These four volumes are guidelines that form the direction and basis for developing and implementing a comprehensive risk management program to reduce property, liability, and workers' compensation losses in each state agency.

These guidelines are presented pursuant to the requirements of the Texas Workers' Compensation Act, Texas Labor Code, Chapter 412, State Office of Risk Management. Each volume is designed to provide initial, general guidance that may assist an agency toward development of its own risk management program. These guidelines suggest programs, policies, and procedures that collectively may comprise an appropriate risk management program fora state agency. Therefore, detailed programs, policies, and procedures that more accurately address the agency's structure will need to be added to make the risk management program work for each agency. Agencies are encouraged to add and delete chapters as appropriate in order to arrive at a focused, comprehensive program. Each agency is requested to provide copies of any changes, additions, or deletions to these guidelines that support their documented risk management program to the State Office of Risk Management.

The Texas Workers' Compensation Act, Texas Labor Code, Section 412.011(b)(3) provides that the State Office of Risk Management shall assist a state agency that has not implemented an effective risk management program to develop and implement such a program that meets the Board's guidelines. Accordingly, the staff of the State Office of Risk Management is ready to serve state agencies as a resource for information and technical assistance. For more information or assistance, please contact:

State Office of Risk Management
P.O. Box 13777
Austin, TX 78711-3777
512/475-1440

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Section One: Authority, Risk Management for Texas State Agencies

Section Two: What is Risk Management

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Section One - Authority, Risk Management for Texas State Agencies
Chapter 1
State Office of Risk Management
[Texas Labor Code, Title 5, Subtitle A, Chapter 412]
Revised: November 2004

Volume I:

Introduction

On December 13, 1989, the Texas Workers' Compensation Act, Vernon's Annotated Civil Statutes (V.A. C.S.), Article 8308 was signed into law. In addition to providing the framework for reform of the workers' compensation system in Texas, §7.21 of the Act made provision for "risk management for certain state agencies." The Act has now been codified and is referenced in the Texas Labor Code, Title 5, Subtitle A, Chapter 412.

This chapter of the Risk Management for Texas State Agencies guidelines contains the full text of the Labor Code, Chapter 412. The following sections of the Act are updated to reflect amendments enacted by the74th Legislature, House Bill 1089, effective September 1, 1995; by the 75th Legislature, House Bill 2133, effective September 1, 1997, which established the State Office of Risk Management; by the 76th Legislature, House Bill 2509, effective September 1, 1999; by the 77th Legislature, House Bill 2600 effective June 17, 2001, HB 2976 effective September 1, 2001, and House Bill 1203, effective September 1, 2002; and by the 78th Legislature, Senate Bill 287 and House Bill 1230, effective September 1, 2003.

SUBCHAPTER A. GENERAL PROVISIONS

§ 412.001. DEFINITIONS.

In this chapter;
(1) "Board" means the risk management board.
(2) "Director" means the executive director of the office.
(3) "Office" means the State Office of Risk Management.
(4) "State agency" means a board, commission, department, office, or other agency in the executive, judicial, or legislative branch of state government that has five or more employees, was created by the constitution or a statute of this state, and has authority not limited to a specific geographical portion of the state. [As amended by House Bill 2133, 75th Legislature, effective date September 1, 1997.](Chapter 412 was amended by repeal of sections 412.002 - 412.008 by House Bill 2133, 75th Legislature, effective September 1, 1997)

SUBCHAPTER B. OFFICE § 412.011. POWERS AND DUTIES OF OFFICE.

(a) The State Office of Risk Management shall administer insurance services obtained by state agencies, including the government employees workers' compensation insurance program and the state risk management programs. (b) The office shall: (ol)

- operate as a full-service risk manager and insurance manager for state agencies as provided by Subsection (c);
- maintain and review records of property, casualty, or liability insurance coverages purchased by or for a state agency;
- administer the program for the purchase of surety bonds for state officers and employees as provided by Chapter 653, Government Code;
- administer guidelines adopted by the board for a comprehensive risk management program applicable to all state agencies to reduce property and liability losses, including workers' compensation losses;
- review, verify, monitor, and approve risk management programs adopted by state agencies;
- assist a state agency that has not implemented an effective risk management program to implement a comprehensive program that meets the guidelines established by the board;
- administer the workers' compensation insurance program for state employees established under Chapter 501; and
- provide risk management services for employees of community supervision and corrections departments established under Chapter 76, Government Code, as if the employees were employees of a state agency.

(c) The office shall:

1. perform risk management for each state agency subject to Chapter 412; and
2. purchase insurance coverage for a state agency subject to Chapter 501, except for an institution subject to Section 501.022, under any line of insurance other than health or life insurance, including liability insurance authorized under Chapter 612, Government Code.

(d) The board by rule shall develop an implementation schedule for the purchase under this section of insurance for state agencies by the office. The board shall phase in, by line of insurance, the requirement that a state agency purchase coverage only through the office.

(e) A state agency subject to Chapter 501, except for an institution subject to Section 501.022, may not purchase property, casualty, or liability insurance coverage without the approval of the board. [Added by HB 2133, 75th Legislature, effective date September 1, 1997; and amended by HB 1203, 77th Legislature, effective date September 1, 2002; HB 1230, 78th Legislature, effective date September 1, 2003.]

§ 412.0111. AFFILIATION WITH OFFICE OF ATTORNEY GENERAL.

The office is administratively attached to the office of the attorney general and the office of the attorney general shall provide the facilities for the office, but the office shall be independent of the office of the attorney general's direction. [Added by HB 1203, 77th Legislature, effective date September 1, 2002.]

§ 412.012. FUNDING.

The office shall be administered through money appropriated by the legislature and through:

1. interagency contracts for purchase of insurance coverage and the operation of the risk management program; and

   the allocation program for the financing of state workers' compensation benefits. [Added by HB 2133, 75th Legislature, effective date September 1, 1997; and amended by HB 2509, 76th Legislature, effective date September 1, 1999; HB 2600, 77th Legislature, effective date June 17, 2001, HB 2976, 77th Legislature, effective date September 1, 2001, HB 1203, 77th Legislature, effective date September 1, 2002;

§ 412.0121. INTERAGENCY CONTRACTS.

(a) Each state agency shall enter into an interagency contract with the office under Chapter 771, Government Code, to pay the costs incurred by the office in administering this chapter for the benefit of that state agency.

(b) Costs payable under the contract include the cost of:

1. services of office employees;
2. materials; and
3. equipment, including computer hardware and software.

(c) The amount of the costs to be paid by a state agency under the interagency contract is based on:

1. the number of employees of the agency compared with the total number of employees of all state agencies to which this chapter applies;
2. the dollar value of the agency's property and asset and liability exposure compared to that of all state agencies to which this chapter applies; and
3. the number and aggregate cost of claims and losses incurred by the state agency compared to those incurred by all state agencies to which this chapter applies.

(d) The board may by rule establish the formula for allocating the cost of this chapter in an interagency contract in a manner that gives consideration to the factors in Subsection (c) and any other factors it deems relevant, including an agency's risk management expenditures, unique risks, and established programs. [Added by HB 2133, 75th Legislature, effective date September 1, 1997; and amended by HB 2509, 76th Legislature, effective date September 1, 1999; HB 2600, 77th Legislature, effective date June 17, 2001; HB 2976, 77th Legislature, effective date September 1, 2001; HB 1203, 77th Legislature, effective date September 1, 2002.]

§ 412.0122. STATE SELF-INSURING FOR WORKERS'COMPENSATION.

(a) The state is self-insuring with respect to an employee's compensable injury.

(b) The legislature shall appropriate the amount designated by the appropriation structure for the payment of state workers' compensation claims costs to the office. This section does not affect the reimbursement of claims costs by funds other than general revenue funds, as provided by the General Appropriations Act. [Added by HB 2133, 75th Legislature, effective date September 1, 1997; and amended by HB 2509, 76th Legislature, effective date September 1, 1999; HB 2600, 77th Legislature, effective date June 17, 2001; HB 2976, 77th Legislature, effective date September 1, 2001; HB 1203, 77th Legislature, effective date September 1, 2002.]

§ 412.0123. ALLOCATION OF WORKERS' COMPENSATION AND RISK MANAGEMENT COSTS; RISK REWARD PROGRAM.

(a) The office shall establish a risk reward the payment of workers' compensation claims and risk management services that are incurred by a state agency subject to Chapter 501.

(b) The office shall establish a formula for allocating the state's workers' compensation costs among covered agencies based on the claims experience of each agency, the current and projected size of each agency's workforce, each agency's payroll, the related costs incurred in administering claims, and other factors that the office determines to be relevant. The agency may provide modifiers to the formula to promote the effective implementation of risk management programs by state agencies.

(c) The board has final authority to determine the assessments to be paid by the covered agencies. [Added by HB 2133, 75th Legislature, effective date September 1, 1997; and amended HB 2509, 76th Legislature, effective date September 1, 1999; HB 2600, 77th Legislature, effective date June 17, 2001; HB 2976, 77th Legislature, effective date September 1, 2001; HB 1203, 77th Legislature, effective date September 1, 2002.]

§ 412.0124. DEPOSIT OF WORKERS' COMPENSATION SUBROGATION RECOVERIES.

All money recovered by the director from a third party through subrogation shall be deposited into the state workers' compensation account in general revenue. [Added by HB 2133, 75th Legislature, effective date September 1, 1997; and amended by HB 2509, 76th Legislature, effective date September 1, 1999; HB 2600, 77th Legislature, effective date June 17, 2001; HB 2976, 77th Legislature, effective date September 1, 2001; HB 1203, 77th Legislature, effective date September 1, 2002.]

SUBCHAPTER C. BOARD § 412.021. RISK MANAGEMENT BOARD.

(a) The office is governed by the risk management board. Members of the board must have demonstrated experience in the fields of:

1. insurance and insurance regulation;
2. workers' compensation; and

3. risk management administration.

(b) The board is composed of five members appointed by the governor.

(c) Members of the board hold office for staggered terms of six years with one or two members' terms expiring February 1 of each odd-numbered year. A member appointed to fill a vacancy shall hold office for the remainder of that term.

(d) The governor shall designate one member of the board as presiding officer. The presiding officer shall serve in that capacity for a two-year term.

(e) The board is subject to Chapters 552 and 2001, Government Code.

(f) The risk management board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this section expires September 1, 2007. [Added by HB 2133, 75th Legislature, effective date September 1, 1997; and amended by HB 2600, 77th Legislature, effective date September 1, 2001; HB 1203, 77th Legislature, effective date September 1, 2002; SB 287, 78th Legislature, effective date September 1, 2003.]

§ 412.022. TRAINING PROGRAM FOR BOARD MEMBERS.

(a) To be eligible to take office as a member of the board, a person appointed to the board must complete at least one course of a training program that complies with this section. If the course has not been completed at the time of the appointment, the training program is to be completed within six months from the date of appointment, failure of which constitutes grounds for removal from the board.

(b) A training program established under this section must provide information to the member regarding:

1. the enabling legislation that created the board;
2. the program operated by the board;
3. the role and functions of the board;
4. the rules of the board, with an emphasis on the rules that relate to disciplinary and investigatory authority;
5. the current budget for the board;
6. the results of the most recent formal audit of the board;
7. the requirements of:
   (A) the open meetings law, Chapter 551, Government Code; (B) the public information law, Chapter 552, Government Code; and
   (C) the administrative procedure law, Chapter 2001, Government Code;
8. the requirements of the conflict of interest laws and other laws relating to public officials; and
9. any applicable ethics policies adopted by the board or the Texas Ethics Commission. [Added by HB 2133, 75th Legislature, effective date September 1, 1997; and amended by HB 1203, 77th Legislature, effective date September 1, 2002.]

§ 412.023. EFFECT OF LOBBYING ACTIVITY.

A person may not serve as a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession that is regulated by or that has fees regulated by the board. [Added by HB 2133, 75th Legislature, effective date September 1, 1997.]

§ 412.024. GROUNDS FOR REMOVAL FROM BOARD.

(a) It is a ground for removal from the board if a member:

1. does not have at the time of appointment the qualifications required for appointment to the board other than the requirements of Section 412.022;
2. does not maintain during service on the board the qualifications required for appointment to the board;
3. violates a prohibition established by Section 412.023;
4. cannot because of illness or incapacity discharge the member's duties for a substantial part of the term for which the member is appointed; or
5. is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year.

(b) If the director knows that a potential ground for removal exists, the director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the director shall notify the next highest officer of the board, who shall notify the governor and the attorney general that a potential ground for removal exists. [Added by HB 2133, 75th Legislature, effective date September 1, 1997.]
SUBCHAPTER D. GENERAL POWERS AND DUTIES OF BOARD§ 412.031.

RULEMAKING AUTHORITY.
The board shall adopt rules as necessary to implement this chapter and Chapter 501, including rules relating to reporting requirements for a state agency. [Added by HB 2133, 75th Legislature, effective date September 1, 1997.]

§ 412.032. BOARD'S REPORT TO LEGISLATURE.

(a) Based on the recommendations of the director, the board shall report to each legislature relating to:

1. methods to reduce the exposure of state agencies to the risks of property and liability losses, including workers'compensation losses;
2. the operation, financing, and management of those risks; and
3. the handling of claims brought against the state.

(b) The report must include:

1. the frequency, severity, and aggregate amount of open and closed claims in the preceding biennium by category of risk, including final judgments;
2. the identification of each state agency that has not complied with the risk management guidelines and reporting requirements of this chapter; and
3. recommendations for the coordination and administration of a comprehensive risk management program to serve all state agencies, including recommendations for any necessary statutory changes. [Added by HB 2133, 75th Legislature, effective date September 1, 1997.]

§ 412.033. HIRING DIRECTOR.

The board shall hire a qualified person to serve as director of the office. The director serves at the pleasure of the board. [Added by HB 2133, 75th Legislature, effective date September 1, 1997.]

SUBCHAPTER E. DIRECTOR. § 412.041.

DIRECTOR DUTIES.
(a) The director serves as the state risk manager.

(b) The director shall supervise the development and administration of systems to:

1. identify the property and liability losses, including workers' compensation losses, of each state agency;
2. identify the administrative costs of risk management incurred by each state agency;
3. identify and evaluate the exposure of each state agency to claims for property and liability losses, including workers' compensation; and
4. reduce the property and liability losses, including workers' compensation, incurred by each state agency.

(c) In addition to other duties provided by this chapter, by Chapter 501, and by the board, the director shall:

1. keep full and accurate minutes of the transactions and proceedings of the board;
2. be the custodian of the files and records of the board;
3. prepare and recommend to the board plans and procedures necessary to implement the purposes and objectives of this chapter and Chapter 501, including rules and proposals for administrative procedures consistent with this chapter and Chapter 501;
4. hire staff as necessary to accomplish the objectives of the board and may delegate powers and duties to members of that staff as necessary;
5. be responsible for the investigation of complaints and for the presentation of formal complaints;
6. attend all meetings of the board as a nonvoting participant; and

7. handle the correspondence of the board and obtain, assemble, or prepare the reports and information that the board may direct or authorize.

(d) If necessary to the administration of this chapter and Chapter 501, the director, with the approval of the board, may secure and provide for services that are necessary and may employ and compensate within available appropriations professional consultants, technical assistants, and employees on a full-time or part-time basis.

(e) The director also serves as the administrator of the government employees workers' compensation insurance program.

(f) In administering and enforcing Chapter 501 as regards a compensable injury with a date of injury before September 1, 1995, the director shall act in the capacity of employer and insurer. In administering and enforcing Chapter 501 as regards a compensable injury with a date of injury on or after September 1, 1995, the director shall act in the capacity of insurer.

(g) The director shall act as an adversary before the commission and courts and present the legal defenses and positions of the state as an employer and insurer, as appropriate.

(h) For the purposes of Subsection (f) and Chapter 501, the director is entitled to the legal counsel of the attorney general.

(i) In administering Chapter 501 the director is subject to the rules, orders, and decisions of the commission in the same manner as a private employer, insurer, or association.

(j) The director shall:

1. prepare for adoption by the board procedural rules and prescribe forms necessary for the effective administration of this chapter and Chapter 501; and
2. prepare for adoption by the board and enforce reasonable rules for the prevention of accidents and injuries.,/li>

(k) The director shall hold hearings on all proposed rules and provide reasonable opportunity for the officers of state agencies to testify at hearings on all proposed rules under this chapter and Chapter 501.

The director shall furnish copies of all rules to:

1. the commission;
2. the commissioner of the Texas Department of Insurance; and
3. the administrative heads of all state agencies affected by this chapter and Chapter 501. [Added by HB 2133, 75th Legislature, effective date September 1, 1997; and amended by HB 1203, 77th Legislature, effective date September 1, 2002.]

§ 412.042. REPORTS TO THE LEGISLATURE.

