

DEPARTMENT OF INSURANCE
Statutory Authority: 18 Delaware Code, Sections 311 & 1718 (18 Del.C. §§ 311, 1718) 18 DE
Admin. Code 504

FINAL

ORDER

504 Continuing Education for Insurance Agents, Brokers, Surplus Lines Brokers and Consultants

Proposed changes to Regulation 504 relating to Continuing Education for Insurance Agents, Brokers, Surplus Lines Brokers and Consultants were published in the *Delaware Register of Regulations* on December 1, 2005. The comment period remained open until January 3, 2006. There was no public hearing on the proposed changes to Regulation 504. Public notice of the proposed changes to Regulation 504 in the *Register of Regulations* and two newspapers of general circulation was in conformity with Delaware law.

Summary of the Evidence and Information Submitted

No public comment was received as a result of the publication of the proposed changes for comment. With the experience of the Atlantic and Gulf Coast states in 2005 generally and Delaware's experience with the Glenville flood in 2003 and Hurricane Jeanne in 2004 specifically, it is important that Delaware licensed property and casualty producers who sell homeowners and personal lines coverages be familiar with flood insurance programs and how to offer the best possible flood protection to Delaware consumers. Consumers will be better informed about the insurance products and coverage on flood policies by requiring producers who sell flood insurance to include a two hour course of instruction in flood insurance as part of the their biennial continuing education requirement.

The adjustment to the required ethics hours from four to three allows Delaware to conform to the same requirement as other states as part of the uniformity agreement within the National Association of Insurance Commissioners that resulted from the passage of the Gramm Leach Bliley Act.

Findings of Fact

Based on Delaware law and the record in this docket, I make the following findings of fact:

1. Any producer who sells homeowners and/or personal lines coverage should be required to attend a minimum of two hours of continuing education in flood insurance as part of that producer's mandatory continuing education requirement under 18 **Del.C.** Ch. 17 and Regulation 504.
2. In order to be consistent with other states in the National Association of Insurance Commissioners as part of the uniformity agreement, it is appropriate to reduce the mandatory number of course hours of continuing education in ethics from four to three.
3. Paragraph 12 relating to the effective date is confusing as written and applies to prior amendments to the Regulation. Paragraph 12 can be removed without affecting the substance of the regulation and its removal does not require publication and comment since it is technical in nature and is permitted by 29 **Del.C.** §10113(b).

Decision and Effective Date

Based on the provisions of 18 **Del.C.** §§311(a) and 1718 and 29 **Del.C.** §§10113-10118 and the record in this docket, I hereby adopt Regulation 504 as amended and as may more fully and at large appear in the version attached hereto to be effective on March 1, 2006.

Text and Citation

The text of the proposed amendments to Regulation 504 last appeared in the *Register of Regulations* Vol. 9, Issue 6, pages 939-944.

IT IS SO ORDERED this 13th day of January 2006.

504 Continuing Education for Insurance Agents, Brokers, Surplus Lines Brokers and Consultants

1.0 Statutory Authority and Purpose

This Regulation is established and promulgated pursuant to 18 **Del.C.** §§314, 1718 and 29 **Del.C.** Ch.101. The purpose of this Regulation is to establish requirements for insurance education and ethics for resident insurance adjusters, public adjusters, producers, surplus lines brokers and for standards for education providers and instructors in order to ensure a high level of professionalism for the benefit of Delaware consumers.

8 DE Reg. 703 (11/1/04)

2.0 Definitions

"Administrative record" means any document relating to course approval, course offerings, attendance, course completions or credits, and any other records required to be kept by the Delaware Insurance Code, and any rule or order of the Department.

"Audit" means Insurance Department activity to monitor the offering of courses or examinations, including visits to classrooms, test sites, and administrative offices where documentation of individual attendance and completion records and documentation of instructor credentials is maintained. Audit may include re-evaluating approved classroom course outlines, self-study programs and distance learning programs based on current guidelines.

"Authorized representative" or "provider representative" means the person designated by the entity as responsible for the timely filing of all required Department forms and documentation for courses and for the maintenance of necessary administrative records including but not limited to classes held, examinations monitored, instructor qualifications, and attendance records. Where this regulation provides for an act by an entity sponsor or provider, such act shall be performed by an authorized representative.

