

STATE OF SOUTH DAKOTA RISK MANAGEMENT MANUAL

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PREFACE

Manual Intent and Use

The intent of this manual is to familiarize you with the importance of the risk management function in South Dakota state government, acquaint you with the Office of Risk Management and the Public Entity Pool for Liability and the services they offer, and provide you with the tools to effectively manage the risks to which you and your operations are exposed.

Format

This manual has been developed to provide you with an easy to use format so you can understand and use risk management principles throughout your operations.

The table of contents highlights the major topics of the manual. Each topic has one or more subtopics that provide specific information or instruction. By familiarizing yourself with the table of contents, you will more easily be able to utilize this manual and implement sound risk management practices.

Updates

Revisions to the manual will be provided, as needed, by the Office of Risk Management.

Section 1

The Risk Management Process in South Dakota

THE ORIGIN OF RISK MANAGEMENT IN SOUTH DAKOTA

State government is faced with the task of providing services and ensuring public safety within an environment of limited resources, increasing liability, and a more litigious society. The Office of Risk Management was formed in 1987 to centralize the state's risk management program and reduce the state's exposure to loss.

The Office of Risk Management oversees the state's risk management activities. Each agency and institution has a risk management contact person to implement risk management techniques and act as a liaison to the Office of Risk Management.

RISK MANAGEMENT POLICY

Mission Statement

The mission of the Office of Risk Management is to efficiently and effectively protect the assets of the state of South Dakota in the conduct of governmental activity. This mission can be accomplished through the prudent use of risk management and insurance programs, safety and loss control techniques.

Policy Statement

The risk management policy and philosophy of the state of South Dakota is to:

- ◆ Protect the state's assets;
- ◆ Ensure a safe environment for state employees and for the public who come into contact with state employees or property as services are provided;
- ◆ Minimize the possible interruption of vital public services;
- ◆ Safeguard that all exposures to financial loss are discovered and handled appropriately and;
- ◆ Reduce the costs and consequences of accidents, including insurance premiums, through effective risk management.

In striving to fulfill the risk management mission and policy, the following five steps of risk management are followed:

1. Identify risks of loss throughout state operations.
2. Evaluate risks of loss to determine loss frequency and severity.
3. Control risks of loss through:
 - * Elimination or avoidance of the risk;
 - * Reducing the loss potential through loss prevention;
 - * Assumption of the risk;
 - * Risk transfer through contracts or insurance.
4. Implement risk management controls.
5. Monitor the effectiveness of risk management controls and implement changes where appropriate.

THE RESPONSIBILITIES OF THE OFFICE OF RISK MANAGEMENT

The Office of Risk Management has the primary responsibility of implementing the risk management objectives of the state to ensure its operations are not impaired by a loss. To accomplish that goal, the Office of Risk Management is responsible for:

- ◆ Conducting loss control audits (see the “safety and loss control” section of this manual for a description of a loss control audit);
- ◆ Reviewing claims to identify trends or situations requiring loss prevention efforts;
- ◆ Advising agencies on applicable laws, regulations and standards which contribute to a safe environment;
- ◆ Providing loss control training;
- ◆ Reviewing contracts for appropriate risk management language and;
- ◆ Selecting brokers and insurance companies and negotiating to obtain the best product for the best price.

RISK MANAGEMENT RESPONSIBILITIES OF SOUTH DAKOTA STATE AGENCIES AND INSTITUTIONS

Agencies and institutions are responsible for coordinating and implementing risk management programs within their departments and at their facilities with the assistance of the Office of Risk Management. Agencies and institutions should assist the Office of Risk Management in identifying, measuring and minimizing exposures to loss by:

- ◆ Conducting facility inspections to identify and address safety hazards;
- ◆ Conducting services and operations in accordance with applicable laws, regulations, and safety standards;
- ◆ Properly reporting accidents, incidents and unsafe conditions;
- ◆ Reviewing losses to identify trends or situations requiring loss prevention efforts;
- ◆ Ensuring policies and procedures remain current, are communicated to all employees and enforced;
- ◆ Drafting all contracts with the appropriate risk management language;
- ◆ Communicating to the Office of Risk Management changes in exposures; and
- ◆ Implementing the Office of Risk Management's recommendations.