(a) The director shall report to the legislature at the beginning of each regular session regarding the services provided by the office to a state agency subject to Chapter 501. The report required under this subsection shall be dated January 1 of the year in which the regular session is held and must include:

1. a summary of administrative expenses;
2. a statement (A) showing the amount of the money appropriated by the preceding legislature that remains unexpended on the date of the report; and (B) estimating the amount of that balance necessary to administer Chapter 501 for the remainder of that fiscal year; and
3. an estimate, based on experience factors, of the amount of money that will be required to administer Chapter 501 and pay for the compensation and services provided under Chapter 501 during the next succeeding biennium. (b)

In addition to the report required under Subsection (a), the director shall report to the legislature not later than February 1 of each odd-numbered year regarding insurance coverage purchased for state agencies, premium dollars spent to obtain that coverage, and losses incurred under that coverage. (c) On an annual basis, not later than September 30 of each year, agencies exempt under Section 412.052 of this article shall provide a written report to the Legislative Budget Board identifying policies purchased under any line of insurance other than life or health insurance. The report should include a description of the policy, name of the insurance company, annual premium, coverage limits, deductibles, and losses incurred under that coverage. [Added by HB 2133, 75th Legislature, effective date September 1, 1997; and amended by HB 2509, 76th Legislature, effective date September 1, 1999; HB 1203, 77th Legislature, effective date September 1, 2002.]

SUBCHAPTER F. STATE AGENCIES § 412.051.

DUTIES OF STATE AGENCIES; INSURANCE REPORTING REQUIREMENTS.
(a) Each state agency shall actively manage the risks of that agency by:

1. developing, implementing, and maintaining programs designed to assist employees who sustain compensable injuries to return to work; and
2. cooperating with the office and the Texas Department of Insurance in the purchase of property, casualty, and liability lines of insurance coverage.

(b) In addition to the report required under Section 412.053, each state agency that intends to purchase property, casualty, or liability insurance coverage in a manner other than through the services provided by the office shall report the intended purchase to the office in the manner prescribed by the office. The state agency shall report the intended purchase not later than the 30th day before the date on which the purchase of the coverage is scheduled to occur. The office may require a state agency to submit copies of insurance forms, policies, and other relevant information. [Added by HB 2133, 75th Legislature, effective date September 1, 1997; and amended by HB 1203, 77th Legislature, effective date September

1, 2002.]

412.052. EXEMPTION OF CERTAIN STATE AGENCIES.

This chapter does not apply to a state agency that had medical malpractice insurance coverage, workers' compensation insurance coverage, or other self-insurance coverage with associated risk management programs before January 1, 1989. [Added by HB 2133, 75th Legislature, effective date September 1, 1997.]

§ 412.053. ANNUAL REPORT BY STATE AGENCY.

(a) Each state agency shall report to the director for each fiscal year:

1. the location, timing, frequency, severity, and aggregate amounts of losses by category of risk, including open and closed claims and final judgments;
2. loss information obtained by the state agency in the course of its administration of the workers' compensation program;
3. detailed information on existing and potential exposure to loss, including property location and values, descriptions of agency operations, and estimates of maximum probable and maximum possible losses by category of risk;
4. estimates by category of risk of losses incurred but not reported;
5. information the director determines necessary toprepare a Texas Workers' Compensation Unit Statistical Report; and
6. additional information that the director determines to be necessary.

(b) The information shall be reported not later than the 60th day before the last day of each fiscal year. [Added by HB 2133, 75th Legislature, effective date September 1, 1997; and amended by HB 1203, 77th Legislature, effective date September 1, 2002.]

Additional Resources for Texas State Agencies
Publications

Vernon's Texas Codes Annotated, Labor Code, Title 5, Subtitle A - Texas Workers' Compensation Act, Chapter 412 - State Office of Risk Management

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Section One - Authority, Risk Management for Texas State Agencies
Chapter 2
Adopted Rules
[Texas Administrative Code, Title 28, Part 4, Chapter 252 - State Risk Management]
Revised:

Volume I:

Subchapter A - Chapter Definitions; Office Forms and Communications

252.101. Definitions

The following terms and phrases shall have the following meanings unless the context clearly indicates otherwise:

(1) Business Day--Days in which an agency operates under a normal business schedule, including days in which an agency is staffed with a skeleton crew and optional holidays as defined in Texas Government Code §662.003(c).
(2) Claim--A demand by an individual or entity to recover a financial loss caused by an agency or its employee.
(3) Exposures--A situation, practice or condition that might lead to a loss.
(4) Incident--An event that disrupts normal activities and may become a loss or claim.
(5) Insurance Policy--Any line of insurance, other than health or life insurance, including liability insurance authorized under Government Code, Chapter 612. This definition applies to all property, casualty and liability insurance.
(6) Liability--Includes every character of hazard or responsibility. The term includes professional liability, medical malpractice, employment and civil rights violations, and similar liabilities. The term includes, but is not limited to, the duty to pay for:

- the actions or lack of action by a state official, state employee, or person operating under the authority of the state;
- liability-assumed contracts such as lease or rental agreements; and (C) liabilities created by federal or state law, or common law.

(7) Loss--The basis of a claim for damages under the terms of a policy or the loss of assets resulting from an insurable risk.
(8) Notary Without Bond--An employee of a state agency whose responsibilities include serving as notary for an agency.
(9) Notary Bond--A bond, as required under Government Code §406.010, to protect against the

negligent act of a notary public.
(10) Office--The State Office of Risk Management.
(11) Property--Anything owned, leased, occupied, or borrowed by a state agency, whether corporeal or incorporeal, tangible or intangible, real or personal. The term includes, but is not limited to:

- land and mineral rights;
- buildings and other improvements;
- vehicles and boats;
- equipment;
- published materials;
- works of art and antiquities;
- furniture;
- supplies;
- chemicals;
- food and agricultural products;
- apparel;
- raw materials;
- rights and royalties;
- intellectual property;
- financial assets including money; and
- EDP hardware and software.

(12) Sponsored Policy--A policy obtained by the Office on behalf of agencies for statewide use.
(13) Surety Bond--Shall have the meaning given under Government Code §653.003. Surety bonds include, but are not limited to, public official bonds and fidelity bonds.

252.103. Forms and Communications - In General

(a) Forms referenced in this chapter may be obtained at The State Office of Risk Management's website at www.sorm.state.tx.us unless otherwise noted in the rules.
(b) All forms and applications pertaining to a particular matter shall be sent to the Office simultaneously, whenever practicable. Where the original of a document is required by these rules, facsimile or electronic transmission shall not be used. Except for reports required under Subchapter B, correspondence to the Office under this chapter shall be addressed to: State Office of Risk Management, Bonds and Insurance Section by:

1. interagency mail code No. 031 (state agencies only);
2. facsimile transmission to (512) 472-4769, (subject to change as posted on the Office's website);
3. hand delivery to: 300 W. 15th Street, 6th Floor, Austin, Texas 78701;
4. regular mail to: P.O. Box 13777, Austin, Texas 78711-3777; or
5. electronic mail to bonds.insurance@sorm.state.tx.us.

(c) The Office shall notify agencies of Office decisions in writing, in the form and manner prescribed by the Office.

Subchapter B - Risk Management

252.201. State Risk Management Guidelines

(a) Each state agency covered by Texas Labor Code, Chapter 412, shall, by January 1, 1996, develop and implement an agency risk management program which shall include a safety and health program and a return to work program. State agency risk management programs shall either:

1. comply with the risk management guidelines, including risk control and risk financing, contained in Risk Management for Texas State Agencies published by the State Office of Risk Management the Office ; or
2. utilize other appropriate nationally recognized standards, including Occupational Safety and Health Administration (OSHA) standards.

(b) When a risk exposure is not covered by the guidelines referenced in subsection (a) of this section, appropriate nationally recognized standards shall be followed, including the OSHA standards.

(c) A state agency which cannot comply with any applicable guideline or nationally recognized standard shall, upon request of the Office at the time of a risk management program review, file a statement with the Office which:

1. clearly identifies the factors preventing the agency's compliance with the appropriate guideline or nationally recognized standard; and
2. states the action the agency will take in lieu of complying with the guideline or nationally recognized standard.

(d) The Office shall review, verify, monitor, and approve state agency risk management programs based on compliance with subsections (a), (b), and (c) of this section.

(e) State agencies covered by Chapter 412 of the Texas Labor Code which do not comply with subsections (a), (b), and (c) of this section will be identified as not in compliance with this subchapter in the biennial report to the Legislature.

252.203. Reports

(a) A state agency subject to the Texas Labor Code, Chapter 412, shall file the following with the Office no later than October 30 of each year:

1. an annual Loss Summary Report on the SORM-200;
2. a list of any loss exposures unique to the agency that have not been reported and placed in a

statewide database accessible to the Office.

(b) Where state controlled databases containing information relating to state property, and liability and workers' compensation losses exist, the controlling agency shall, upon request by the Office, provide the Office access to the database to obtain claims, and/or loss information.

Subchapter C - Reporting and Obtaining Insurance Coverage

252.301. Review of Lines of Insurance by the Office

(a) This subchapter shall apply to agencies of the State of Texas, courts or institutions subject to Labor Code, Chapter 501, except for an institution subject to §501.022.

(b) The Office shall select lines of insurance for review based on the following factors:

1. reported purchases by agencies;
2. identified exposures and liabilities as reported by agencies or as determined by the Office;
3. the number of agencies requesting the line or type of insurance;
4. whether the insurance is necessary to protect the interests of the state;
5. whether the insurance is economically advantageous to the state;
6. whether the line is available from acceptable vendors at acceptable prices; or
7. other relevant factors as determined by the Office.

(c) After review of each line of insurance, the Office shall classify each line as follows:

1. approved with sponsored policy;
2. approved without sponsored policy; or
3. prohibited, except as authorized under §252.305.

(d) After review, the classification assigned to each line of insurance reviewed, along with any comments by the Office, shall be posted on the Office's website.

252.303. Purchases of Approved Lines

(a) The Office shall procure insurance policies to be generally available to agencies. Policies from specific vendors shall be selected for statewide use and posted on the Office website. Unless excepted by subsections (c) or (d), agencies shall use a policy from one of these pre-selected lines.

(b) To participate in a sponsored insurance policy, an agency shall complete and submit the SORM-201 along with any other information requested by the Office. The form must be submitted 15 days before the inception date of any sponsored policy.

(c) Agencies must seek a written exception to obtain a line of insurance under a policy not sponsored by the Office when the Office offers the line under a sponsored policy. Agencies must submit a SORM-201 and all documentation supporting the coverage 30 days before the inception of the proposed policy. If, after review of the submission, the Office finds that the agency has unique exposures or that the purchase is necessary because of substantial or unusual risk of loss or that the coverage is necessary to protect the interests of the state, the Office shall authorize the purchase.

(d) To purchase a policy from lines other than approved policies, agencies must submit a SORM-201 and all documentation supporting the necessity of the coverage 30 days before the inception of the proposed policy. If, after review of the submission, the Office finds that the agency has unique exposures or that the purchase is necessary because of substantial or unusual risk of loss or that the coverage is necessary to protect the interests of the state, the Office shall authorize the purchase.

252.305. Purchases of Prohibited Lines

(a) After reviewing lines of insurance as provided under §252.301, the Office may prohibit agencies from purchasing particular lines of insurance. Agencies may apply to the Office for an exception to purchase coverage under a prohibited line in the following manner:

1. submit a SORM-201 to the Office 45 days before the effective date of the proposed policy; and
2. state the grounds for seeking the otherwise prohibited policy.

(b) After review of the submission, the Office may grant an exception for an otherwise prohibited policy to be used by a specific agency.

252.307. Reporting Purchases of Insurance

State agencies shall initiate the process of procuring or renewing a line of insurance not yet reviewed by the Office by completing the SORM 201 and submitting it to the Bonds and Insurance Section of the Office no later than 30 days before the intended purchase is scheduled to occur.

252.309. Agency Duties

(a) Agencies participating in any insurance polices covered under this subchapter shall:

1. timely pay premiums incurred by the agency to the insurer as calculated per policy;
2. coordinate with underwriters by complying with reasonable requests for information in a timely manner unless otherwise directed by state legal counsel;
3. consider and respond to insurer loss control recommendations;
4. cooperate with insurer claims personnel to investigate and process claims; and
5. comply with the Office's loss control mandates.

(b) State agencies failing to comply with this section may be reported to the legislature and the comptroller for appropriate action.

252.311. Reporting Losses and Claims, by Agencies

(a) Agencies shall report all losses and claims to the Office in the form and manner prescribed by the Office by the close of the tenth calendar day following the day of any claims or losses or any changes in status thereto, including settlement or denial. If the applicable insurance policy requires a shorter reporting time period for claims or losses, the time period in the policy shall govern both reports to the Office and the insurance company.

(b) Agencies shall notify the Office of the Attorney General of claims pursuant to Civil Practice & Remedies Code, Chapter 101 on written notice of a claim. Agencies shall notify the Office of the Attorney General of claims pursuant to Civil Practice & Remedies Code, Chapter 104 on written notice of a lawsuit.

252.313. Insurers' Report to Office

(a) Except for health or life insurance, insurers shall report to the Office any policy, contract or agreement for any line of insurance delivered or renewed on or after January 1, 2002 to an entity subject to this subchapter. Insurance under this section includes surety bonds.

(b) Insurers shall complete the SORM-202 and submit it to the Office not later than 30 days before the date any intended sale of coverage is scheduled to occur.

(c) During a policy's term, the insurer shall notify the Office within 30 days of:

1. policy changes upon issuance;
2. claims filed as settled;
3. cancellation and reinstatement notices; or
4. non-renewal notices.

Subchapter D- Surety Bond Purchases

252.401. General Provisions

(a) This subchapter shall be applicable to a state department, commission, board, institution, court, or institution of higher education or soil conservation district of the state. This subchapter does not apply to any other political subdivisions of the state.

(b) Surety bonds shall not be purchased without approval of the Office. State agencies failing to obtain approval for purchases of surety bonds may result in non-authorization of the expenditure and/or report to the legislature for appropriate action.

(c) This subchapter does not affect the purchase by a state agency of any form of insurance other than a surety bond.

252.403. Surety Bond Purchases

(a) State agencies shall initiate the process of purchasing surety bonds by submitting the SORM-201 not later than 30 days before the inception date of the bond.

(b) The following factors shall be considered by the Office in determining the necessity of surety bonds for state agencies:

1. whether the bond is required under the Texas Constitution, federal law or regulation, or court order;
2. whether the surety bond is warranted by a substantial or unusual risk of loss;
3. whether the surety bond is necessary to protect the interests of the state; and/or
4. (4) other relevant factors.

(c) If the Office approves the application for the surety bond, the Office shall determine the scope and amount of the bond coverage and shall authorize the purchase of the bond.

252.405. Reporting of Claims Against Surety Bonds

(a) Claims against surety bonds shall be reported by entities subject to this subchapter in the manner provided in §252.311.

(b) Claims against surety bonds shall be reported by insurers in the manner provided in §252.313.

Subchapter E - Notaries Without Bond

252.501. General Provisions

(a) State employees whose duties include service as notaries shall serve without bond and shall not submit a notary bond or notary bond filing fee with their notary applications. Notaries without bond shall otherwise meet the general requirements of Government Code, Chapter 406, including but not limited to, maintaining a notary record book and taking the official oath.
(b) This subchapter shall be applicable only to a state department, commission, board, institution, court, or institution of higher education or soil conservation district of the state. This subchapter does not apply to other political subdivisions of the state.

252.503. Notaries Without Bond - Applicable Process

(a) Applicants shall complete the Secretary of State (SOS) form 2301-NB and the SORM-201 and provide it to the employing agency for submission to the Office.

(b) The agency shall submit to the office:

1. the original SOS form 2301-NB;
2. the original SORM-203; and
3. an inter-agency transfer voucher (ITV) payable to the Secretary of State. The employee's name shall appear in the descriptive legal text (DLT). The ITV shall constitute acceptable proof of the applicant's state-employment status, to be verifiable through the employing agency at any time.

(c) The Office shall review and forward the approved applications consisting of the SOS form 2301-NB and the ITV to the Secretary of State for final processing.

252.505. Agency Duties

(a) The agency shall provide a stamp to the notary upon which "Notary without Bond" is affixed. Information for ordering the stamp is available on the Office's website or by contacting the Bonds and Insurance Section of the Office. A notary without bond may not use a stamp unless the stamp contains the additional line reading "Notary without Bond". Notaries without bond shall use this stamp on all documents notarized pursuant to their official state duties. The stamp shall comply with all additional notary stamp requirements of the Secretary of State.

(b) Agencies shall require notaries without bond to attend a notary training class, either provided internally or externally. Information concerning notary training is available on the Office's website or by contacting the Bonds and Insurance Section of the Office.