"Commissioner" means the Insurance Commissioner of the State of Delaware and/or such designee appointed by the Commissioner.

"Completion" when used in the context of:

Self-Study, means a passing grade of 70% or better on the examination.

Class, means attendance for the full amount of time approved for each course.

Seminar means attendance for the full amount of time assigned for each workshop or break-out session selected.

"Compliance date" means the last day of February of even numbered years. Each biennial license shall commence on March 1st and end on the last day of February of even numbered years.

"Contact person" means the person at the entity level with authority to transact business for the entity; through contracts, licenses, or other means, usually as the owner or corporate officer, and who designates the school official to represent the entity.

"Continuously licensed" means an uninterrupted license without lapse due to suspension, revocation, voluntary surrender, cancellation or non-renewal for a period of 12 months or greater.

"Course" means any class, self-study, seminar or distance learning course for insurance producers, surplus lines brokers, adjuster and public adjustor licensees or other insurance professionals that has been approved by the Department for the purpose of complying with continuing education requirements.

"Credit hour (CEUs)" means one (1) unit of credit based on a classroom hour or approved hour of credit for a seminar or self-study program.

"Department" means the Delaware Department of Insurance.

"Disciplinary action" means administrative action that has been taken against an individual or entity as a licensee or approved course provider, instructor, or school official for which probation, suspension, or revocation of any license (issued by this or any other state, country, or territory) or approved status has been ordered or consented to or for which a fine has been entered for a wrongdoing against a consumer or a licensee.

"Distance learning" or "Distance education" means instructional delivery that does not constrain the student to be physically present in the same location as the instructor. Distance education includes but is not limited to: audio, instructional television, videotape, teleconferencing, audio/video conferencing, and computer conferencing, web

based instruction, traditional self-study course(s) including CDs and DVDs as supplied materials and any other planned learning that normally occurs in a different place from teaching and as a result requires special techniques of course design, special instructional techniques, special methods of communication by electronic and other technology, as well as special organizational and administrative arrangements approved by the Department.

"Entity sponsor" or **"sponsor"** means a natural person, firm, institution, partnership, company, corporation, or association offering, sponsoring, or providing courses approved by the Department in eligible continuing education subjects.

"Ethics credits" means the study of fiduciary responsibility, commingling of funds, payment and acceptance of commissions, unfair claims practices, professionalism, policy replacement consideration, handling or supervising the affairs or funds of another, conflicts of interest and matters that deal with individual character and personal characteristics such as honesty, integrity and professionalism in the insurance industry.

"Hour" means sixty (60) minutes of class or seminar time, of which at least fifty (50) minutes must be instruction, with a maximum of ten minutes of break per hour all of which must be accounted for on the agenda or syllabus. For self-study courses, "hour" means sixty (60) minutes of time including reading and studying which would be necessary to successfully complete the final examination (actual exam time not included).

"Initially Licensed" means the first insurance license issued an individual by this Department authorizing the transaction of insurance business in this state to which the continuing education requirement applies.

"Recognized association" means an insurance industry association established for at least 5 years.

"School official" means the person designated by the entity as responsible for the timely filing of all required Department forms and documentation for courses and for the maintenance of necessary administrative records including but not limited to classes held, examinations monitored, instructor qualifications, and attendance records.

"Syllabus" means an agenda showing the schedule of how a continuing education course is to be presented including time allotment to subject matter and including any meals and break times.

2 DE Reg. 122 (7/1/98)

8 DE Reg. 703 (11/1/04)

3.0 Course Providers

3.1 A provider who sponsors a continuing education course must be approved by the Department and shall be operated by, including but not limited to, an authorized insurance company, a recognized insurance agents' association, an insurance trade association, a self-insurance fund, a non-profit educational institute, national provider, a member of a state Bar Association, an independent program of instruction, or an institution of higher learning. Application for entity approval shall be concurrent with application for course approval and shall be submitted on written forms or in an electronic format approved by the Department. The Department may approve of or participate in reciprocal agreements relating to continuing education with the NAIC and/or its members. In assessing a provider's application for approval, the Department may consider, among other factors, whether the management of a provider, including officers, directors, or any other person who directly or indirectly controls the operation of the provider, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the provider in such position.