Section 2

The Public Entity Pool for Liability

THE ORIGIN OF THE PEPL FUND IN SOUTH DAKOTA

The mid-1980's witnessed an increasingly expensive commercial insurance market for public entities seeking tort liability coverage.

In response, the South Dakota State Legislature passes what is known as the "PEPL Law," SDCL Chapter 3-22, in 1986. That law allows certain public entities to pool contributions to provide tort liability coverage.

Subsequently, the Public Entity Pool for Liability (PEPL Fund) was activated on July 1, 1988, to provide tort liability coverage for employees of the state of South Dakota. The State Risk Manager is appointed the PEPL Fund Executive Director.

EXPLANATION OF COVERAGE

Sovereign Immunity

Sovereign immunity according to Barron's Law Dictionary is "a doctrine precluding the institution of a suit against the sovereign [government] without the sovereign's consent." Public entities in the United States enjoyed this immunity from lawsuit, until judicial decisions in the last 40 years began limiting its application.

State Employee Liability Exposure

South Dakota law provides that sovereign immunity is waived to the extent that coverage is provided either through the purchase of insurance or an arrangement such as the State has with the PEPL Fund. Therefore, the "Agreement" and "Memorandum of Coverage" between the State and PEPL carve out the instances where the State waives sovereign immunity and agrees to cover damages for which an employee becomes liable.

Initially, the PEPL Fund excluded coverage to state employees sued for economic damages resulting from their errors or omissions. However, on August 16, 1995, the South Dakota Supreme Court ruled state employees have no immunity for damages resulting from ministerial acts. Ministerial acts are defined by the South Dakota State Supreme Court as "that which involves obedience to instructions, but demands no special discretion, judgment or skill," such as driving a vehicle. In response to this further erosion of the state's sovereign immunity, the PEPL Fund coverage document was amended to cover non-economic damages resulting from ministerial acts.

Coverage and Limit of Liability

PEPL provides State employees with a \$1,000,000 per occurrence coverage limit for general liability, public officials errors and omissions liability, automobile liability, law enforcement liability, and some medical malpractice liability. Details of the coverage are provided in a formal "Agreement" and "Memorandum of Coverage" between the State and PEPL. (See pages 2-6 through 2-18 of this Manual.)

A state employee is defined as all current and former employees and elected officers of the state whether classified, unclassified, licensed or certified, permanent or temporary, whether compensated or not. The term includes employees of all branches of government including the judicial and legislative branches and employees of constitutional, statutory and executive order boards, commissions and officers. The term does not include independent contractors.

Automobile Coverage

Under the PEPL program, coverage is provided for a state employee's liability (up to \$1,000,000 per occurrence) to other persons due to the state employee's negligence in operating a state-owned vehicle on state business.

It should be noted that if a state employee is operating their personally-owned vehicle on official state business, their personal automobile liability coverage is primary and PEPL is secondary.

There is no PEPL Fund coverage for:

- ◆ Property damage to the state owned vehicle;
- ◆ Injuries covered by other insurance;
- ◆ Losses which agencies, employees and agents did not cause or were not legally responsible to prevent;
- ◆ Actions wrongfully meant to harm someone or actions not related to state employment;
- ◆ Personal belongings in vehicles; and
- ◆ Reckless disregard for the safety of others.

*State-owned vehicles are exempt from "proof of insurance" laws (SDCL 32-35-124). Therefore, even though liability coverage exists, state-owned vehicles carry no "proof of insurance" cards.

Premiums

Each agency contributes to the PEPL fund annually. Upon receipt of an annual actuarial report, the PEPL Fund Director determines the amount required from the state to maintain a sound fund balance. The amount required for general liability coverage is divided equally between the number of FTE covered by the fund. The amount required for vehicle coverage is divided equally among the number of vehicles in the state fleet.