252.507. Notification Requirements Upon Transfer or Termination of Notaries Without Bond

(a) Upon transfer of any notary without bond to another state agency, the new agency shall immediately notify the Bonds and Insurance Section of the Office using the SORM-204.

(b) Upon termination of any notary without bond, the terminating agency shall immediately notify the Bonds and Insurance Section of the Office using the SORM-204.

(c) Notaries without bond should voluntarily resign notary commissions immediately before termination of state employment or as soon thereafter as practicable. Immediately before termination, each agency shall notify all notaries without bond of the Office's recommendation. The stamp shall remain with the agency upon termination of state employment as state property. The original of the notary record book shall remain with the employee unless the employee resigns the commission, in which case the employee shall comply with Government Code §406.022.

252.509. State Employees' Notarization of Documents Outside of State Employment

(a) A state employee is not prohibited from purchasing a notary bond or paying the Secretary of State's bond filing fee at personal expense. The cost of the notary bond filing fee and bond premium shall not be reimbursed by any state agency or with any other state funds. State employees who purchase a notary bond shall complete a standard SOS form 2301 form and follow the filing procedures as established by the Secretary of State.

(b) Notaries without bond who notarize documents outside of their state duties and who fail to use the "Notary without Bond" stamp shall be subject to disciplinary action by their respective agencies.

252.511. Reporting of Claims Against Notaries Without Bond

Claims against notaries without bond shall be reported by entities subject to this subchapter in the manner provided in §252.311.

Effective Date: December 22, 2002

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Section One - Authority, Risk Management for Texas State Agencies
Chapter 3
State Office of Risk Management - Risk Management Program

Reviewed: November 2004

Volume I:

Purpose and Scope of the State Office of Risk Management

Legislative Mandate

The Texas Workers' Compensation Act (Labor Code, Title 5, Subtitle A, Chapter 401) provides the legislative mandate for the State Office of Risk Management (Office). Chapter 412 of Subtitle A creates the State Office of Risk Management as a state agency, creates a governing board for the agency, and specifies that the executive director shall serve as the "state risk manager." For more detailed information on the enabling legislation, see Volume I, Section One, Chapter 1 of these guidelines.

Besides mandating risk management, property and liability insurance, and surety bond programs for state agencies, Chapter 412 also requires the State Office of Risk Management to administer the government employees' workers' compensation insurance program. The Labor Code, Title 5, Subtitle C, Chapter 501 identifies the requirements of this program. For more information on this aspect of the State Office of Risk Management mandate, see the Workers' Compensation Division's Claims Coordinator Handbook.

State Risk Management Program Applicability to State Agencies

Section 412.001(4) defines a state agency as a board, commission, department, office, or other agency in the executive, judicial, or legislative branch of state government that was created by the constitution or a statute of the State of Texas and that has authority that is not limited to a specific geographical portion of the state. Institutions of higher education, as defined by §61.003, Education Code (V.T.C.A.), are included in this definition. State agencies that have fewer than five employees are excluded from applicability of §412.001(4). Section 412.052 exempts certain other state agencies from the requirements of the Code. Those that are exempted are agencies that, prior to January 1, 1989, had medical malpractice, workers' compensation, or other self-insurance coverage with associated risk management programs. The following four agencies fall within this category:

- University of Texas System
- Texas A&M University System
- Texas Department of Transportation
- Texas Tech University System.

All remaining state agencies are not exempted from the statewide risk management program and therefore come under the purview of the State Risk Management Program.

Funding Source for the State Risk Management Program

Section 412.012 of the Code provides the requirement that each state agency subject to the Code shall enter into an interagency contract with the State Office of Risk Management to pay the costs incurred by the Office in administering the risk management program. Costs that shall be reimbursed by the state agency to the Office are

- Services of State Risk Management Program employees
- Materials
- Equipment, including computer hardware and software.

The interagency contracts are administered in accordance with the requirements of the Interagency Cooperation Act (Chapter 771, Government Code, and are based on the following:

- The number of agency employees compared with the total number of state employees to which Chapter 412 applies

- The dollar value of agency property, asset, and liability exposures compared to all state agencies to which Chapter 412 applies

- The number and aggregate cost of claims and losses incurred compared to all state agencies to which Chapter 412 applies.

Labor Code 412.0121 authorizes SORM's board to establish a formula for allocating the cost assessed each agency by taking into consideration the above factors and any other factors it deems relevant, including an agency's risk management expenditures, unique risks, and established programs. Referred to as a risk reward program, Labor Code 412.0123 specifies the formula is to be based on the claims experience of each agency, the current and projected size of the each agency's workforce, each agency's payroll, the related costs incurred in administering claims, and other factors that the office determines to be relevant. A modifier may be included in the formula to promote the effective implementation of risk management programs by state agencies.

The purpose of the risk reward, or allocation program is to equitably distribute the cost of funding workers' compensation losses, the cost of administering claims, and the cost of providing loss control services to participating state agencies. It encourages the development and implementation of risk management programs and practices designed to minimize occupational injuries and illnesses, as well as, protects state property and provide appropriate safety and health training for all state employees. In addition, the pooling of large and small risks enable catastrophic loss(es) to be spread throughout all participating state agencies while encouraging compliance with State Office of Risk Management regulations, policies, and programs recommended in Risk Management For Texas State Agencies.

The current formula used to determine the allocated amount assessed each agency in the interagency cooperation contracts for a fiscal year can be located in Title 28, Part 4, Chapter 251, Subchapter E, of the Texas Administrative Code.

Functions and Programs of the State Risk Management Program

Supervise the Development and Administration of a State Risk Management System

Section 412.041 identifies the executive director of the State Office of Risk Management as the state risk manager. The state risk manager is responsible for supervising the development and administration of a system of risk management for the state.

In accomplishing the above legislative mandate, the Office uses risk exposure, claims and loss data, and information that Chapter 412 requires state agencies to report to the Office.

The statewide risk management system or program also includes development and administration of risk management guidelines, a provision for technical assistance to state agencies that have not implemented a comprehensive, effective risk management program that meets the Office's guidelines, and administration of property and liability insurance and bond purchases. These items are discussed in more detail in the Assistance to State Agencies section.

Chapter 412 also makes provision for the Office to prepare two reports for each regular session of the Texas legislature regarding the status of the statewide risk management program. These reports address many issues including insurance coverage purchased for state agencies, identification of those state agencies that have not complied with the reporting requirements of the Labor Code, and identification of any state agency that fails to meet its obligation regarding the prevention of accidents and injuries to state employees.

Assistance to State Agencies

Section 412.011(b) provides that the State Office of Risk Management shall operate as a full-service risk and insurance manager for state agencies. The Office oversees all surety bond, and property and liability insurance purchases by state agencies; and assist in the implementation of a comprehensive risk management program that meets Office guidelines. The State Risk Management Programs encourages cooperation with and consultation to state agencies to assist with the development and implementation of comprehensive risk management programs for individual agencies and the state as a whole. Each state agency provides the specific expertise to accomplish that agency's risk management program in accordance with its mission and objectives, and retains responsibility for the success of its program.

When providing assistance to state agencies in the form of risk management guidelines, consultations, safety evaluations, and risk management program reviews, The Risk Management for Texas State Agencies cites standards, guidelines, and rules implemented by many other entities, including other state agencies when appropriate. This approach of referencing and referral recognizes and emphasizes the role, responsibilities, and expertise of other programs and avoids duplication of programs.

Currently, specific assistance provided to state agencies by State Risk Management consists primarily of the eight items discussed below.

1. Insurance and Surety Bond Purchases Section 412.011(b) specifies that the State Office of Risk Management shall maintain and review records of property, casualty, or liability insurance coverage purchased by or for state agencies. In addition, the office shall administer the program for the purchase of surety bonds, including Notary Bonds, for state officers and employees as provided by Government Code 653. Subsection (c) requires the office to purchase insurance coverage, other than life and health insurance, for state agencies subject to Chapter 501 of the Labor Code and develop an implementation schedule for the purchase of insurance lines under this section. A state agency subject to Chapter 501, except for an institution subject to 501.022, may not purchase property, casualty or liability insurance coverage without the approval of the office's board. The rules guiding insurance and surety bond purchases are located in Title 28, Part 4, Chapter 252 of the Texas Administrative Code.

The objectives of the bond and insurance programs are to eliminate insurance policies and bonds that do not cover an agency's risks or charge a premium for covering non-existent risks. These programs help the office identify opportunities to pool risks among agencies to protect property and budgets, and assist in tracking claims and controlling losses. With the state's marketing and buying power, only appropriate coverage at the most reasonable price with the best terms and conditions available is obtained.

2. State Risk Management Guidelines Section 412.011(b)(4) specifies that the State Office of Risk Management shall administer guidelines adopted by the Board for a comprehensive risk management program applicable to all state agencies. Accordingly, a four-volume set of guidelines, entitled Risk Management for Texas State Agencies has been developed and distributed to all agencies. These four volumes are;

- Volume I - Risk Management Administration
- Volume II - Property Exposures Volume
- III - Workers' Compensation Exposures
- Volume IV - Liability Exposures.

The guidelines provide essential information that a state agency may need to develop and implement a comprehensive risk management program to reduce property and liability losses, including workers' compensation losses. They are intended to provide both general and specific direction to state agencies to assist them in establishing and maintaining an agency-specific risk management program. The guidelines are designed to address topics and issues relating to property, liability, and workers' compensation exposures to loss, and to make suggestions for managing and controlling the exposures as well as actual losses incurred. The guidelines are dynamic and will be continually issued and revised in the future. Multiple copies of the Risk Management for Texas State Agencies guidelines have been distributed to every participating state agency.

3. Technical and Statistical Reports

Section 412.053 requires that each state agency shall report certain risk management exposure and loss information to the state risk manager on a fiscal-year basis. The annual claims and loss information reported by state agencies are maintained in a computerized risk management information system (RMIS). In addition, State Risk Management uses detailed, claims-level data obtained from the Workers' Compensation Claims Program of the State Office of Risk Management.

Technical and statistical reports from the RMIS regarding aggregate claims and loss data are provided biannually to each legislature, and annual report updates are provided to the Texas Department of Insurance. Various reports are provided monthly, quarterly, annually, and as requested to state agencies. This information is used to determine the frequency and severity of claims and losses, and to begin establishing historical trend information on which projections of minimum and maximum probable losses can be determined.

4. On-Site Consultations

The State Risk Management staff provides on-site technical assistance to state agencies. These on-site consultations may be informative, educational, training, or remedial in nature, and address specific property, liability, or workers' compensation exposures or losses.

The basis for an on-site consultation can be the actual claims and loss data from the RMIS, which may indicate that an agency has significant claims and losses in terms of frequency and/or severity. Alternatively, the agency may request an on-site consultation to assist in evaluating risk exposures and/or identifying appropriate risk prevention and/or loss control techniques. If a known risk exposure is considered significant by State Risk Management, the staff will schedule an on-site consultation with the appropriate agency representatives to discuss the exposure and risk prevention/loss control measures that may be implemented.

5. Safety Program Evaluations

Evaluations of safety programs are conducted to assist state agencies to establish an employee safety and health program, and to determine the status of agency efforts to develop and implement a program to provide a safe and healthful environment for agency employees and the public served by the agency. The objective of a safety program evaluation is to review an agency's health and safety program and to determine the level of compliance in meeting the legislative intent outlined in Chapter 412. More specifically, the objective is to determine if the agency has a comprehensive, documented employee health and safety program and has implemented the applicable elements of an employee safety and health program as discussed in the Risk Management for Texas State Agencies guidelines (Volume III, Section Two).

Based on the evaluation, State Risk Management prepares a written report that is submitted to the agency head and risk manager. This report presents the findings and recommendations of the safety program evaluation. The agency is requested to prepare an action plan to address the findings and recommendations contained in the report. Risk management specialists within State Risk Management monitor the agency's actions and conduct on-site consultations as appropriate to assist the agency to implement the action plan.

6. Risk Management Program Reviews

Reviews of state agency risk management programs are performed to determine the status of state agency efforts to develop and implement a comprehensive risk management program. These reviews are accomplished through the use of a comprehensive survey questionnaire which facilitates the evaluation and review process. The questionnaire is designed to quickly identify risk exposures and to determine if appropriate policies, programs, procedures, and practices have been developed by the agency to address the identified risk exposures. The questionnaire is completed by the agency prior to the evaluation and used as a checklist by the review team.

Review of a state agency's risk management program is conducted approximately every three years, contingent on State Risk Management staffing and resources. State agency risk management program reviews are conducted for 50 state agencies annually. This review covers approximately 20 functional property, liability, and workers' compensation exposure areas.

State Risk Management monitors an agency's cooperation and progress toward fulfilling legislative intent regarding establishment of a comprehensive, statewide risk management program for all state agencies, in accordance with Chapter 412. Statistical data from the RMIS is used by the review team to evaluate the effectiveness of the implemented program, and to direct the State Risk Management staff to areas of risk exposure or losses that require attention.

It is not the intent of a risk management program review to identify every specific hazard or deficiency in agency operations, nor to make specific recommendations to solve agency operational problems. The review is not an inspection of facilities nor an internal audit of the agency's internal operations or programs. However, a walk-through of the agency's facilities and operations is conducted to familiarize the review team with the agency's unique exposures and resources that impact the risk management program. Exposures to risk or loss that are identified during the walk-through are noted for immediate discussion and/or inclusion within the program review report.

Based on the responses by the agency to the risk management program review survey questionnaire and the on-site review, State Risk Management prepares a written report that is submitted to the agency head and risk manager. The report presents the findings on specific issues and recommendations that the agency should concentrate on to develop, improve, and/or enhance its risk management program. The agency is also requested to prepare an action plan to address the issues and recommendations contained in the report. Risk management specialists within State Risk Management monitor the agency's actions and conduct on-site consultations as appropriate to assist the agency to implement the action plan.

7. Risk Management Seminars and Training for State Agencies

State Risk Management sponsors and hosts seminars and training sessions for state agencies. These seminars and training sessions are aimed at providing opportunities for continuing the professional development of state agency employees who are involved in developing and implementing agency risk management programs.

Current risk management issues and topics of interest and concern are presented in seminar and workshop formats. Persons who have specific subject matter and/or technical knowledge and expertise are invited as speakers and presenters. These presenters may come from other state agencies, public entities, professional associations, and/or the private sector.

A minimum of twelve sessions a year will occur with subject matter including additional duty safety officer orientation, behavior-based safety, contingency planning, fire prevention, and workplace violence and bomb threats. Claims-related training is discussed in Volume III, Section One, Chapter 4 of these guidelines.

The training sessions are free of charge for agencies to which Chapter 412 applies.

8 . Model Manuals and Programs

Sample manuals, programs, and procedures are developed and distributed by the Office for use by all agencies. Most of these samples are actually examples provided by other state agencies that have been edited for dissemination. While the larger agencies have staff to produce necessary guidance for their risk management programs, many of the smaller organizations do not. This is an opportunity to give those agencies a "running start" at developing their programs.

Additional Resources for Texas State Agencies
Publications

Labor Code, Title 5, Subtitle A, Chapter 412 - State Office of Risk Management, Sections 412.001-412.053

Risk Management for Texas State Agencies, Volumes I-IV
and
Claims Coordinator Handbook
State Office of Risk Management
William P. Clements, Jr. Building, 6th Floor
300 W. 15th Street
P.O. Box 13777
Austin, TX 78711-3777
(512) 475-1440
FAX: (512) 472-4769

Agencies and Organizations Providing Assistance

State Office of Risk Management
William P. Clements, Jr. Building, 6th Floor
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Section Two - What is Risk Management?
Overview of Risk Management
Chapter 2
Revised: November 2004

Volume I:

Definition of Risk Management

Every organization, no matter how large or small, inherently possesses exposures to risk. This holds true for all Texas state agencies. The operations of state agencies are dynamic. They change constantly, and are rarely stationary. Employees come and go. . .new services and programs are provided. . .outdated services and programs are eliminated. . .equipment wears out and must be replaced. . .facilities are built, renovated, demolished. . . laws change. . .the state's business marches on! The dynamics of change in Texas state government produces risks that adversely impact the state's financial, physical, and human resources. Management of these risks requires a coordinated, disciplined managerial approach to eliminate or control the risks. This managerial approach is called "risk management."

A risk exposure is the possibility of loss or injury because of some peril or cause of a loss. Management is the process of planning, organizing, staffing, leading, and controlling human and physical resources in order to achieve the organization's objectives and goals. *1* Therefore, risk management, by definition of its component terms, is the management process of planning, organizing, staffing, leading, and controlling an organization's resources to minimize the possibility of loss or injury from various causes of loss. Simply stated, risk management is the process of identifying and controlling an organization's losses.