3.2 General Requirements and Responsibilities.

3.2.1 Providers shall maintain the records of each individual completing a course for three (3) years from the date of completion and shall send the Department a roster of those in attendance within thirty (30) days of the course completion date on forms or in electronic format prescribed by the Department.

3.2.2 Providers shall notify the Producer Licensing Education Section, within thirty (30) days of a change in their mailing address or administrative office address.

3.2.3 Course providers will provide each licensee successfully completing their program a Certificate of Completion for attendees' records only after successful completion of the entire approved education course/activity. Entity Sponsors are required to distribute a Certificate of Completion to each licensee successfully completing the educational activity within thirty (30) calendar days.

3.2.4 Course providers shall obtain the Department's approval for each course offered. No prior approval shall be required for any course offered through any NAIC sponsored reciprocal agreement but course credit under this regulation shall only be allowed for those subjects eligible for course credit in Delaware.

3.2.5 No partial credit may be granted for any course unless an emergency arises. In case of an emergency, a written explanation shall be provided to the Department upon request.

3.2.6 Self-study courses shall contain an exam that shall be graded by the sponsor or an approved third party. No credit shall be given for a failing grade.

3.2.7 One Continuing Education Credit shall consist of fifty (50) minutes of qualifying classroom instruction.

3.2.8 Course Providers are responsible for the actions of their school officials, instructors, speakers and monitors.

3.2.9 Entity sponsors and instructors shall conduct themselves in a professional manner and may not misrepresent any course material or other information.

3.2.10 Course approvals, once granted by the Department, shall remain valid until modified or terminated by the entity sponsor or Department. Any changes or modifications to one or more courses by an entity sponsor shall not be valid until submitted to and approved by the Department in writing. All courses approved for credit as of November 1, 2004 shall not be subject to re-approval under the provisions of this section.

3.2.11 No activity may be advertised as having been approved until the sponsor receives written notification from the Department.

8 DE Reg. 703 (11/1/04)

4.0 Instructors

4.1 An entity sponsor shall certify to the Department that the instructor shall possess one or more of the following qualifications:

4.1.1 A minimum of 3 years working experience in the subject matter being taught.

4.1.2 An approved professional designation in accordance with Section 9.3 from a recognized association.

4.1.3 A degree from an accredited school in the subject matter being taught.

4.1.4 Special expertise, such as employment with a governmental entity; or a documented history of research or study in the area.

4.1.5 An instructor who is a licensee shall receive the same number of continuing education credits granted to participants. The instructor may not receive additional credit for teaching the same course more than once in a biennium reporting period.

4.1.6 Instructors shall have the authority and responsibility to deny credit to anyone who disrupts the class or is inattentive. Based on the course provider's policies, refunds may be given. It will be a violation of this regulation for an instructor or school official to knowingly allow during the class, the activities of sleeping, reading of books, newspapers, or other non-course materials, use of a cellular phone, or to allow absence from class other than authorized breaks. Penalties will be assessed against participant, instructor, and school, as provided in this regulation. Approval of a course will constitute approval of submitted instructors.

8 DE Reg. 703 (11/1/04)

5.0 Department's Action upon Violation or Non-conformity by Course Provider or Instructor

If the Department determines that a course provider or instructor has violated any provisions of this regulation, the Department may withdraw approval of the entity sponsor or instructor or may order a refund of course fees to licensees who attended the course, or both. The Department may also refuse to approve courses conducted by specific sponsors or instructors if the Department determines that past offerings by those entity sponsors or instructors have not been in compliance with insurance education laws, rules and regulations. The Department or his/her designee(s) may perform course provider audits on all educational activity proposed to be available to licensees of this State.