THE RESPONSIBILITIES OF THE PEPL FUND TO THE STATE OF SOUTH DAKOTA

- ◆ Provide tort liability coverage to the employees of the state of South Dakota.
- ◆ Manage liability claims to keep losses and costs down: ensuring an adequate reporting procedure, ensuring claims are properly investigated and handled, negotiating settlements advantageous to the state, identifying loss trends and keeping agencies abreast of their losses.
- ◆ Manage lawsuits including the selection of the most competent attorneys to represent state employees, the monitoring of lawsuits to ensure efficient and cost-effective litigation, and negotiating settlements advantageous to the state.
- ◆ Provide detailed financial statements and budgets for each coverage period.
- ◆ Conduct independent audits of claims administration services.
- ◆ Conduct independent actuarial studies of loss and contingency reserves.

THE RESPONSIBILITIES OF THE STATE OF SOUTH DAKOTA TO THE PEPL FUND

- ◆ Prompt payment of coverage contributions to the PEPL Fund.
- ◆ Prompt and proper reporting of accidents, incidents, and unsafe conditions.
- ◆ Prompt and proper reporting of claims and lawsuits filed against the state and its employees.
- ◆ Cooperation with the PEPL Fund in the settlement and defense of claims and lawsuits.

**PARTICIPATION AGREEMENT
BETWEEN
THE PUBLIC ENTITY POOL FOR LIABILITY
AND
THE STATE OF SOUTH DAKOTA**

To view the Participation Agreement and the Memorandum of Coverage, return to the manual homepage and click on the link labeled “Participation Agreement and Memorandum of Coverage.”

Section 3

Other State Risk Financing

OTHER STATE INSURANCE COVERAGES PURCHASED BY THE OFFICE OF RISK MANAGEMENT

Aviation

The Office of Risk Management purchases aircraft liability insurance for state-owned planes.

Boiler and Machinery

In order to ensure regular inspections of the state's boilers, boiler and machinery insurance is purchased.

Employee Crime Bond

The state purchases a blanket bond which covers all employees up to a limit of \$100,000. The policy is endorsed to provide additional coverage for certain employees.

Property

The Office of Risk Management purchases property insurance for certain bonded and revenue producing buildings, some leased computer installations and some art works.

Summary of State Risk Financing

Risk	Description	Financing Source
Automobile Liability	Liability arising out of the use of state-owned or leased vehicles	The PEPL Fund
Aviation Liability	Liability arising out of the use of state-owned or leased aircraft	Commercial insurance policy purchased by the Office of Risk Management
Boiler and Machinery	Explosion or damage caused by steam boilers and related equipment	Commercial insurance policy purchased by the Office of Risk Management
Fidelity	Employee theft of funds	Commercial bond purchased by the Office of Risk Management
General Liability	Liability arising out of the state's premises or operations	The PEPL Fund
Professional Liability	Liability relating to other professional services provided by state employees (e.g. attorneys, accountants, engineers, etc.)	The PEPL Fund
Property	Physical damage to certain state-owned bonded or revenue producing buildings	Commercial insurance purchased by the Office of Risk Management
Workers' Compensation	Employee injuries or illness relating to their jobs	The State Workers' Compensation Fund administered by the Bureau of Personnel

Providing Certificates of Insurance

A Certificate of Insurance is a written verification from an insurance company of the existence of insurance, the policy amount, the insured(s), and the period for which the coverage is effective. See the Contracts section of this manual for when to require Certificates of Insurance.

If asked to provide Certificates of Insurance to verify coverage for the state's Aviation, Boiler and Machinery, Bonds or Property coverage, contact the Office of Risk Management for assistance. These Certificates will be obtained from the state's commercial carrier.

If asked to provide a Certificate verifying state employee liability coverage, again contact the Office of Risk Management. The Public Entity Pool for Liability (PEPL) Fund issues Certificates of Coverage verifying coverage for \$1,000,000 per occurrence.

Section 4

Claim Reporting

CLAIM REPORTING

This section will provide general claims reporting and handling instructions for the various exposures faced by the state of South Dakota. By following these instructions and reporting claims promptly and properly we will protect the State's interests and contain costs of loss. Late or inaccurate claim reporting could jeopardize our defense of the claim. When in doubt about reporting a claim, call the Office of Risk Management.