Quite often, risk management is too narrowly defined. The term is often thought to simply mean a safety program. Or, it is thought of as being the arm of the organization that deals only with insurance matters. Safety and insurance are both *components* of a risk management program. However, because risk exposures exist in *all areas* of the organization, a comprehensive risk management program involves the risk management staff in accounting and finance, law, human resources, and all operations of the organization.

Volume I, Section Two (What Is Risk Management?) of these guidelines very briefly presents basic concepts and theories relative to risk management. State agencies should realize that application of these concepts and theories may depend on appropriate enabling legislation before implementation may occur.

Objective and Goals of Risk Management

Reducing the cost of risk is the primary objective of a risk management program. A state agency should also be concerned with political risks and maintaining goodwill to the citizens of the state. The cost of risk for a specified loss is the total value of all related costs and resources, both direct and indirect. The total cost of risk to an organization is the sum of the following:

- The replacement value of all equipment and property damaged or lost
- Total claims expenditures, including legal expenditures
- The costs of loss prevention and control measures
- The costs of insurance premiums
- Lost productivity
- Administrative and overhead costs.

Since reduction of the cost of risk is the primary objective of a risk management program, specific goals that support this primary objective are to

- Minimize exposures to financial losses
- Protect physical assets
- Reduce the frequency and severity of accidents
- Provide a reasonably safe environment for employees and the public
- Minimize interruptions of services provided to the public. [2]

Benefits of Risk Management

A well-conceived, comprehensive risk management program requires a significant commitment of time and resources by the organization. However, the cost of this organizational commitment is fully mitigated by the realization of the following benefits to the organization that are the direct result of the risk management program:

- Reductions in misuse, theft, and/or losses to equipment and property
- Reductions in the frequency and severity of accidents
- Reductions in the expenditures of claims
- Reductions in legal expenditures
- Increased productivity
- Improved employee morale. [3]

Endnotes

1. Head, George L. and Stephen Horn II; *Essentials of Risk Management*, Volume I, Second Edition; Insurance Institute of America; 1991; pp. 10-12. (Return to text)

2. Head, George L. and Stephen Horn II; pp.36-38. (Return to text)

3. Head, George L. and Stephen Horn II; pp. 36-38. (Return to text)

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Section Two - What is Risk Management?
Chapter 2
The Risk Management Process

Revised: April 2005

Volume I:

Introduction

Risk management is a "process." That is, risk management is a progression or series of actions that are taken with the purpose of minimizing losses or injuries in the organization. These actions may be set forth as a series of steps that lead to the goal of reduced losses and injuries. The five steps in the risk management process are identified below.

Step 1 - Identify Perils and Risk Exposures

The most important losses for an organization are those that create conflicts with the basic mission of the organization and interrupt achievement of its objectives. For state agencies, these objectives may include: exercising regulatory authority over various industries; providing humanitarian services; fulfilling legal mandates; and, providing continuous, uninterrupted service. The risk management program identifies all risks that significantly impact the ability of the organization to fulfill its mission and achieve its objectives and goals. Risk management then categorizes these exposures in a logical manner for further analysis. Volume I, Section Two, Chapter 3 of these guidelines provides a breakdown of the major categories of perils and risk exposures, and details various methods of identifying the perils and exposures. *1*

Step 2 - Assess the Significance of the Exposure

Once the perils and risks have been identified, the loss potentials are analyzed. This analysis should include a determination of the probability (frequency and timing) of a loss occurring and the fiscal impact (severity) of the loss to the organization. The significance of any loss is the degree to which the loss, or combination of similar losses, adversely impacts the organization's achievement of its objectives. It is beneficial to quantify the exposures and losses to better assess the significance of risk exposures and actual losses. In this manner, frequency and severity of losses can be tracked over time, and trends can be established as predictors of future losses. Such trends also provide the mechanism for budgeting current and future losses. Volume I, Section Two, Chapter 4 of these guidelines provides a more detailed discussion of risk analysis techniques. *2*

Step 3 - Select an Appropriate Risk Management Method(s)

Once the risk and loss potentials have been identified and analyzed, an appropriate method(s) must be chosen for eliminating or controlling the negative impact that the loss would have on the organization. The risk can either be eliminated or avoided before it occurs; transferred to another organization; or, controlled to lessen its frequency and/or severity. This aspect of risk management is commonly referred to as "risk control."

If the risk cannot be eliminated or transferred, an appropriate method(s) of financing must be identified to pay the costs of loss or claim. The expenses incurred because of a loss or claim can either be retained and paid by the organization, or transferred to an outside organization. This is called "risk financing."

The selection of appropriate risk control and/or financing methods must be based on an objective assessment of the effectiveness of the various techniques. What technique will yield the best results for this organization to control the risk? What will be the cost to implement the technique? The technique(s) selected should generate the greatest amount of control for the least amount of cost to the organization. Additionally, the chosen technique(s) should be achievable, i.e., it should be within the organization's financial and physical abilities to implement.

Volume I, Section Two, Chapter 5 of these guidelines provides detailed discussions regarding the various risk control techniques that are available, while Chapter 6 identifies the methods of financing risk that are available to Texas state agencies. [3]

Step 4 - Implement the Chosen Risk Management Method(s)

Any risk management method chosen, in order to be successful, must be within the financial and physical capabilities of the organization. Otherwise, the chosen technique will fall short of its intended objectives. In implementing risk management techniques, risk management specialists must rely on managers and employees in other areas of the organization over which the risk management specialist has no direct control. Therefore, the implementation program must be carefully conceived and promoted to ensure the cooperation of others. Risk management specialists provide the technical knowledge for implementation. However, other managers must be involved in management decisions regarding allocation of the organization's resources to accomplish risk management objectives. The risk management specialist must become an effective consultant to other managers within the organization. [4]

Step 5 - Evaluation of the Risk Management Program

The risk management program must have a built-in mechanism of self-monitoring to determine if the program is meeting its objectives. If monitoring determines the program is not meeting its objectives, the program must have flexibility to implement changes to get the program back on target. Thus, a mechanism for controlling the program must be established.

A monitoring and control mechanism is accomplished by establishing performance standards and comparing actual performance to the standards. Performance standards should be quantifiable and measurable. They should be both results- and task-oriented. An example of a results-oriented standard is the frequency rate of employee injuries per 100 employees. An injury frequency rate can be used to determine program effectiveness in eliminating or reducing risks that lead to employee injuries. An example of a task-oriented standard is the number of safety inspections that are conducted at each facility. Although a task, such as a safety inspection, can lead to a reduction of risks, the results of the task are not the measurement standard. Rather, the number of tasks performed becomes the standard.

Once the performance standards are established, actual performance (results and tasks) can be compared to the standard to determine if the risk management technique is achieving the desired results and are meeting the overall objectives and goals of the risk management program. If after analysis it is determined the chosen technique is not achieving the desired results, changes can be made to improve performance. *5*

Endnotes

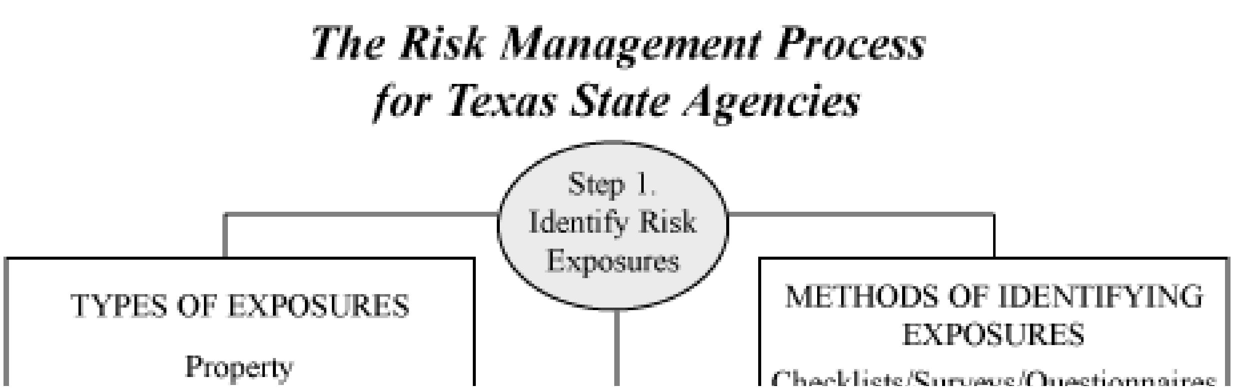
1. Head, George L. and Stephen Horn II; *Essentials of Risk Management*, Volume I, Second Edition; Insurance Institute of America; 1991; pp. 10-20.
and
Oliver, Barbara B. and Heather Knight, eds.; "Introduction to Risk Management" in *Public Sector Risk Management*; Public Risk Management Association; 1998; pp. 1-4. (Return to text)

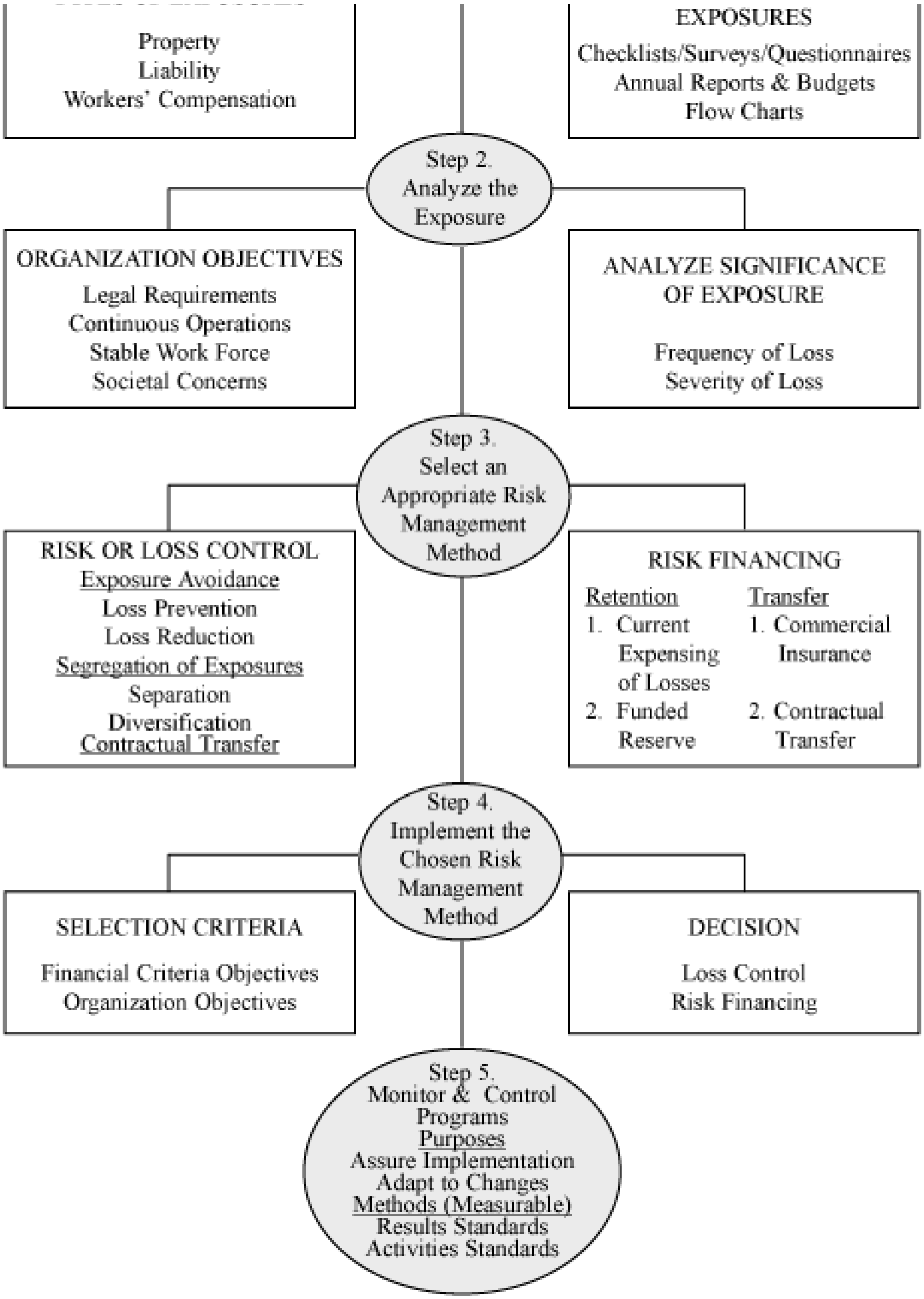
2. Head, George L. and Stephen Horn II; pp. 21-29.
and
Oliver, Barbara B. and Heather Knight; pp. 4-6. (Return to text)

3. Head, George L. and Stephen Horn II; pp. 29-32.
and
Oliver, Barbara B. and Heather Knight; pp. 6-7. (Return to text)

4. Head, George L. and Stephen Horn II; pp. 32-34.
and
Oliver, Barbara B. and Heather Knight; p. 7. (Return to text)

5. Head, George L. and Stephen Horn II; pp. 34-36.
and
Oliver, Barbara B. and Heather Knight; pp. 7-8. (Return to text)





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Section Two - What is Risk Management?
Chapter 4
Risk Analysis
Reviewed: November 2004

Volume I:

Introduction

Once risk exposures have been identified, the risks must be thoroughly analyzed before the proper loss control technique(s) can be applied. *1* Risk analysis quantifies exposures and losses so that probabilities of future losses can be projected. Such analyses invariably address the "frequency" and "severity" of losses.

Frequency of Loss

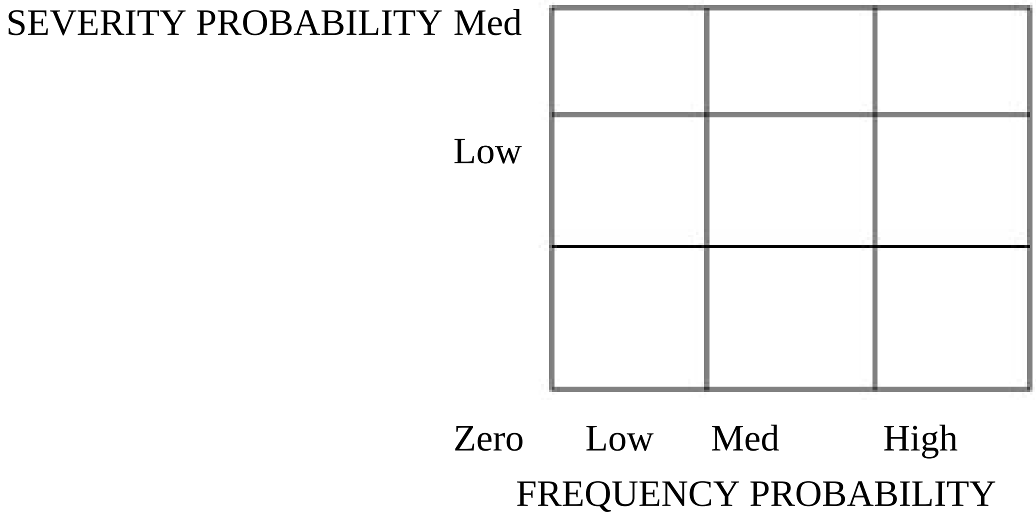
Frequency of loss refers to the actual numbers or times the same or similar loss occurs. *1* In many cases a single loss incident is not significant in terms of the dollars lost. An example is the loss of a hand-held calculator. One incident of a lost calculator, which typically costs less than $100, does not amount to a large dollar loss. However, if the frequency or numbers of calculators lost increases during a short period of time, the total amount of the loss increases in direct relation to the increased incidence of lost calculators. Therefore, the frequency of loss occurrence is an important measurement stick in risk management.

Severity of Loss

Severity of loss refers to the size or cost of the loss to the organization. *1* In the example above, the single incident of a lost calculator is not a severe loss since the cost of one hand-held calculator is less than $100. However, the loss of one mainframe computer is considerably more severe to an organization. A mainframe computer can cost $2 million and upwards. If a peril strikes and damages the organization's mainframe computer and proper loss control measures have not been implemented, the loss to the organization can be quite severe. So the severity of the loss is also an important measurement that is used in risk management.

The following matrix depicts the general relationship that exists between frequency and severity. *2*

High



A risk exposure that has both a high frequency and a high severity probability of occurrence should be given the greatest consideration for elimination or control. A risk that is both low in frequency and low in severity can easily be retained and self-funded. 2

Analysis Through Forecasts

Frequency and severity analysis is most often performed on past or historical claims data. Based on the historical data, a forecast of the frequency and severity of future losses should be developed. This is most often accomplished by analyzing probabilities and trends over a period of time. Ideally, the past five years of data should be analyzed in order to develop accurate trends and projections.