8 DE Reg. 703 (11/1/04)

6.0 Appeals

6.1 Appeals shall be conducted in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Ch.101 and 18 Del.C. §§323-28.

6.2 Providers may appeal to the Commissioner or Commissioner's designee, from any adverse decision on their request concerning continuing education activity. Appeals shall be in writing and minimally contain:

6.2.1 A synopsis of the issue,

6.2.2 The basis for the appeal,

6.2.3 The name, address, and telephone number of a contact person,

6.2.4 A copy of the original course submission and supporting documents, and

6.2.5 A copy of any correspondence from the Continuing Education Advisory Council or the Insurance Department.

8 DE Reg. 703 (11/1/04)

7.0 Required Forms

7.1 Requests for entity sponsor approval shall be made to the Department on such forms as shall be authorized by the Department.

7.2 Requests for entity sponsor course approval shall be made to the Department on such forms as shall be authorized by the Department.

8 DE Reg. 703 (11/1/04)

8.0 Licensee's Responsibility

8.1 Each licensee shall retain each original course completion certificate for a period of 3 years. The course completion certificate may be required in the event of a discrepancy between the licensee's records and the Department's records. Each licensee may be subjected to a Department audit of continuing education requirements. Failure to comply with a Department audit may result in suspension of a licensee's license. Each licensee will have thirty (30) days to produce such records upon request or audit by the Department.

8.2 General Requirements. Resident licensees and producers not otherwise exempted shall earn, at a minimum, the number of education credits described below.

8.2.1 Resident licensees required to fulfill continuing education requirements shall complete twenty-four (24) credit hours of Department approved education subjects, ~~four~~ three (3) of which shall be in ethics subjects during each biennium reporting period. If the resident producer holds a health license and solicits long term care policies, as part of his/her biennial requirement, the producer must complete at least three (3) hours of training in Delaware long term care insurance that consists of product knowledge, laws, rules and regulations. Any resident licensee who is authorized to write homeowners or personal lines coverage shall be required to complete a two (2) hour continuing education course related to flood insurance and the National Flood Insurance Program as part of the twenty-one (21) general credit hours necessary to maintain a Delaware resident license. [The flood education requirement shall become effective for reporting periods on or after March 1, 2006.]

8.2.2 Resident adjusters, public adjusters and Fraternal Agents shall be required to fulfill twelve (12) credit hours of Department approved education subjects, four (4) of which shall be in ethics subjects during each biennium reporting period.

8.2.3 Resident licensees will receive a continuing education transcript at least ninety (90) days prior to the end of a license biennium by mail or by electronic access as the Department deems appropriate. The licensee is responsible for reviewing the transcript for accuracy. To dispute the Department's accounting, the licensee must submit a written exception thereto prior to the biennium deadline and include a copy of the providers course completion certificate.

8.2.4 The maximum number of carryover credits shall not exceed five (5) credits in a biennium reporting period. Carryover shall not apply to ethics credit requirements. Credits in excess of the mandatory requirements set forth in section 8.2.1 may be applied to the licensee's general course requirements.

8.2.5 No continuing education requirement shall apply to newly licensed individuals during the biennium in which such individuals are licensed.

8.3 Automatic credit. An individual continuously licensed for twenty-five (25) years or longer prior to the start of a biennium reporting period or who holds a professional designation shall receive an automatic credit of twelve (12) credits in each biennium. The Department shall maintain a list of approved professional designations. Automatic credits may not be applied to satisfy the mandatory continuing education courses set forth in section 8.2.1.

8.4 License reinstatement after suspension, revocation or cancellation. All resident licensees whose licenses were canceled, suspended or revoked for a period of twelve (12) months or more shall first complete all licensing requirements under 18 Del.C. §1706 including the retaking of exams for all lines of authority under which the individual proposes to transact insurance. Any licensee who is reinstated under the provisions of this subsection shall not be entitled to the waiver provided for in section 8.2.5.

8.5 Extension of time. For good cause shown, the Department may grant an extension of time during which the requirements imposed by this regulation may be completed. The extension shall not exceed twelve (12) months. The extension will not alter the requirements or due date of the succeeding biennium period. "Good cause" includes disability, natural disaster, or other extenuating circumstances. Each request for extension of time shall be in writing from the licensee and shall include details and any documentation to support the request. Each request must be received by the Department no less than thirty (30) days before the expiration of the biennium period.