Our responsibility for the claim does not end when the claim has been reported. We have an obligation to assist in the management of the claim whenever necessary.

Following an accident which results in a claim, you may be contacted by a number of people, including: law enforcement authorities, adjusters hired by the state, attorneys, private investigators, the media, etc. Information should only be given to law enforcement authorities, adjusters hired by the state and attorneys representing the state. All other request for information should be referred to the Office of Risk Management. When discussing the claim, give only the facts, not your opinion. Do not admit liability or fault.

Automobile

If you are involved in an automobile accident:

- ◆ Contact law enforcement immediately; obtain a copy of the Police Report which should be available to you within 24 hours of the accident.
- ◆ Do not move the vehicle until it has been viewed by the authorities.
- ◆ If the accident results in a fatality, serious bodily injury or serious property damage, immediately report the accident to Claims Associates, Inc., the state's adjusting service, at their 24-hour emergency number, 1-888-430-2249. (A card with this information is to be located in the glove compartment of all state-owned vehicles. A sample of that card is included as Exhibit A, page 9-1 in the Exhibit portion of this Manual.)
- ◆ If the other party involved in the accident requests information on how to submit a claim for damages sustained in the accident, provide them with the Claimant's Report of Accident form (Exhibit B, page 9-2) and instruct them to complete the form and mail it to Claims Associates, Inc., for investigation.
- ◆ Obtain names and addresses of all persons involved in the accident as well as all witnesses.
- ◆ As soon as reasonably possible, provide complete, specific, accurate, and truthful information to your agency risk management contact person to complete the State Vehicle Accident Report (Exhibit C, page 9-3). Also provide the contact person with a copy of the Police Report. Request a copy of the completed accident report be returned to you in order that you may check it for accuracy. Keep a copy of the report for future reference, if needed.

Bond and Crime

Claims arising from bond or crime exposures should be reported to the Office of Risk Management as soon as they are discovered.

General Liability (Non-automobile)

- ◆ If you become aware of an accident resulting in a fatality, serious bodily injury, or serious property damage, immediately report the accident to Claims Associates, Inc., the state's adjusting service, at their 24-hour emergency number, 1-888-430-2249.
- ◆ Obtain names and addresses of all persons involved in the accident as well as all witnesses.
- ◆ Provide complete, specific, accurate, and truthful information to your agency risk management contact person to complete the Report of Accident, Incident or Unsafe Condition form (Exhibit D, page 9-4) as soon as reasonably possible. Request a copy of the completed accident report be returned to you in order that you may check it for accuracy. Keep a copy of the report for future reference, if needed.
- ◆ If the other party involved in the incident or accident requests information on how to submit a claim for damages sustained in the incident or accident, provide them with the state of Claimant's Report of Accident form (Exhibit B, page 9-2) and instruct them to complete the form and mail it to Claims Associates, Inc., for investigation.

Lawsuits

If you are served with any legal documents making you a party to a lawsuit, immediately contact the Office of Risk Management. Forward a copy of all the documents you receive. Prompt action is necessary due to the fact there are only 20 days for our attorney to prepare and file an Answer in a lawsuit.

If a state employee is named a defendant in a lawsuit claiming damages for actions covered by the PEPL Fund, defense of the lawsuit will be provided by an attorney hired by the PEPL Fund Executive Director.

Property

Building and contents property losses over \$500, whether insured or not, should be filed with the Office of Risk Management through completion of a Report of Incident form. (Exhibit D. page 9-4)

Claims for property damage to insured buildings should be reported to the Office of Risk Management as soon as possible to facilitate our insurance claim filing process.

Section 5

Contracts

CONTRACTS

State agencies frequently enter into contracts for a wide range of goods and services. When providing these goods and services, a contractor could potentially cause damages to a third party for which the state may be held liable. To address the liability exposure these agreements create, it is important that contracts contain adequate hold harmless/indemnification and insurance language, and that certain requirements are met. The Office of Risk Management has established the following guidelines to assist state employees in practicing contractual risk management.

Screen Your Contractors Carefully

Deal only with reputable firms; check references; check for records of safety violations; monitor compliance with contract terms. In large construction contracts, require periodic inspections.