In addition to forecasting the frequency and severity of future losses, a forecast should be made of the potential impact(s) that the risk control and risk financing techniques used will have on frequency and severity of future losses. In addition, the costs of administering these risk control and/or risk financing techniques should also be projected. The risk control and/or risk financing method(s) that is deemed most effective in achieving specified goals, and that is the least expensive, should be the method(s) chosen to control risks. 2

Qualitative Analysis of Exposures and Losses

Analysis of a loss exposure is easily accomplished through use of a systematic, qualitative method that assigns a value to the exposure. Such a method is described below through a "frequency/severity analysis." During this analysis, the exposure or loss event is priority ranked through the use of a "frequency and severity matrix" and by assigning a priority ranking to the exposure or loss event. After the exposures and losses are ranked and prioritized, risk or loss control techniques may then be identified and implemented to minimize or eliminate exposures and losses.

Risk identification is at the heart of the process, and it should be recognized that risk exposures and losses potentially involve anything that could cause a loss to the organization. Such losses potentially may occur in any area of operations within the agency.

Definitions

- **Exposure -** The possibility of a loss due to some peril or hazard. An exposure may be a physical hazard that could lead to physical injury to a person; the potential for theft, damage, or destruction to real or personal property; the potential for the filing of a legal claim against the agency; or, the potential for loss of revenue or appropriations through theft, embezzlement, etc.
- **Loss -** Damage or harm to persons or things of value, the filing of a legal claim, or reduction in revenues that results in a monetary or financial loss to the agency.
- **Frequency of Loss -** The number of times the same or similar loss occurs within a given time frame.
- **Severity of Loss** - The size or cost of a loss to the agency that results from a peril or harmful event striking an exposure during a specified time frame.

In order to analyze the frequency and severity of exposures and losses, the expected or incurred frequency and severity of loss are determined in order to assign a numerical value to the loss exposure. This numerical value enables the risk manager to prioritize exposures and loss events in relationship to others. Once the exposures and losses are categorized and prioritized, priority attention can be given to identifying the proper risk control technique(s) to avoid, eliminate, or control the problem.

Frequency/Severity Qualitative Rating System

The following table *3* presents an example of a numerical frequency/severity rating system that may be utilized to assign priorities to the frequency and severity of exposures and losses.

Severity Category	Description of Category
1 - Catastrophic	May cause death or loss of property. A single event would threaten the existence of the organization. **(Value=1)**
2 - Critical	May cause severe injury/illness or serious property damage. A single loss is likely to have a serious effect on the overall budget of the organization. **(Value=2)**
3 - Serious	May cause moderate to serious injury or moderate property damage. A single loss event is likely to have a moderate impact on the organization's budget. **(Value=3)**
4 - Marginal	May cause minor injury/illness or property damage. Individual losses will not significantly affect the organization. **(Value=4)**

5 - Negligible	Likely to not result in injury/illness or measurable property damage. **(Value=5)**

Frequency Category	Description of Category
1 - Frequent	Loss event occurs frequently or is continuously experienced. **(Value=1)**
2 - Probable	Loss event occurs at least on an annual basis. **(Value=2)**
3 - Occasional	Loss event is likely to occur sometime in the lifetime of the organization [i.e., occurs once in a 25-year time period]. **(Value=3)**
4 - Remote	Loss event is not likely to occur within the average lifetime of an organization, or is unlikely to occur, but is possible. **(Value=4)**
5 - Extremely	Likelihood of a loss occurrence Improbable cannot be distinguished from zero. (**Value=5)**

Steps to Analyze Frequency and Severity

For any given loss exposure, whether it is a property, liability, or workers' compensation loss exposure, the following steps may be followed to analyze the frequency and severity of the exposure.

STEP 1. Assign a category for the *frequency* of occurrence of a loss event. For example, if back injuries frequently or continuously occur, then category "1 - Frequent" is the proper category. Another example is if at least one civil rights claim is filed annually, then the proper category is category "2 - Probable." A third example is a fire loss to a building that may occur within the lifetime of the organization; then, category "3 - Occasional" is the proper category.

STEP 2. Assign a category for the *severity* of the loss event. For example, a workers' compensation claim for a back injury may cause moderate to severe injury; therefore, the proper severity category is category "3 - Serious." A civil rights claim that progresses into federal court can have a serious effect on the overall budget of a small state agency; so, the proper severity code is category "2 - Critical." Similarly, a fire loss to a state agency located in a single building can cause extensive loss of life and/or property; therefore, the proper category is "1 - Catastrophic."

STEP 3. Multiply the frequency value from step 1 by the severity value from step 2. The resulting product of multiplication is the qualitative rating of the combined frequency and severity for the given loss exposure. For example, if the frequency from step 1 is "1" and the severity from step 2 is "3," then the resulting product of multiplying 1 times 3 is 3 (1 x 3=3). Therefore, the frequency/severity rating for this particular loss exposure or event is 3. This qualitative rating for frequency and severity is graphically depicted on the Frequency/Severity Matrix contained in the Appendix to this chapter.

STEP 4. Prioritize the ratings for all loss exposures. This numerical rating system automatically produces priorities. Those exposures that receive a rating of "1" for combined frequency/severity should receive the highest priority for risk control. A rating of "25" for frequency/severity is the lowest rating, and should receive the least attention in the development of risk control strategies.

Endnotes

1. Morrison, Don; *Risk Management and Loss Control Manual for Local Government*; The Local Government Institute; 1988; p. 4. (Return to text)

2. Head, George L., and Stephen Horn II; *Essentials of the Risk Management Process, Volume I*; Insurance Institute of America; 1985. (Return to text)

3. Seleg, Bernard; "Technology's Impact on Risk"; *Risk Management*; November 1993; pp. 60-61. (Return to text)

Checklist for Texas State Agencies

1. Does the agency conduct a frequency/severity analysis of all identified loss exposures?	YesNo
2. Are priority values assigned to a frequency/severity categories, and the resulting priority values ranked in priority order?	YesNo
3. Are forecasts of future losses performed?	YesNo

APPENDIX
FREQUENCY/SEVERITY MATRIX

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Section Two - What is Risk Management?
Chapter 5
Risk Control

Released: August 15, 1991; Reviewed: November 2004

Volume I:

Introduction

Once a risk exposure or loss *potential* has been identified and analyzed, an appropriate method(s) must be chosen for eliminating or controlling the negative impact which a loss would have on the organization. This aspect of risk management is commonly referred to as "**risk control**".[1] There are numerous methods or techniques by which risk exposures may be controlled. These are discussed below. Specific risk control programs relating to Texas state agencies are discussed in Volumes II, III, and IV.

Risk Control Techniques

Risk control is often referred to as "loss control." The two terms are used interchangeably. The intent is the same in either case. If the risk exposure can be eliminated or, if the impact of a peril on that exposure can be reduced and controlled, the ultimate loss also can be eliminated or reduced and controlled.

Risk Avoidance

Risk avoidance is the most effective means of controlling risks.[2] Risk avoidance simply means to not undertake an activity, action or program that would produce an undesirable loss exposure. However, governmental agencies frequently provide services that cannot practically be provided by private enterprises, or the service is provided in the public's best interest. Therefore, avoiding certain risks is not always practical for state agencies.

For example, the citizens of Texas desire to have a quality system of state parks. A park certainly could be developed and administered by a private entrepreneur. But it is in the public's best interests that the state develop and administer its own state parks in order to insure that the quality of individual parks and overall integrity of the state's natural, scenic, and historic areas are maintained throughout the system. Therefore, it is not practical for the state to avoid all risks associated with development and administration of a state park system.

If a risk exposure cannot be avoided, the organization assumes or retains the financial and political consequences and/or legal liabilities of that risk.

Risk Prevention

Risk prevention techniques focus on methods to prevent a peril from occurring.[2] Prevention measures concentrate on reducing the frequency of losses. If any activity or program must be undertaken, good accident prevention and property conservation guidelines and procedures, if properly implemented, can reduce the frequency of losses.[1]

Risk prevention means change must occur. People must change their acts and practices that cause accidents. For example a person who drives while drinking alcoholic beverages is "at risk" to have an accident. Change may be affected through education and awareness campaigns that are designed to educate those who drink about the dangers of doing so while driving. Change may also be legislatively induced by implementing and enforcing stricter laws to restrict/eliminate offender's driving privileges. So in dealing with people's actions and practices, risk prevention occurs by changing policies and procedures, or through education and training.

In addition to changing the way people act and think to prevent accidents, prevention may occur through changes in the design or arrangement of places and things associated with an exposure. Tools and equipment may be redesigned or modified to make them safer. For example, a shield or guard can be provided on a power saw blade, which reduces the risk of accidents. Similarly, the environment, buildings, structures and facilities may also be redesigned or modified with accident prevention features in mind.

Risk Reduction

The concept of risk reduction assumes "it is not feasible" or "impossible" to eliminate or prevent an exposure. Risk reduction techniques are therefore utilized to reduce the effects of perils. Risk reduction is associated with reducing the severity of a loss when it occurs.[2] For example, frequent inspections of an office for overloaded electrical outlets is a fire *prevention* technique. However, the provision of a sprinkler system anticipates the eventuality that a fire will occur. If an overloaded electrical outlet causes a fire, the sprinkler system will reduce the amount of damage from the fire. Thus, the sprinkler system is a risk *reduction* technique.

Some risks may be reduced simply by providing an adequate warning. For example, a mopped floor area commonly traveled by the general public will leave a slick wet area. Provision of proper warning signs to warn the public of the hazard is a risk reduction measure.

Segregation of Exposures

Exposure segregation is a specialized form of both risk prevention and risk reduction. An organization's activities and programs may be either separated, diversified, or duplicated so a single peril cannot cause a catastrophic loss to all. Exposure segregation effectively "spreads the risk" to prevent a catastrophic loss or to reduce the severity of loss.[1]

Separation of exposures involves the use of several different locations to separate resources, activities or programs. For example, instead of one supply room, supplies are stored in several different locations. Instead of one large warehouse, several smaller warehouses at different locations are utilized.[1]

Diversification of exposures involves the placement of assets into different asset management programs. For example cash assets may be diversified into different securities (stocks and bonds) from different classes or industries. If all cash assets were invested in the stock of one company, the risk potential of losing all assets is much greater than if the assets are diversified in stocks and bonds of several companies and industries.[1]

Duplication of exposures relies on the concept that a backup of the resource or activity will be available. The hard disk of a personal computer is "backed up" onto diskettes at regular, frequent intervals to minimize the loss of data due to a hard disk crash. Spare parts and duplicate wrenches are kept available if parts break or tools are lost or stolen. Using more than one supplier of the same product or material is also considered duplication, and an acceptable risk reduction measure.[1]

Risk Transfer

The transfer of risk involves the concept that the financial and/or legal liabilities associated with an identified risk can be shifted to an outside organization. This transfer of risk is normally accomplished through a contract. The terms of the contract specify the conditions under which loss exposures are transferred from the transferring party to the contracting party. A building lease, as opposed to ownership of a building, transfers certain risk exposures from the lessee to the lessor, or owner of the building. For example, in a contract to provide building custodial services, the terms of the contract transfers certain loss exposures to the contracting custodial service.[1]

REFERENCES

1. Head, George L. and Horn II, Stephen; *Essentials of the Risk Management Process,* Volume I; Insurance Institute of America; Malvern, PA; 1985. (Return to text)

2. Morrison, Don; *Risk Management and Loss Control Manual for Local Government*; The Local Government Institute; Seattle, WA; 1988. (Return to text)

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Section Two - What is Risk Management?
Chapter 3
Risk Identification

Revised: November 2004

Volume I:

Methods to Identify Perils and Risk Exposures

Identifying perils and risk exposures is probably the most important step in the risk management process.[1] All other elements of the risk management process flow from this initial step. If a poor job of exposure identification is done and risk exposures are not recognized, the entire risk management program will suffer. Therefore, it is extremely important that a thorough job of exposure identification is accomplished.

The process of identifying risk exposures is a continuous one. Organizations are dynamic. That is, the composition of the organization's employees, programs, resources, and environment are in a state of constant change. Because of these dynamics, the organization is constantly subjected to changing exposures. Consequently, a single effort to identify risk exposures simply provides a "snapshot" of the exposures at one point in time. Subsequent risk exposures may not be included in the snapshot. Periodic updates of risk exposure identification must be conducted.

Several methods are used to identify risk exposures. Several principal methods are the following:

- Checklists, surveys, and questionnaires
- Annual reports
- Records, files, and reports
- Flowcharts
- Professional expertise
- On-site inspections.[2]

Checklists, Surveys, and Questionnaires

Most risk management specialists initially employ a standardized questionnaire that asks general questions applicable to all organizations. The questionnaire is usually divided into categories of risk exposures and questions designed to identify and quantify the exposures within these categories. Since all organizations are different, standardized questionnaires may not provide the level of detail needed to fully identify all exposures that are inherent to that organization. Supplemental questionnaires, inventories, and/or checklists usually are developed and on- site risk inspections usually conducted.

However, the standardized, general questionnaire will flush out those areas that need follow-up attention.3

The advantage of using a checklist is that it can be specifically tailored by risk management staff to ensure all necessary information is included. Once prepared, checklists can be distributed to operational personnel who should be able to answer questions related to specific operations.4

A preliminary risk identification questionnaire for state agencies is provided as an appendix to this chapter. It is suggested this questionnaire be utilized as the initial instrument to identify risk exposures.

Annual Reports

A primary goal of the state risk management program is to protect the organization's resources against loss. The annual report produced by an agency provides a wealth of information that assists the risk management specialist in identifying exposures wherein accidents, claims, and losses may occur.

The enabling legislation for the State Office of Risk Management (Office) requires every state agency to prepare an annual report for each fiscal year. The annual report includes the following information:

- The location, timing, frequency, severity, and aggregate amounts of losses by category of risk, including open and closed claims and final judgement
- Loss information obtained by the state agency in the course of its administration of the workers' compensation program
- Detailed information on existing and potential exposure to loss, including property location and values, descriptions of agency operations, and estimates of maximum probable and maximum possible losses by category of risk
- Estimates by category of risk of losses incurred but not reported
- Information the director determines necessary to prepare a Texas Workers' Compensation Unit Statistical Report
- Additional information that the director determines to be necessary.5

The state risk management program identification and assessment process should include an examination of the state agency annual report. Such an assessment provides valuable data concerning risk exposures.

Records and Files

In addition to the agency's annual report, each state agency produces numerous other reports, documents, and files that potentially contain information relating to risk exposures. For example, requests for proposals, bids, contracts, purchase orders, architectural and engineering drawings, minutes of meetings, administrative procedures, and standard operating procedures may all contain information useful to the risk management specialist. Many of these documents signify change that may be occurring, and the risk exposure implications should be reviewed.*6*

Flowcharts

Flowcharting can be an extremely valuable tool in risk management. A flowchart is a graphic illustration of the elements of a process. The services provided by the agency can be graphically depicted, or flowcharted, to identify all inputs, internal operations, and outputs. Whenever this flow or process is interrupted, the agency suffers a loss. Therefore, a flowchart can identify critical elements and paths of the agency's operations vulnerable to loss.

A flowchart can be complex, showing the primary process and all subprocesses, or the flowchart can chart only a portion of the primary process. In most cases, it is useful to further define the subprocess.*7*

Professional Expertise

Many individuals from within and without the agency possess extensive knowledge and information that may be drawn upon to identify risk exposures. Within the agency, such individuals range from board/commission members and executive staff down to line employees. In most cases, the person who will have the most extensive knowledge of a risk exposure is the person who is directly involved in performing the job, duty, or service where the exposure exists.

Outside the agency are a host of highly specialized professionals with expertise to identify virtually any risk exposure. These specialized professionals may be available only through the payment of consulting fees. However, other state, federal, and local agencies provide a variety of risk management and loss control services that may be available free of charge.*8*

On-Site Inspections

After all data and information concerning risk exposures are collected using the above referenced methods of identification and after an initial analysis has been conducted, on-site inspections may be desirable to obtain a better understanding of the exposures.*9* Such on-site investigations provide valuable data regarding the magnitude of exposures, the potential frequency and severity of losses, and may suggest alternative loss control techniques to be employed. On-site investigations also provide opportunities for face-to-face discussions with employees and specialists that are directly involved in site work processes. These discussions lead to a better understanding of the exposures and may suggest alternative loss control techniques.*10*

Perils and Hazards

A peril in insurance circles is defined as the cause of a loss. Similarly, the insurance definition of an exposure is the possibility of a loss. A hazard is a condition or situation that significantly increases the likelihood loss will occur.

A loss occurs when a resource is exposed to a peril. Therefore, during the process of identifying loss exposures, it is important to be able to recognize the perils and hazards to which resources may be exposed. Texas state agencies provide many diverse services to the citizens of Texas. These agencies function in various geographic, economic, and political climates of the state, and even in other states and foreign countries. Therefore, it is impossible to list all possible perils to which Texas state agencies may be exposed. However, perils can be generally grouped into certain categories and described for better understanding.