8.6 Waiver of Continuing Education Requirements. The requirements of this regulation may be waived in writing by the Department for good cause shown. "Good cause" includes long-term illness or incapacity and any other emergency situations deemed appropriate by the Department. Request for waivers of continuing education requirements shall be made in writing and shall be submitted to the Department no later than thirty (30) days prior to the end of the biennium for which such waiver is requested. Those individuals serving full time in the armed forces of the United States of America on active duty outside of the State of Delaware shall notify the Department upon their return by

supplying a copy of their activation orders as part of their application for a waiver. Any waiver granted pursuant to this regulation shall be valid only for the biennium for which waiver application was made.

8.7 Sixty (60) days prior to the start of each biennium, the Department shall prepare and publish a list of those lines of insurance for which the producers are exempt from the requirements of section 8.

8.8 Resident adjusters licensed for the lines of Fidelity and Surety and/or Marine and Transportation are exempt from the provisions of section 8.2.2 of this regulation. Nonresident adjusters and public adjusters must meet the license requirements of their home state.

8 DE Reg. 703 (11/1/04)

9.0 Penalty for Noncompliance

9.1 Pursuant to 18 Del.C. §§334, 1712, and 1718, any licensee who fails to complete the minimum requirements of this regulation, and who has not been granted an extension of time to comply under section 8.5 of this regulation shall be subject to an administrative penalty up to and including a \$2000.00 fine and suspension of license(s) for one year. Submission of false or fraudulent information shall result in an administrative penalty up to and including a \$15,000.00 fine and permanent revocation of license.

9.2 Any appointment(s) of such licensee suspended for failure to comply with this regulation shall likewise be suspended by operation of law. Upon satisfactory completion of education requirements in arrears and payment of any administrative fine imposed within a period of twelve (12) months, all license(s) and appointments shall be reinstated unless or until the insurer notifies the Department and licensee in writing of the insurer's intent to terminate such appointment. If suspension is for a period of twelve (12) months or greater, the licensee is subject to compliance with 18 Del.C. §1706 including the retaking of examinations for all line(s) of authority for which the individual licensee seeks a license.

9.3 The Commissioner may, by Order based upon a reasonable belief that a violation of Title 18 occurred, require any individual licensed under 18 Del.C. Ch. 17 to complete in addition to biennium insurance education requirements, approved continuing education course work to ensure the maintenance and improvement of a licensee's insurance skills and knowledge.

8 DE Reg. 703 (11/1/04)

10.0 Continuing Education Advisory Council

10.1 The Council shall consist of fourteen (14) licensees drawn from the professional organizations and the insurance industry in the State, 5 from the life and health field, 5 from the property and casualty field and four (4) from the claims settlement field.

10.2 One of the primary responsibilities of the Council shall be to review applications for course approvals and make recommendations to the Department – regarding acceptance/rejection and the number of CEUs to be granted if accepted.

10.3 The Council shall also advise the Department on matters of concern as they arise and be the liaison between the Department and the professional organizations.

10.4 Members shall serve a term of 2 years. Any member may be reappointed for successive terms. The committee shall meet every 2 months on the third Tuesday of the month or additionally as required. The members of the committee shall serve without pay and shall not be reimbursed for any expenses.

10.5 The Department's decision with respect to any Entity Sponsor submission shall be final.

8 DE Reg. 703 (11/1/04)

11.0 Separability

If any provision of this Regulation shall be held invalid, the remainder of the Regulation shall not be affected thereby.

8 DE Reg. 703 (11/1/04)

[12.0 Effective Date

~~This Regulation shall become effective March 1, 1998 and shall remain in effect until rescinded. Prior to the aforementioned date the provisions of Regulation 504 (Formerly Regulation 47) as last amended in 1987 shall remain in effect. The amendments to this Regulation shall become effective November 15, 2004. Any matters that are not merely procedural in nature arising prior to November 15, 2004 shall be governed by the provisions of the prior version of this regulation in effect at the time the matter arose.]~~

8 DE Reg. 703 (11/1/04)

9 DE Reg. 1239 (02/01/06) (Final)