Hold Harmless / Indemnification Clause

All contracts should contain an adequate hold harmless/indemnification clause which ensures that the party responsible for actions resulting in claims for damages becomes financially responsible for those claims. Sample hold harmless/indemnification language can be found in Auditor 9 located in this manual as 5-4 (3).

Alternative hold harmless/indemnification language must be approved by the Office of the Attorney General or the Office of Risk Management.

Insurance Requirements

All contracts should require commercial general liability, or its equivalent, worker's compensation, and automobile liability coverage. Professional liability coverage is required for medical professionals, attorneys, architects, engineers, accountants, or financial planners. Sample insurance language can be found in Auditor 9 located in this manual as 5-4 (3) through 5-4 (4).

Certificates of Insurance

To verify that the contractor has insurance coverage required in the contract, certificates of insurance should be required. Additional information on Certificates of insurance can be found in Auditor 9 located in this manual as 5-4 (5).

Insurance Policies

Contracts for certain types of services may present a high level of risk. (The amount paid for goods or services is not an accurate indication of a contract's loss

exposure.) In such cases, request copies of the contractor's insurance policies to review for adequate coverage and limits, and acceptable deductibles. If you need assistance in reviewing insurance policies, please contact the Office of Risk Management.

Depending upon the nature of the contracted services, coverage not included in a general liability policy may be necessary (e.g. pollution liability coverage). If you are uncertain as to the level of risk involved in the contract, the type of coverage or limits of liability necessary, contact the Office of Risk Management. All contracts should be reviewed by an attorney.

Note: If a contractor hires subcontractors, the contract should include language which subjects the subcontractor to the same hold harmless/indemnification and insurance requirements.

Facilities Use Agreements

When a state facility is made available to an outside group, it is imperative that a Facilities Use Agreement containing adequate indemnification provisions is entered into prior to allowing the outside group use of the facility. Failure to enter into such an agreement exposes the state to losses for damages for which the state may not and should not be liable.

Exhibit E (page 9-5) in the Exhibits and Forms section of the manual contains language drafted by the Attorney General's office to address this issue. Paragraph three is only appropriate where the activity undertaken in the facility necessitates supervision be provided (e.g. a group is using a state swimming pool and must provide their own lifeguards.) Consider removing or modifying that paragraph depending on the facility use. For example, use of a facility for oral presentations or meetings would warrant excluding paragraph three.

The final three paragraphs of Exhibit E contain language requiring the user to carry liability coverage. This language should be used when the risk of injury or property damage is high. Athletic events or large events, such as trade shows, are examples of activities which justify requiring the user to carry liability coverage. If you have any questions regarding when it is necessary to require insurance, or if you need assistance in determining acceptable limits of insurance, contact the Office of Risk Management.

Special Events Waivers of Liability, Indemnification and Medical Releases

When state facilities are used by the general public for special events which pose a high risk of injury (e.g. water recreational activities or athletic events), a signed Waiver of Liability, Indemnification, and Medical Release should be required of each participant. See Exhibits F and G (pages 9-6 and 9-7) in the Exhibits and Forms section of the manual.

The waiver form should not be significantly modified. It has been written to comply with a 1994 Supreme Court decision which stated:

- ◆ pre-injury releases are much more likely to be deemed valid and enforceable when they are written on a separate document--that is, not imbedded in an application, rental agreement or sign-up sheet;
- ◆ unless the intention of the parties is expressed in unmistakable language, an exculpatory clause will not be deemed to insulate a party from liability for his own negligent acts...what the law demands is that such provisions be clear and coherent;
- ◆ the more inherently dangerous or risky the recreational activity, the more likely that an anticipatory release will be held valid.

The form can and should be modified to specifically identify the activity involved. In the case of a particularly dangerous activity, the level of risk involved should also be stated. For example, it may not be sufficient to name the activity "water skiing stunts." The release form should specify the level of difficulty of the stunts.

NOTE:

High risk activities warrant the use of either a Facilities Use Agreement which requires the user to carry liability coverage, or participant liability waivers, or both. The process of determining when to require insurance of the user and/or when to require signed waivers of participants can be a difficult one. Unfortunately, with the wide variety of activities, events and facilities across state government, there is no way to establish a standard policy to specifically address all cases. Please contact the Office of Risk Management for guidance.