Acts of Nature

Numerous acts of nature form the category of natural perils. Such natural acts may be catastrophic in nature such as floods, severe weather and windstorms (cyclone, hurricane, tornado), earthquakes, and droughts. These acts are obvious catastrophic acts of nature. However, natural perils also include acts that typically are not thought of as perilous. Some examples of these are: dust, erosion, fungi, rot, rust, static electricity, and insects. Like catastrophic acts of nature, these more passive acts can also inflict losses upon an organization.*11*

Human Acts

Many perils are created by people's actions. It is basic human nature to look for some other cause when things go wrong. However, any attempt at identification of perils must include human acts. As with acts of nature, many human perils are obvious such as robbery and theft, arson, vandalism, and extortion. However, many other human acts are more subtle in nature and not as easily recognizable as perils. Some examples are: discrimination, strikes, environmental degradation from pollution, vibration from man-made equipment, and human error resulting in damage or harm. These human perils likewise can inflict huge losses unless risks are controlled.*12*

Economic Forces

Many economic forces that influence organization operations exist in today's world marketplace. These forces not only exist domestically but also internationally. Despite the best efforts of economists, these forces remain largely unpredictable, and are subject to changes from the political arena as well as in consumer habits. Some examples of economic perils are depreciation and obsolescence, technological breakthroughs, inflation and recession, stock market advances and declines, and fluctuations in world currencies. These economic perils can cause losses to an unprepared organization.*13*

Legal Perils

Any action that is brought against an organization by an individual(s), entity(ies), or other organization (s) constitutes a legal peril. In effect a legal peril is a claim against a defendant organization where the claimant alleges the organization engaged in legal wrongdoing that resulted in some damage or harm to the claimant. The claim may be factual or have no basis in fact. However, the filing of a claim, whether factual or nonfactual, must be addressed and defended by the organization. Therefore, any claim of wrongful conduct is a peril to the organization. Such claims may be brought against the state under contract or tort law but not under criminal law.

An act of wrongdoing by the organization itself is a hazard. That is, a wrongful act creates a situation in which the likelihood of a claim being brought against the organization is greatly increased. In the absence of a wrongful act, a claim of wrongdoing still can be brought against the organization. An actual event merely increases the chances a claim will be filed. Therefore, the wrongful act is considered a hazard, rather than a peril.[14]

Exposures

An exposure is the possibility of a loss. Losses most important to an organization are those that create conflicts with the basic mission of the organization and interrupt achievement of its objectives and goals.[15] For state agencies these objectives include: exercising regulatory authority over various industries; providing humanitarian services; fulfilling legal mandates; and providing continuous, uninterrupted operations. The risk management program identifies all risks that significantly impact the organization's ability to fulfill its mission, and achieve its objectives and goals. Risk management then categorizes these exposures in a logical manner for further analysis. The following discusses the major categories of risk exposures to which Texas state agencies may be exposed.

Property Exposures

Physical property can be subdivided into several broad categories as follows:

- Land or real estate (improved/ unimproved)
- Buildings or structures
- Contents of buildings or structures (furniture, supplies, equipment)
- Fleet property (automobiles, trucks, boats, airplanes).

Physical property is exposed to numerous perils that can damage or destroy it, or property may be lost or stolen. When a property item is subjected to a peril, it is considered an exposure to that peril.

Legal Liability Exposures

Legal liabilities arise against the state by persons who claim to have suffered a loss because of negligence or civil wrongdoing by the state. Such negligence or civil wrong may be either actual or perceived on the part of the claimant. In either case, the net result is that an action, or claim, is filed against the state which ultimately may need to be defended in court.[16]

A claim against the state may come from a member of the general public or an employee of the state itself. Wrongful acts and negligence may actually occur due to the actions or inactions of any state agency representative (e.g., an employee, executive, or commission member). Examples of such actions are: vehicle accidents, facilities in disrepair, civil rights violations, environmental hazards, and wrongful discharge. When an employee of the state is involved in an act of negligence or wrongdoing, it is an exposure to legal liability.

Workers' Compensation Exposures

Employees are without question the most valuable resource any organization possesses, and one of the primary goals of an organization is to protect its human resources. Employee losses may occur whenever an employee is exposed to one or more perils. Such perils include, but certainly are not limited to, injury that results from vehicle accidents; faulty equipment; inattention or fatigue; improper safety equipment; poor housekeeping and maintenance procedures; coworker inattention or negligence; and occupational diseases. Because of these and other exposures, losses occur to the organization whenever an employee becomes disabled, ill, or dies. The organization incurs a monetary loss in the form of benefit payouts.

Furthermore, losses to the organization occur whenever an employee is laid off, resigns, or retires. In each of these cases, the organization is deprived of the special knowledge, skills, and/or abilities. In addition, the employee may also suffer personal monetary losses when any of the above named losses occur.

Loss of Revenues, Production, and Performance

State agencies typically exist to provide a service. Such service may be regulatory in nature, or the service may be provided in the interests of the general public. In some instances, revenues may be generated in the performance, production, or provision of the service.

Losses to the state occur when an event happens that interrupts the flow of services being performed, produced or provided, or that interrupts the flow of revenues for services rendered. Some examples of such exposures are: employee injuries and accidents; power outages; natural catastrophes, such as tornadoes and floods; late deliveries of goods or products; theft; and fire.

Endnotes

1. Head, George L. and Stephen Horn II; *Essentials of Risk Management,* Volume I, Second Edition; Insurance Institute of America; 1991; p. 83. (Return to text)

2. Head, George L. and Stephen Horn II; p. 84.
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Oliver, Barbara B. and Heather Knight, eds.; "Introduction to Risk Management" in *Public Sector Risk Management*; Public Risk Management Association; 1998; p. 2. (Return to text)

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5. Texas Workers' Compensation Act, *Vernon's Texas Codes Annotated*, Labor Code, Title 5, Subtitle A, Chapter 412, Section 412.053 (Vernon 1998). (Return to text)

6. Head, George L. and Stephen Horn II; pp. 118-119. (Return to text)

7. Head, George L. and Stephen Horn II; pp. 119-123. (Return to text)

8. Head, George L. and Stephen Horn II; pp. 125-126. (Return to text)

9. Oliver, Barbara B. and Heather Knight, eds.; "Introduction to Risk Management" in *Public Sector Risk Management*; p. 2. (Return to text)

10. Head, George L. and Stephen Horn II; pp. 123-125. (Return to text)

11. Head, George L. and Stephen Horn II; p. 98. (Return to text)

12. Head, George L. and Stephen Horn II; pp. 99 and 136. (Return to text)

13. Head, George L. and Stephen Horn II; pp. 99 and 136. (Return to text)

14. Head, George L. and Stephen Horn II; pp. 214-215. (Return to text)

15. Head, George L. and Stephen Horn II; p. 10. (Return to text)

16. Head, George L. and Stephen Horn II; pp. 211-215. (Return to text)

APPENDIX
Preliminary Risk Identification
Questionnaire

Introduction

Identification of risk exposures is the most important step in the risk management process. From this first step, all other steps of the process will flow. If a poor job of risk identification is done and risk exposures are not recognized, the entire risk management program will suffer. Therefore, it is extremely important that a thorough job of exposure identification be accomplished on an annual basis.

Preliminary Risk Identification Questionnaire

Beginning on the following page, an example of a preliminary risk identification questionnaire is provided for use by state agencies. This questionnaire serves the following purposes:

- The initial instrument to begin identifying and quantifying an agency's risk exposures

- An initial tool to educate personnel in the agency who are unfamiliar with the scope and depth of risk management issues.

The state agency should not be overly concerned at this point about having one person knowledgeable of all issues. What is of importance is that staff members knowledgeable of the issues be involved in identifying the exposures, and that the agency actually begins a journal process of exposure identification.

PRELIMINARY RISK IDENTIFICATION QUESTIONNAIRE		
A. Agency Name	B. Division	C. Agency # (Comptroller's Code)
D. Unit Badge No.	E. Telephone	F. Fax #
G. Information completed by:	H. Title	I. Date Returned

GENERAL

____ Yes ____ No 01 Does the agency have any significant or unusual circumstances involving risk, insurance, or losses?

____ Yes ____ No 02 Is there a documented risk management policy or program currently in place?

____ Yes ____ No 03 Is there a risk management committee or agency risk manager?

____ Yes ____ No 04 Does the agency produce periodic loss reports or itemized statements of losses?

____ Yes ____ No 05 Is there a documented "Disaster/Emergency Plan" for the agency?

____ Yes ____ No 06 Are there written "Administrative Procedures/Directives" for the agency (standard operating procedures)?

HUMAN RESOURCES

____ Yes ____ No 07 Do any agency employees work outside of Texas?
____ Yes ____ No 08 Is temporary/seasonal help or volunteers ever utilized?
____ Yes ____ No 09 Are specific employees' recreational facilities or activities sponsored?
____ Yes ____ No 10 Does the agency have a personnel policies manual or handbook?
____ Yes ____ No 11 Do any agency employees regularly work from their homes or on other employers' premises?

SAFETY

____ Yes ____ No 12 Have the "'Employee Safety and Health Program" elements contained in Volume III of theRisk Management for Texas State Agencies been implemented?

____ Yes ____ No 13 Are pre-employment physcial examinations/screens given or required for any job classification?

____ Yes ____ No 14 Are programs established to detect/correct occupational illness hazards?

____ Yes ____ No 15 Is there a full-time agency safety manager/officer?

____ Yes ____ No 16 Are there any named additional duty safety managers/officers?

____ Yes ____ No 17 Is there an agency-wide safety committee?

____ Yes ____ No 18 Are safety committee meetings held regularly and documented minutes kept?

____ Yes ____ No 19 Are there regularly-scheduled divisional/section/unit safety meetings?

____ Yes ____ No 20 Is the subject and attendance maintained?

____ Yes ____ No 21 Does the agency have an existing safety manual or written rules?

AUTOMOBILES/HEAVY EQUIPMENT

____ Yes ____ No 22 Does the agency conduct an annual fleet/vehicle management inventory?

____ Yes ____ No 23 Are any hired/leased vehicles used regularly by agency?

____ Yes ____ No 24 Are any vehicles hired or leased outside of the state contracts?

____ Yes ____ No 25 Are certificates of insurance obtained from owners of hired/leased vehicles?

____ Yes ____ No 26 Are non-owned trailers hauled by agency-owned trucks?

____ Yes ____ No 27 Do non-owned tractors haul agency-owned trailers?

____ Yes ____ No 28 Do employees drive personal cars on agency business?

____ Yes ____ No 29 Does the agency have a policy with respect to personal use of agency vehicles?

____ Yes ____ No 30 Are any parking or garage facilities operated by the agency?

____ Yes ____ No 31 Are any repair/maintenance facilities operated by the agency?

____ Yes ____ No 32 Are employees transported by agency-owned trucks or vans?

____ Yes ____ No 33 Are agency employees transported by non-owned trucks or vans?

BUILDINGS/CONTENTS

____ Yes ____ No 34 Does the agency conduct an annual inventory (schedule) of agency-owned buildings and property including: purchase date, cost, new or used, location, current/replacement value, etc.?

____ Yes ____ No 35 Does the agency produce an annual inventory (schedule) of building contents?

____ Yes ____ No 36 Does the agency contract for significant rental contents?

LIABILITY

_____ Yes _____ No 37 Does the agency conduct any operations involving the following: operation of industrial operations, industrial railroad, ponds, dams, parks, or recreational facilities, swimming pools, bathing beaches, grandstands, gymnasiums, bowling alleys, sale or co-generation of electricity, steam, water?

_____ Yes _____ No 38 Does the agency assume any contractual liability for the following: lease or rental agreements for real estate, signs, EDP equipment, machinery, telephone equipment, exhibit space, permit for wires, overpass, pipe line/right of way across private or public property, electricity, stream water, purchase orders, or advertising?

_____ Yes _____ No 39 Does the agency own or operate any locations with any exposure to liquor liability: ownership of premises or sponsored events?

_____ Yes _____ No 40 Does the agency have any water damage, sprinkler leakage, or fire legal liability exposure?

_____ Yes _____ No 41 Does the agency own or operate any locations with above ground or underground storage tanks?

_____ Yes _____ No 43 Does the agency own or operate any hospital or infirmary?

_____ Yes _____ No 44 Does the agency have medical doctors on payroll?

_____ Yes _____ No 45 Does the agency have medical doctors under contract?

_____ Yes _____ No 46 Does the agency have nurses on payroll?

_____ Yes _____ No 47 Does the agency have nurses under contract?

_____ Yes _____ No 48 Does the agency own any boats/watercraft?

_____ Yes _____ No 49 Does the agency have any boats/watercraft leased or chartered?

_____ Yes _____ No 50 Does the agency provide any services regularly performed in foreign countries?

_____ Yes _____ No 51 Does the agency have any professional liability or errors and omissions exposures for the following activities: accounting services, actuaries/pension consultants, adjusting services, advertising agency, ambulance service, appraisal of real estate, architects/engineers/testing laboratories, beauty parlors/barber shops, blood banks, collection agents, custom house brokers, data processing services, equipment agency, equipment leasing, escrow agents, hospital/clinic/nursery, insurance agents/brokers, insurance consultants, land surveyors, lawyers, mortgage lending, real property/chattels, premium financing, publishers/graphic arts, real estate, telephone answering services, title abstractors, travel agency, trust department?

_____ Yes _____ No 52 Does the agency conduct any publishing activities?

_____ Yes _____ No 53 Does the agency conduct operations which might adversely impact the environment: air, water, land?

_____ Yes _____ No 54 Does the agency have any explosion, collapse, or underground exposure?

_____ Yes _____ No 55 Does the agency have any hazardous waste exposures?

____ Yes ____ No 56 Does the agency have any chemical waste exposures?

____ Yes ____ No 57 Does the agency have any asbestos exposures?

____ Yes ____ No 58 Does the agency have any nuclear exposures?

AIRCRAFT

____ Yes ____ No 59 Does the agency own or lease any aircraft?

____ Yes ____ No 60 Are any aircraft chartered for special purposes?

____ Yes ____ No 61 Does the agency have any known non-ownership exposures: directors, officers, employees who fly their own aircraft on agency/department business?

____ Yes ____ No 62 Has the agency any known past aircraft losses?

FIDUCIARY LIABILITY/CRIME EXPOSURES

____ Yes ____ No 63 Are any amounts of cash, securities, or checks on agency premises at regular intervals (other than petty cash)?

____ Yes ____ No 64 Are any unusual cash amounts on hand seasonally or occasionally?

____ Yes ____ No 65 Does the agency own/lease any safes or vaults?

____ Yes ____ No 66 Does the agency utilize any messengers to banks?

____ Yes ____ No 67 Are there any authorized night deposits?

____ Yes ____ No 68 Does the agency use any safe deposits boxes?

____ Yes ____ No 69 Is an annual physical inventory made of stock and supplies?

____ Yes ____ No 70 Have there been any known past exposures to extortion, threats, or attempt to kidnap?

____ Yes ____ No 71 Are there any temporary help, employees of others, or contracted services which might present a dishonesty exposure directly or in collusion with others: custodians, agents, collectors, EDP service, etc.?

____ Yes ____ No 72 Are agency credit cards issued to directors, officers, or employees?

____ Yes ____ No 73 Have there been any crime losses during the past five years?

____ Yes ____ No 74 Are petty cash funds audited regularly?

____ Yes ____ No 75 Does the agency do any wire transfers?

____ Yes ____ No 76 Are there any other checking accounts besides through the Texas Comptroller of Public Accounts?

BOILER AND MACHINERY: AGENCY-OWNED

____ Yes ____ No 77 Are there any heating or power boilers located on agency premises?

____ Yes ____ No 78 Are any other boiler & machinery objects used: refrigeration, pressure vessels, large motors?

____ Yes ____ No 79 Would any of the above items (#73 & #74) cause substantial business interruption if damaged?

____ Yes ____ No 80 Are there any alternate sources of power (or electricity) utilized?

____ Yes ____ No 81 Does the physical plant include generation of energy?

____ Yes ____ No 82 Are there any cold storage or controlled temperature rooms?

____ Yes ____ No 83 Has there been a recent study done on excess capacity or availability of replacement for critical objects, emergency generators, substitute equipment?

BUSINESS INTERRUPTION

____ Yes ____ No 84 In the event of an agency or major facility shutdown by fire or other catastrophe, is it essential that operations be resumed immediately, regardless of expenses?

____ Yes ____ No 85 If so, have plans been made for use of substitute facilities or equipment?

____ Yes ____ No 86 Are major materials, machines, or equipment difficult or impossible to replace "in kind"?

____ Yes ____ No 87 Are agency operations seasonal or otherwise subject to fluctuation?

____ Yes ____ No 88 Are there identified potential EDP replacement sources for equipment leasing or employee leasing, etc.?

