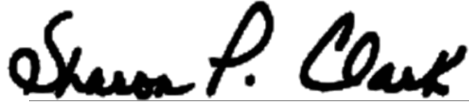
19 (d) "Form D Prior Notice of a Transaction," August 2014;

1 (e) "Form E Pre-Acquisition Notification Form Regarding the Potential Competitive
2 Impact of a Proposed Merger or Acquisition by a Non-Domiciliary Insurer Doing Business in
3 this State or by a Domestic Insurer," August 2014; and

4 (f) "Form F Enterprise Risk Report," August 2014.

5 (2) This material may be inspected, copied, or obtained, subject to applicable copyright
6 law, at the Kentucky Department of Insurance, The Mayo-Underwood Building, 500 Mero
7 Street, [215 West Main Street], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to
8 4:30 p.m. Forms may also be obtained on the Department of Insurance Internet Web site,
9 <https://insurance.ky.gov/ppc/CHAPTER.aspx> [<http://insurance.ky.gov>].

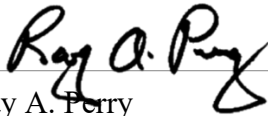
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READ AND APPROVED:



Sharon P. Clark
Commissioner, Department of Insurance

6/8/2022

Date



Ray A. Perry
Secretary, Public Protection Cabinet

6/8/2022

Date