STATE AUDITOR'S GUIDELINES FOR DRAFTING CONSULTING CONTRACTS

Note: These guidelines are issued to furnish guidance to state agencies in the preparation of Consulting Contracts. These guidelines should be followed for any Consulting Contract, unless the contract is otherwise approved as to form by the Attorney General's Office. The State Auditor may reject vouchers submitted for payment under any Consulting Contract that does not substantially comply with these guidelines, or is not otherwise approved as to form by the Attorney General's Office.

1. *Identify the parties entering into the agreement.*

Example:

Agreement made and entered into this ____ day of _____,
_____.

by and between _____, a state agency,

of _____, _____,

_____,
(Address) (City) (State)

_____, (the "State") and

_____, _____, _____
(Zip Code) (Name)

of _____,

_____,
(Company Name) (Address)

_____, _____,

_____,
(City) (State) (Zip Code)

_____, (the "Consultant").

2. *Describe the work that the Consultant is to perform. Be as specific as possible in detailing the Consultant's scope of work and responsibilities. If the description of the work is lengthy, attach the description as an Exhibit to the agreement.*

Example:

The Consultant will perform those services described in the Work Plan, attached hereto as Exhibit A and by this reference incorporated herein.

Example:

The Consultant will perform services for the State as follows:

3. *Specify the date services will commence and the date services will terminate.*

Example:

The Consultant's services under this Agreement shall commence on _____ and end on _____, unless sooner terminated pursuant to the terms hereof.

4. *Describe the State's responsibilities, if any.*
5. *State whether the Consultant is using State equipment, supplies or facilities. If the Consultant is using State equipment, supplies or facilities, include a statement specifying the conditions under which the State equipment is to be used.*
6. *Require the Consultant to provide their Employer Identification Number, Federal Tax Identification Number or Social Security Number to the State. This is to be separately provided to agencies that will not be made public due to identity theft concerns; the contract itself will be public information.*
7. *Identify the maximum amount to be paid for services, including expenses. Specify whether the State will reimburse the Consultant for expenses as a separate item and state the Total Contract Amount. Where hourly rates have been negotiated, the contract must specify the hourly rate. Unless otherwise approved, legal services contracts shall include an hourly rate. Describe the method of payment, i.e. monthly, and what documentation is required from the Consultant in order to process a request for payment. Payment shall be made consistent with the terms of the Prompt Payment Act (SDCL ch. 5-26).*

Example:

The State will make payment for services upon satisfactory completion of the services in an amount not to exceed \$_____. The State will pay Consultant's expenses for travel, lodging and meals as a separate item. Expenses submitted will be reimbursed at state rates as established by the State Board of Finance, and receipts must be provided. The total amount for such expenses may not exceed \$_____. The TOTAL CONTRACT AMOUNT is an amount not to

exceed \$_____. Payment will be made monthly, pursuant to itemized invoices submitted with a signed state voucher. Payment will be made consistent with SDCL ch. 5-26

Example:

The State will make payment for services upon satisfactory completion of the services. The TOTAL CONTRACT AMOUNT is an amount not to exceed \$_____. The State will not pay Consultant's expenses as a separate item. Payment will be made pursuant to itemized invoices submitted with a signed state voucher. Payment will be made consistent with SDCL ch. 5-26

Example:

The agreed upon hourly rate for services performed under this Agreement is \$_____ per hour. The State will pay Consultant's expenses as a separate item in an amount not to exceed \$_____. The TOTAL CONTRACT AMOUNT is an amount not to exceed \$_____. Payment will be made monthly, pursuant to itemized invoices submitted with a signed state voucher. Payment will be made consistent with SDCL ch. 5-26.