____ Yes ____ No 89 Are duplicate EDP tapes, discs, cars, etc., maintained?

____ Yes ____ No 90 Are duplicates kept at different physical locations and updated regularly?

TRANSPORTATION

____ Yes ____ No 91 Do any major exposures exist where goods are regularly shipped to the agency and possible delays or accumulation may occur?

____ Yes ____ No 92 Do any major exposures exist where goods are regularly shipped from the agency and possible delays or accumulation may occur?

____ Yes ____ No 93 Is there any potential need for major transit business interruption protection?

____ Yes ____ No 94 Are there any agency-controlled bridges, tunnels, roads, docks, ferries, warehouse facilities, etc., essential to the continuation of operation?

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Section Two - What is Risk Management?
Chapter 6
Risk Financing

Revised: November 2004

Volume I:

Introduction

Risk control attempts to eliminate or prevent losses from occurring, or at least to reduce the frequency and severity of losses that do occur. When losses do occur they must be financed. Risk financing is the element of risk management concerned with funding and payment of losses. Methods of financing losses generally are grouped into two classes: retention and transfer of risk.[1]

This Chapter on "Risk Financing" presents basic concepts and theory relative to risk management. State agencies should recognize that application of risk financing techniques may depend upon appropriate enabling legislation before implementation may occur.

Retention of Risk[1]

The financing of risks and losses is said to be "retained" if the funding source for payment of the losses originates from and remains within the organization until the loss is actually paid. The state of Texas retains risks unless specific insurance is purchased, and such insurance purchases are authorized by legislation. Financing risks through retention can be accomplished by any of the following techniques.

Expensing of Losses

Current expensing of losses involves the payment of losses directly from the current operating budget or appropriation. That is, the loss is "expended" or paid out of the current year's operating funds. Current expensing typically does not provide for a formally recognized funding source from which losses are paid. Therefore, expensing of losses is suitable only for payment of small losses such as repairing or replacing a broken typewriter.

Expensing is not suitable for funding large losses.

Reserves

Reserves may be established in two ways.

(1) Unfunded Reserve - An unfunded reserve is established when the state agency recognizes a loss will occur, but specific funds or assets are not set aside from which the loss may be paid. An example of an unfunded reserve is an account that is established to track uncollectible fees or taxes owed to the state.

(2) Funded Reserve - A funded reserve is created when funds are set aside specifically for payment of losses. The funded reserve cannot be utilized for any other purpose than payment of claims. An example of a funded reserve might be the establishment of a fund from which tort claims against the organization are paid.

Borrowing

Borrowing is a method that may be utilized by an organization to pay for losses that have not been previously funded or insured. However, state agencies are not able to borrow since all appropriations and funding sources must be approved by the Legislature. Therefore, borrowing is not an option for state agencies as a risk financing technique.

Self Insurance

Self insurance by the state involves the establishment of an entity within state government which functions in the same manner as a commercial insurer. "Premiums" are collected from the various agencies, commissions, and institutions of higher education, etc. within the state, and claims and losses are adjusted and paid from the fund created by the "premiums" paid. Self insurance is practical only for large entities. An example of this is the Workers' Compensation Payment program administered by SORM.

***Transfer of Risk**[1]*

The financial burden of losses can be transferred from the entity incurring the loss to an outside entity. This may be accomplished through the purchase of commercial insurance or through a contractual transfer.

Insurance Transfer of Risk

Insurance is a contractual relationship that exists when one party (the Insurer) for a consideration (the Premium) agrees to reimburse another party (the Insured or third party on behalf of the Insured) for a loss to a specified subject (the Risk) caused by designated contingencies (the Hazards or Perils).

When commercial insurance is purchased the insured entity pays premiums to the insurer. The insurer then pools the premiums paid by all insured entities that have purchased the same type of insurance. In this manner the risks are "spread" among all insured, and premiums are kept to a minimum. The insurer is then legally responsible for payment of all claims and losses, subject to the terms, exclusions and limitations of the policy, rather than the entity incurring the claim or loss. Insurance is discussed in more detail in RMTSA Section One, Chapter 7, Insurance.

Contractual Transfer of Risk

Contractual transfer of risk involves a legal transfer of the financial responsibility for payment of losses, but does not involve the purchase of insurance. Such non- insurance transfers typically involve the use of a "hold harmless agreement. Such an agreement may be required by a state agency that allows the use of public facility by a third party. The state agency would require the third party to sign a contract to hold the state agency harmless for losses that may arise due to the third party's use of the facility. The contract would need to specify the type of losses that fall within the contract. A state agency should check with the agency's general counsel regarding applicability of hold harmless agreements.

Contractual transfer is discussed in more detail in RMTSA Section One, Chapter 4, Contractual Liability Exposures.

REFERENCES

1. Head, George L. and Horn II, Stephen; *Essentials of the Risk Management Process*, Volume I; Insurance Institute of America; Malvern, PA; 1985. (Return to text)

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Section Three - Managing a State Agency Risk Management Program
Chapter 1
Developing a Risk Management Manual

Released: August 15, 1991; Reviewed: November, 2004

Volume I:

The Importance of a Manual *1*

Developing a comprehensive risk management manual requires a considerable amount of planning, organization and time. However, a well-written manual should prove to be a valuable resource to a state agency. By including appropriate policies and procedures, agency personnel are better informed, and time consuming questions can be eliminated. The manual heightens awareness of exactly what risk management is, what a risk management function does, and how effective risk management involves others within the agency.

In any agency the relationship between the risk management function and other divisions is a dependent one. If the agency's assets are to be properly protected, the risk management specialist must obtain the assistance of other departments or divisions. That assistance may be information that risk management needs, such as records of property values, contracts, insurance policies and payroll calculations. At the same time, agency divisions and employees need assistance from risk management in eliminating and controlling loss exposures. Therefore, risk management and other agency divisions must depend on each other for cooperation to achieve agency risk management objectives.

A comprehensive risk management manual can help meet an agency's risk management objectives by providing needed information to agency divisions and other employees about risk management policies and procedures to follow in order to control losses. Therefore, a risk management manual is essential to an agency desiring to effectively control risks.

A risk management manual also improves communication about, and administration of, the agency's risk management program. To accomplish this goal the manual should target particular problem areas that reflect individual agency priorities. By outlining its risk management goals an agency will more effectively communicate its needs, information requirements and services provided throughout the agency.

Format Of The Manual

The challenge in developing a risk management manual is to cover all appropriate subject areas in a concise manner. Risk management covers many broad, complex topics, and numerous volumes, reports and publications have been written concerning these topics. Volumes of detail concerning most subjects are available for reference from other sources. The manual should identify all applicable risk exposures, then briefly discuss the exposures and alternative risk control and financing techniques. If a selected risk control technique involves statements of policy or specific procedures, such polices or procedures should be concisely written and included in the manual.

The manual should be easy to update. Risk Management is not a static process, but is dynamic and constantly changes. Accordingly, the manual should be designed with flexibility for updating. In most cases a three ring binder is the best choice. Organizing the manual according to sections and chapters allows specific elements to be easily revised. More people will refer to the manual if it is easy to use. If the information is well-organized and concise, employees will be more inclined to use and benefit from it.

Manual Topics

Because of the diversity of operations in Texas state agencies, details highlighted in one particular agency's manual may be different from another agency's manual. The following sections should be common to all: *2*

- What is Risk Management?

This section should define what risk management is and outline the objectives. It may briefly discuss how a risk management program protects an agency's assets by identifying and analyzing loss exposures, examining various risk control and financing techniques, choosing and implementing the most feasible method of control or financing, monitoring the results, and managing risk with the help of the State Risk Manager and other divisions of the agency.

- Risk Management Policy Statement

This section should contain a formal risk management policy statement which demonstrates the agency's commitment to managing risk. It should cover the basic goals and objectives of risk management. Typically, this policy statement is signed by the executive director of the agency, which demonstrates top management's support of risk management. Showing top management support may mean the difference between success and failure since a statement of this nature lends credibility to the manual and program. The policy statement may also define the risk management function's authority and responsibilities. However, lengthy discussions should be avoided in the policy statement.

- Risk Management Organization Structure, Staffing and Responsibilities

This section should: 1) identify the employees, the organization structure and the risk management specialists appointed by the agency's executive director to carry out the program; 2) identify the person placed in charge of administering the risk management program; 3) identify employees with specific risk management responsibilities giving name, title and responsibility; and, 4) detail the organizational structure of all risk management functions.

The direct responsibilities of risk management may include, but not be limited to, purchasing appropriate insurance as authorized by legislation; case management of injured employees; establishing and maintaining safety policies and procedures; and submitting all claims correspondence.

Risk management specialists act in an advisory capacity to other divisions and units of the agency. The risk management specialist may be a member of the agency's safety committee or may participate in policy development meetings and/or work with the agency's legal department to review contractual language for liability risks and indemnity provisions. The manual should communicate how risk management interacts with other agency functions to achieve the common goal of protecting the agency's interests.

The importance of interdepartmental cooperation, and shared information should be emphasized. For example, risk management should be advised of planned new construction projects; claims for reimbursement; losses sustained by the agency; and, should also provide information to individuals within the agency to obtain needed assistance from risk management.

- Risk Management Procedures

Most agencies are inundated with directives and procedures from departments within the agency and from other agencies. However, all employees need to know the importance of risk management procedures. If employees are made aware that failing to follow certain procedures will be costly to the agency, they will be more inclined to follow risk management recommendations.

A variety of risk management issues can be addressed in this section. Accident reporting procedures and forms should cover how to file a claim and how to follow up after a loss occurs. The procedures should explain the importance of accident investigations and include specific instructions for workers' compensation claims, losses involving state property, and general liability claims. Examples of actual reporting forms for each of these procedures should be included, as well as names and telephone numbers of appropriate contact persons.

Other issues that could be addressed are: requirements for certificates of insurance, the importance of reviewing contracts for indemnity and insurance provisions, policies concerning use of employees' personal vehicles for business purpose or use of agency cars for personal errand, and information regarding the purchase of collision damage waivers for rental vehicles. The agency could comment on virtually any action or decision that might possibly effect an agency's exposure to loss.

- Property Conservation

This section should set forth the agency's property conservation program which is a system to identify, conserve, and protect the physical assets of the agency. Property conservation activities apply to all real property owned or leased by the state, all personal property (e.g., contents), and boilers and machinery located in state-occupied facilities.

The goal of the property conservation program is to reduce property losses and personal injuries by systematically incorporating property loss control techniques in all agency activities. In order to meet this goal, the agency must establish written property conservation and loss control guidelines. Elements of the written property conservation program should include: a property-equipment inventory, loss control techniques to include safety, security, and emergency planning, preventative maintenance and repair procedures, public premises usage and loss reporting procedures.

- Fleet Safety

If an agency operates a fleet of vehicles, this section would promote safe vehicle operation by presenting a guide for the agency to follow in planning the fleet safety program. This section should provide a fundamental approach for risk exposure identification, loss control, loss reporting, and program appraisal. The program fundamentals should include the following: exposure identification, pre-employment selection, driver record review, training, vehicle operation and maintenance, awards and recognition, accident reporting, and program supervision.

- Workers' Compensation Program

Every state agency has the exposure of employees being injured while performing their jobs. Because of this injury exposure, the agency may have employees who file claims for workers' compensation benefits. Many of these claims will require the employee to be off duty for extended periods of time, or may result in the employee being returned to work at less than full duty. This section of the risk management manual should provide complete procedures to guide the agency in managing workers' compensation claims. This section should include: an overview of the Texas Workers' Compensation process, claim and loss reporting procedures; case management procedures that address management of employees who are off work because of a job related injury or occupational disease and the return-to-work program for employees who are able to return to work at less than full duty.

- Employee Health and Safety Program

An effective loss control program starts with safe employees, which begins with a well-defined employee health and safety program. This section of the manual should address those aspects of employee health and safety applicable to the agency. It should include: agency safety policy, organization and responsibilities of agency safety personnel, safety training, safety committees, accident investigation and loss reporting procedures, and specific loss control techniques that apply to the agency to prevent or minimize employee injuries.

- Human Resources Program

Human resources represent one of the largest exposures to a state agency. Therefore, it is extremely important that human resources policies and procedures be developed and written with risk control measures in mind. This section of the manual should examine the relevant human resources issues from a risk management perspective, to identify human resources risk exposures, and to discuss loss control techniques that will avoid or minimize losses. Issues that should be examined are: personnel policies and procedures, employee constitutional rights, equal employment opportunity compliance, pre-employment screening and hiring, the disciplinary process, grievance process, terminations and wrongful discharge, sexual harassment awareness and unemployment compensation.

- Liability Loss Control Program

In addition to property, fleet, workers' compensation and human resources loss exposures, state agencies are routinely exposed to other legal liabilities. For example, governmental entities can be liable for constitutional violations caused by policy statements, ordinances, regulations and decisions that are adopted or promulgated by the governing body. Furthermore, government officials who have final policy making authority may, by their actions, subject the governmental entity to liability. Therefore, the risk management manual should address public officials liability issues such as: open public meetings, executive sessions, appearance of fairness, conflicts of interest, errors and omissions, and the applicability of sovereign and official immunity.

- Insurance program

This portion of the manual should detail the insurance coverage that the agency may be authorized by legislation to purchase. If the purchase of insurance is authorized by legislation, only the most important features of each policy should be discussed. This portion of the manual should detail the standard insurance clauses that are to be a part of all agency contracts for services provided to the agency and for contacts where the agency is providing use of public facilities.

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2. Amason, David, "Risk Management Manuals", *Public Sector Risk Management*; Section II, Chapter 1; Public Risk Management Association; 1117 N. 19th Street, Suite 900; Arlington, VA. (Return to text)

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Section Three - Managing a State Agency Risk Management Program
Chapter 2
Risk Management Policy Statement

Released: August 15, 1991; Reviewed: November 2004

Volume I:

Philosophy of Eliminating/Controlling Risks

Every state agency's commitment to risk management should be a long-term commitment. This commitment should reflect the philosophy that, in each and every program area of the agency, the physical, financial and human resources of the agency will be managed in a manner that will reasonably eliminate and/or control risks, thereby minimizing the total cost of risk to the agency. Toward this end, the agency should develop a risk management policy statement that reflects this philosophy.

By providing a written risk management policy statement, an effective tool is created that can be used to communicate the importance of risk management to the agency staff. The policy statement can also be utilized as the mechanism to establish risk management goals and objectives and define the relationship that risk management personnel will have with other personnel within the organization.

Sample Risk Management Policy Statement for State Agencies

A sample policy statement is provided beginning on the next page. It is only a sample statement and should be adapted to the particular needs and circumstances of each agency.

NOTE: The creation of a new position of agency risk manager or risk management specialist and establishment of a risk management division, branch or section within the agency is optional for each agency. Such factors as the size and complexity of the agency, number of employees, amount of real and personal property owned or leased, amount of claims and damages paid, legislative mandate(s), mission of the agency, and budgetary constraints all should be considered before making a decision concerning staffing and organizational structure. The State Risk Manager should be consulted by state agencies regarding risk management staffing requirements.

SAMPLE RISK MANAGEMENT POLICY STATEMENT
(NAME OF STATE AGENCY)
Statement of Facts Concerning Risk Exposures and Losses

The Board of Directors/Commission of (Name of Agency) recognizes the following facts concerning the physical, human, fiscal and environmental resources of this agency:

1. During the normal course of conducting the business of this agency, the physical, human, fiscal and/or environmental resources of the agency are routinely exposed to various risks that can result in losses to the agency.

2. These physical, human, fiscal and environmental resources are valuable assets to this agency and to the citizens of the State of Texas.

3. Because of the special value of these assets, they deserve reasonable protection consistent with the availability of funds.

4. Unless measures are taken to preserve/protect these resources, losses will occur.

5. The provision of such protection requires a significant commitment of time, money, resources and staff to manage, preserve and protect these resources in the most cost effective manner.

6. The discipline of "risk management" is a specialized process that is aimed specifically at minimizing and controlling the agency's exposures and losses.

Agency Goals Concerning Risk Management

In recognition of the above facts, the following goals concerning risk management are established for the agency by the Board/Commission:

1. In carrying out the agency's business, the long-term goal is to minimize harm to the physical, human, fiscal and environmental resources of the agency, and to minimize the total cost of risk to the agency.

2. To minimize harm, and the cost of risk, the agency shall:

- a. attempt to routinely identify all significant known perils and risks to which the agency may be exposed;
- b. avoid unnecessary or unreasonable exposures to the extent practicable;
- c. take all reasonable and practical steps to prevent harmful events and losses;
- d. initiate reasonable and appropriate loss control techniques to control the frequency and severity of those losses that are unavoidable; and
- e. in accordance with State law, insure appropriate individual or aggregate exposures that are of such large potential losses that the use of normal operating expenses for payment of losses is prohibitive.