8. *All contracts must contain hold harmless and indemnification language.*

Example:

Consultant agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as the result of performing services hereunder. This section does not require Consultant to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

9. *Most contracts must require the Consultant to have insurance coverage for commercial general liability, or its equivalent, worker's compensation, and business automobile liability. Depending upon the nature of the services performed by the Consultant, coverage not included in a general liability policy may be necessary (e.g. pollution liability coverage). Professional liability coverage is required for medical professionals, attorneys, architects, engineers, accountants or financial advisors.*

The Office of Risk Management should be consulted to determine the appropriate amount and type of coverage necessary. The State Auditor's Office recognizes that there will be exceptions to the insurance requirements. Please contact the Office of Risk Management and the Office of Attorney General for advice regarding exceptions. Sample insurance language is set out below. Not all provisions will be applicable in each consultant contract.

Example:

A. Commercial General Liability Insurance:

Consultant shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit.

[In those limited circumstances when the State is leasing real property as part of the consultant contract add: Such insurance shall further include a fire and legal liability endorsement.]

B. Professional Liability Insurance or Miscellaneous Professional Liability Insurance:

Consultant agrees to procure and maintain professional liability insurance or miscellaneous professional liability Insurance with a limit not less than \$1,000,000.00.

C. Business Automobile Liability Insurance:

Consultant shall maintain business automobile liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.

D. Worker's Compensation Insurance:

Consultant shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.

10. *To verify that the Consultant has the insurance coverage required in the contract, certificates of insurance should be obtained from the Consultant and attached to your file copy of the contract. Sample language is set out below.*

Example:

Before beginning work under this Agreement, Consultant shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement. In the event a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, the Consultant agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Consultant shall furnish copies of insurance policies if requested by the State.

11. *Contracts for certain types of services may present a high level of risk. The amount paid for services is not an accurate indication of a contract's loss exposure. In such cases, request copies of the Consultant's insurance policies to review for adequate coverage and limits, and acceptable deductibles. If you are uncertain as to the level of risk involved in the contract, the type of coverage or limits of liability necessary, or need assistance in reviewing insurance policies, contact the Office of Risk Management.*
12. *All contracts must also include the following provisions:*

A. An Independent Contractor Provision:

Example:

While performing services hereunder, Consultant is an independent contractor and not an officer, agent, or employee of the State of South Dakota.

B. A Termination Provision:

Example:

This Agreement may be terminated by either party hereto upon thirty (30) days written notice, and may be terminated by the State for cause at any time, with or without notice.

Example:

This Agreement can be terminated upon thirty (30) days written notice by either party. In the event the Consultant breaches any of the terms or conditions hereof, this Agreement may be terminated by the State at any time with or without notice. If termination for such a default is effected by the State, any payments due to Consultant at the time of termination may be adjusted to cover any additional costs to the State

because of Consultant's default. Upon termination the State may take over the work and may award another party an agreement to complete the work under this Agreement. If after the State terminates for a default by Consultant it is determined that Consultant was not at fault, then the Consultant shall be paid for eligible services rendered and expenses incurred up to the date of termination.

C. A Funding Out Clause:

Example:

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

D. An Amendment Provision:

Example:

This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

E. A Controlling Law Provision:

Example:

This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

F. A Compliance Provision:

Example:

Consultant will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.

(Note that a more detailed Compliance Provision may be required if it is necessary to comply with requirements for use of federal funds).

G. A Reporting Provision:

Example:

Consultant agrees to report to the State any event encountered in the course of performance of this Agreement which results in injury to any person or property, or which may otherwise subject Consultant, or the State of South Dakota or its officers, agents or employees to liability. Consultant shall report any such event to the State immediately upon discovery.

Consultant's obligation under this section shall only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable law. Consultant's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the State under this section shall not excuse or satisfy any obligation of Consultant to report any event to law enforcement or other entities under the requirements of any applicable law.

H. A Severability Provision:

Example:

In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

I. A Supersession Provision:

Example:

All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

J. A Notice Provision:

Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to _____ on behalf of the State, and by and to _____, on behalf of the Consultant, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent

by registered or certified mail, or, if personally delivered, when received by such party.