3. In the event a harmful act or loss occurs, the agency shall provide for prompt, reasonable correction or payment, to the extent that the agency is reasonably responsible, for any harm done to persons or

properties by the agency or its agents.

Authority and Responsibility*

The Executive Director/Commissioner of the agency shall appoint or hire an agency risk manager who shall serve under the direction of the Executive Director/ Commissioner. The risk manager shall be given the authority to, and shall be responsible for, the agency's risk management program. The risk manager shall employ, (subject to Executive Director/Commissioner approval and availability of funds), a staff of risk management professionals, and technical and clerical support staff that will accomplish agency risk management goals and objectives. The risk manager shall be responsible for planning, organizing, coordinating, implementing, monitoring and controlling the agency's risk management program.

The risk manager's authority and responsibilities shall not cross over into other functional areas of the agency. However, since a comprehensive risk management program touches all other functional areas of the agency, managers, supervisors, and employees of all functional areas shall cooperate with the risk manager in the development and implementation of the risk management program.

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Section Three - Managing a State Agency Risk Management Program
Chapter 3
Risk Management Organization Structure

Revised: May 1998; Reviewed: November 2004

Volume I:

Introduction

The success of any risk management program depends on the level of support the program receives from top management. A program fully supported by the state agency's board/commission and executive staff will be successful. The emphasis top management places on the program filters down and permeates the organization. A fully supported program that is communicated throughout the organization creates employee awareness that the elimination or reduction of risk is a most important aspect of every program, activity, job, and task.

The fact that a state agency exists, that it employs personnel, occupies physical structures, and administers programs, exposes the agency to risks. Avoidance of all risks is not possible. No matter how small or large the agency, it must be concerned with management and control of these inherent risks. The agency should develop an appropriate organization structure that maximizes management and control of risks, and ultimately minimizes the cost of loss.

Organization Structure

Small state agencies may not have the need or the resources available to hire a full-time risk manager. The agency's risk exposures, budgetary constraints, historical claims loss information, and other factors should be carefully examined to determine if it is necessary and feasible to hire a full-time risk management staff. The state risk manager can be of assistance in making this determination. If it is determined that a full-time risk manager is unnecessary or unfeasible, the agency should still consider designating a senior manager as the staff person that will serve the agency as the risk management contact. This person should become knowledgeable of the basics of risk management and serve as the agency's resource to coordinate all risk management activities. This person should work closely with the staff of the State Office of Risk Management. The knowledge and services of the State Office of Risk Management should be used to establish and monitor the risk management program for the agency.

Larger agencies that have greater risk exposures and/or lesser constraints on their budgets should consider a full-time risk management staff. If it is determined that a full-time risk management staff is needed, that staff should develop, implement, and monitor the risk management program for the agency. An agency's risk management staff must work closely with the State Risk Management Program staff to provide continuity of programs.

Placement of risk management functions and staff within an agency's organization structure depends on the size of the agency and its associated risk exposures. A full-time risk management staff should be directly responsible to the agency executive director. This direct link assures risk management decisions affecting the agency will receive high priority. Functionally, the risk management staff should have access to, and in turn be accessible to, all divisions and functions within the agency. Open channels of communication are essential between the risk management staff and all levels of management within other functional areas of the agency. Exhibits 1 and 2 of Appendix A of this chapter present two examples of organization structures that allow risk management to function well.

The size of the risk management staff should be related to the function of the agency, its risk exposures, and budgetary constraints, yet be sufficient to accomplish the risk management goals and objectives. Agencies with large risk exposures may have the need for a number of professionals with different specialties. An example of a risk management division or branch that includes specialized staff members is provided in Exhibit 3 of Appendix A of this chapter.

The Roles of Agency Staff in Risk Management

Certain key positions within the agency should develop an awareness of the role their individual position plays in the overall success of the risk management program. The duties and responsibilities of these positions place these employees in key roles that have a direct influence on the success of the program. Consequently, these key positions should be aware that their individual actions in carrying out specific duties directly impact risk management. Their actions, either individually or collectively, may expose the agency to risks. All actions of the agency staff must be conducted legally and within the legislative authority extended to the agency. Failure to do so exposes the agency, the board/commission, and possibly the individual personally to potential claims and lawsuits. Therefore, staff activities must be conducted ethically and in accordance with federal, state, and local laws at all times.

The risk management functions of these key positions are discussed below.

Boards and Commissions

As the policy-making body of the agency, the board/commission should establish the agency's philosophy and policy regarding risk management. A well-conceived and developed risk management policy statement, fully supported by the board/commission, is a corner stone for success of the risk management program. Without support from the board/commission, other key managers probably will not take the program seriously. The program should receive the full and complete backing of top management.

Executive Director/Commissioner

The executive director or commissioner of the agency reports to the board/commission in administering the agency's programs according to the board/commission's policy intentions. As part of this function, the executive director's risk management duties are twofold.

First, the activities of the risk management staff should be managed in accordance with sound risk management practices. Therefore, the executive director should have general knowledge of risk management to determine if the risk management staff is performing according to expectations.

Second, the executive director should support the risk management program. This support should be communicated to all managers and employees of the agency to support the risk management program within their functional areas. Support of the risk management program by all employees should be mandated by the executive director. Otherwise, the agency managers, supervisors, and line employees may not seriously consider the application of risk management techniques within their jobs and functional areas of responsibility.

Agency Risk Manager or Risk Management Liaison

The agency's risk manager or contact person will be in a position to exert the most influence to design and direct the risk management program. The risk manager plans and organizes the program, but to a great extent must rely on other functional areas for implementation. Therefore, the risk manager should be an effective communicator and leader in order to be successful. A model job description for an agency risk manager is provided in Appendix B of this chapter.

Department/Division/Branch/Section Managers

Senior and mid-level managers should realize that they play a very important role in risk management. The emphasis they place on risk management techniques within their functional areas and to their employees bears directly on the success of the program. The risk management roles of these managers include the following:

- Implement risk management and loss control policies, programs, and procedures within their functional areas
- Administer agency programs with risk management loss control techniques included as important features of the program
- Maintain and actively promote a safe and healthful working environment
- Provide for complete staff cooperation with risk management personnel during accident investigations, inspections, and program reviews
- Take prompt, appropriate action to correct unsafe conditions
- Cooperate with risk management staff and general counsel in developing contracts, agreements, and other documents which may require insurance, hold harmless, and indemnification agreements.

Staff Attorney

The staff attorney plays a significant role in the risk management program in many ways. First, the staff attorney provides legal expertise in the identification and analysis of risk exposures. The staff attorney reviews policies, programs, contracts, reports, and documents to identify any legal liability exposures before they are implemented, published, or released. The staff attorney can be of valuable assistance in uncovering legal exposures that may result from the agency's past, present, and future activities. **The agency's management staff should always seek legal counsel prior to initiating any new policy or program.**

The staff attorney also provides legal counsel after a loss occurs. The total amount of the loss can often be minimized or mitigated by appropriate actions of the legal staff. Also, the staff attorney can work with the Office of the Attorney General to secure appropriate representation for the agency in the event of litigation. Furthermore, the staff attorney affects risk management directly through the actual legal expertise provided. The agency's lack of legal expertise or failure of the legal staff to identify legal liabilities can inflict losses on an agency. It is extremely important that quality legal services be provided to the agency.

Personnel/Human Resources Manager

The personnel or human resources manager typically administers and manages the agency's human resources programs. Human resources represent one of the largest areas of risk exposure to any agency. Therefore, it is extremely important that the personnel manager maintain close coordination with the risk manager and the staff attorney regarding development and implementation of all human resources programs. Sound risk control techniques should be an integral part of all human resources programs.

Financial/Accounting Manager

Any agency employee who handles public funds or property is entrusted by the public to handle such funds or property in a responsible, ethical manner. Such positions of trust are the fiduciary responsibilities of the agency. Employees are entrusted with handling public funds or property represent a risk exposure to the agency through such actions as embezzlement, theft, and misuse or misappropriation of property or funds. The financial/accounting officer of the agency must recognize such fiduciary liabilities, and implement sound accounting and fiscal controls to eliminate or minimize the possibility of such losses from occurring. Accordingly, the financial/accounting officer should work closely with the risk manager in the identification of exposures and appropriate risk control techniques.

Purchasing Manager

Through the purchasing function, the agency can establish an effective risk control technique. This technique involves purchasing supplies, uniforms, and equipment that complies with appropriate safety codes or standards. For example, some uniforms are not made from fire retardant materials, and can ignite and burn in a matter of seconds if exposed to a heat source. Such uniforms should not be approved for purchase. Additionally, equipment such as band saws or table saws that do not have appropriate safety features should not be approved for purchase. The purchasing officer should be aware of product safety features and authorize the purchase of such products that have safety features incorporated into them. Accordingly, the purchasing officer should maintain close coordination with the risk manager regarding safe equipment and appropriate safety codes and standards.

The purchasing officer can also expose the agency to potential losses through the bidding process and in contract negotiations. Unless appropriate procedures and controls are established, considerable loss to the agency may result.

State Agency Safety Manager/Safety Officer

The agency's safety manager plays a vital role in coordinating health and safety activities. The safety manager provides information to the risk manager and executive director concerning safety programs within the agency. The safety manager also investigates and monitors accidents/incidents, tracks accident trends, and suggests possible solutions to safety problems. Necessarily, the safety manager plays an important role in risk management.

All Employees

An effective loss control program starts with safe employees, and every employee should be aware of this fact. A condition of employment should be that the employee agrees to work safely. Progressive disciplinary action should be provided for those employees who repeatedly violate commonly accepted safety rules and practices and/or incur preventable accidents. Employees should have regular training and education programs aimed at specific areas of safety related to their jobs.

Employees should be provided with proper tools and safety equipment to accomplish their jobs in a safe manner. Furthermore, employees should be regularly encouraged to promote safety among coworkers. They should be trained to recognize safety hazards and to report them promptly to management. Effective lines of communication should be established among line employees, first line supervisors, program managers, and the safety and risk management staff to facilitate safety and loss control.

Model Job Description for State Agency Risk Manager

A model (sample) position description for a state agency risk manager is provided as Appendix B of this chapter. This job description would need to be adapted to the particular needs of an agency. A full-time risk manager may not be needed or required for some state agencies. Therefore, creation of an agency risk manager position is optional. The agency's size, budgetary constraints, claims experience, and other factors should be considered in making this decision. The state risk manager can assist an agency to determine if an agency risk manager is needed.

Appendix A

Exhibit 1

Organization Structure for Risk Management as Executive Support Staff

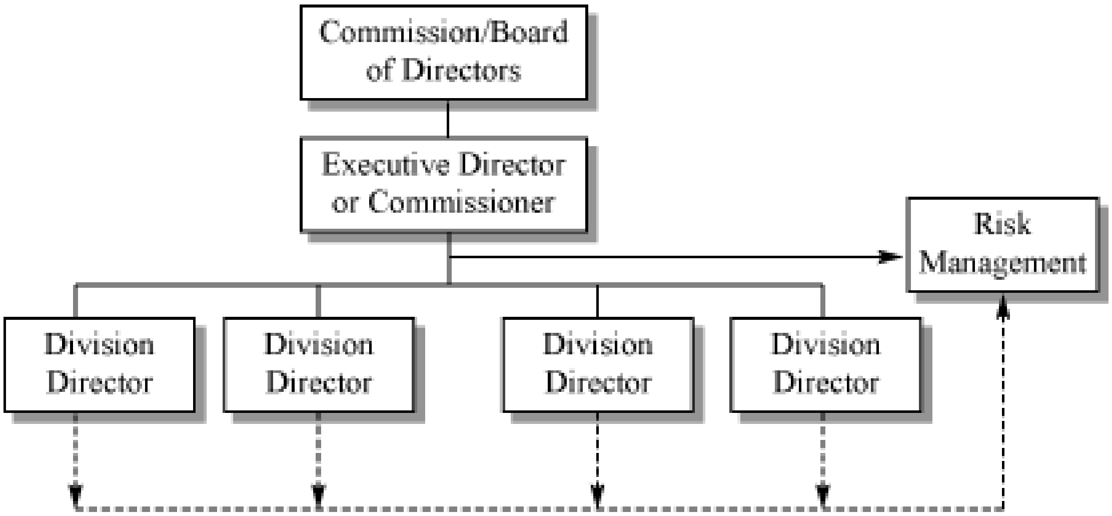

Exhibit 2

Organization Structure for Risk Management Risk Manager as a Line Manager

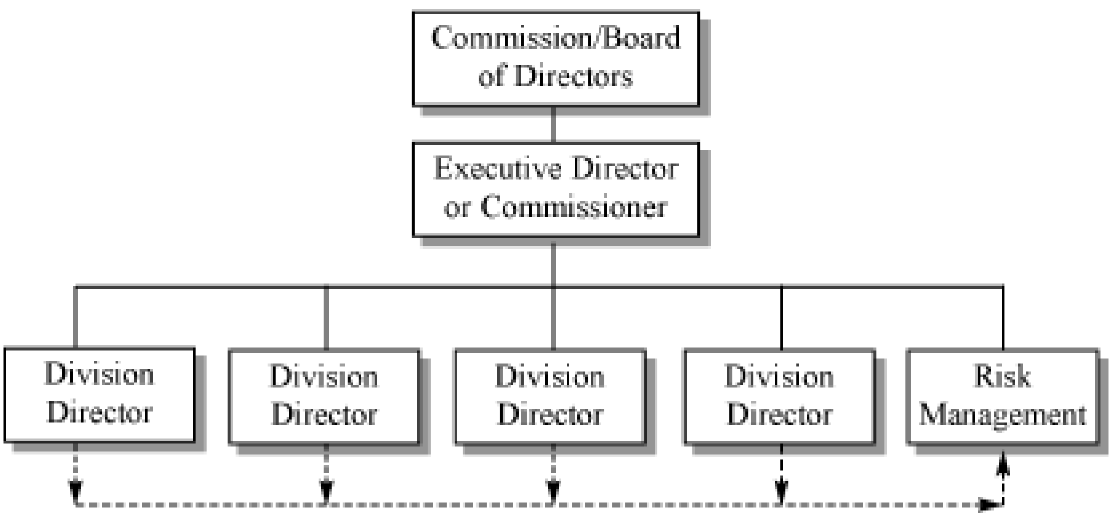

Exhibit 3

Organization Structure of a State Agency Risk Management Division Staff

Appendix B
STATE AGENCY RISK MANAGER - MODEL JOB DESCRIPTION

General Description

Develops and administers an agency-wide risk management and loss prevention program, with the goals of identifying, minimizing, and controlling the agency's exposure to all types of losses, and improving the work environment related to the health and safety of agency employees and the general public. Performs work under the general guidance of the executive director, with considerable independence and flexibility to organize, plan, and assign priorities to own work and that of others. This is a senior level management position involving direct responsibility for subordinate professional, technical, and/or clerical staff.

Major Responsibilities

1. Coordinates and cooperates with the state risk manager concerning all risk management programs and activities of the agency.

2. Sets goals and objectives for the agency's risk management program.

3. Identifies and analyzes perils, risks and hazards to which the agency, its employees, and/or the general public may be exposed.

4. Determines the most effective methods of handling each risk exposure.

5. Writes risk management policies, programs, and procedures, including the development and implementation of safety and loss control procedures and programs.

6. Advises and reports to the executive director/commissioner on methods of avoiding or controlling risks.

7. Coordinates with other division managers regarding development and implementation of risk management programs.

8. Establishes agency procedures for submission of accident reports and handling of claims.

9. Monitors claims adjusting/settlement activities of all claims against the agency. Reports inconsistencies, problems and errors to the executive director and the state risk manager.

10. Reviews agency records regarding property evaluations and equipment schedules. Maintains agency records of all claims and loss experience.

11. Reviews agency contracts and agreements to determine if appropriate techniques are being utilized to reduce the agency's exposure to risks.

12. Maintains all agency insurance policies and endorsements in accordance with state laws. Determines suitable coverage consistent with market availability, agency needs and state laws. Determines reasonable limits of insurance coverage and levels of retention consistent with the financial requirements of the agency. Re-markets insurance plans as needed.

13. Establishes procedures to measure the effectiveness and performance of the risk management program.

14. Allocates the cost of risk on an equitable basis to appropriate divisions of the agency.

15. Performs related duties as required by the executive director/commissioner.

16. Supervises the daily activities of the risk management staff.

Education and Experience Requirements

Graduation from accredited college or university with a bachelors degree in business administration, risk or insurance management, public administration, or a related field. A masters degree is preferred. A minimum of three (3) years of general managerial experience in the field of risk management is required. An Associate in Risk Management certification and/or Chartered Property Casualty Underwriter designation is preferred.

NOTE: A full-time risk manager may not be needed or required by some state agencies. The creation of a risk manager position is optional and depends on the agency's size, budget, claims experience, and other factors. The state risk manager can assist an agency to determine if an agency risk manager is needed.

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