13. *Consultant must get permission from the State to hire subcontractors. All subcontracts should include language that subjects the subcontractor to the same indemnification/hold harmless and insurance requirements that apply to the Agreement. Once permission is granted, the agency must notify the State Auditor of the subcontractor's contact information (company name, contact person, complete address, employer identification number, and phone number).*

Example:

Consultant may not use subcontractors to perform the services described herein without the express prior written consent of the State. Consultant will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage in a manner consistent with this Agreement. Consultant will cause its subcontractors, agents, and employees to comply, with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.

14. *The Agreement should spell out ownership of any reports or property created by the Consultant.
For software contracts the Bureau of Information and technology should be contacted.*

Example:

Consultant hereby acknowledges and agrees that all reports, plans, specifications, technical data, miscellaneous drawings, software system programs and documentation, procedures, or files, operating instructions and procedures, source code(s) and documentation, including those necessary to upgrade and maintain the software program, and all information contained therein provided to the State by the Consultant in connection with its performance of services under this Agreement shall belong to and is the property of the State and will not be used in any way by the Consultant without the written consent of the State. Papers, reports, forms, software programs, source code(s) and other material which are a part of the work under this Agreement will not be copyrighted without written approval of the State.

Example:

All reports, recommendations, documents, drawings, plans, specifications, technical data and information, copyrights, patents, licenses, or other products produced as a result of the services rendered under this Agreement will become the sole property of the State. The State hereby grants the Consultant the unrestricted right to retain copies of and use these materials and the information contained therein in the normal course of the Consultant's business for any lawful purpose. Either the originals or reproducible copies satisfactory to the State, of all technical data, evaluations, reports and other work product of the Consultant shall be delivered to the State upon completion or termination of services under this Agreement.

- 15 *Agreements with federal funds need to comply with federal debarment/ suspension provisions. Recommend inclusion of language below in all contracts to insure compliance. In addition, prior to executing, the contracting agency should verify whether the Consultant is subject to federal debarment by checking the Excluded Parties List System maintained by the General Services Administration*

Example:

The Consultant certifies that neither Consultant nor its principals are presently debarred, suspended, proposed for debarment or suspension, or declared ineligible from participating in transactions by the federal government or any state or local government department or agency. Consultant further agrees that it will immediately notify the State if during the term of this Agreement Consultant or its principals become subject to debarment, suspension or ineligibility from participating in transactions by the federal government, or by any state or local government department or agency.

- 16 *Certain consulting contracts will require additional provisions to adequately protect the State's interest. Examples of this type of provision are set out below:*

A. Provisions for Legal Services Contracts:

1. Conflicts provision:

Consultant agrees not to participate as Counsel, in person or by his law firm, in opposition to the interests of the State of South Dakota or

any of its departments, bureaus, boards, authorities or commissions, consistent with the policy attached hereto as Exhibit A. *(A copy of the policy to be attached as Exhibit A may be obtained from the Office of the Attorney General.)*

2. Hold harmless provision:

The Consultant agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as the result of performing services hereunder. This section does not require the Consultant to be responsible for or defend against claims or damages arising from errors or omissions of the State, its officers, agents or employees or from the errors or omissions of third parties that are not officers, employees or agents of the Consultant, unless such errors or omissions resulted from the acts or omissions of the Consultant. Nothing in this contract is intended to impair the insurance coverage of Consultant or any subrogation rights of Consultant's insurers.

B. A Records Inspection and Retention Provision:

The State, through any authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this Agreement. The Consultant will retain all books and records related to the services performed for a period of not less than the greater of any applicable federal law retention requirement or three years following termination of this Agreement.

17 Where required contracts should include all applicable federal law provisions. The nature and extent of the federal law provisions to include depends on the nature of the contract, funding source and applicable federal regulation. Examples of requirements include: Drug-Free Workplace, Lobbying Activity, Executive Order 11246 Equal Employment Opportunity Act, and the Health Insurance Portability and Accountability Act (HIPAA).

18 All contracts should be reviewed by your attorney. Any substantive deviations from these guidelines should be requested in writing by the head of the agency, should state the reason for

requesting the deviation from the guideline examples, and must be approved by the Attorney General's Office. All contracts must be signed by the Consultant and the agency head or authorized designee, and must be dated. Copies of all consulting contracts are required to be filed with the State Auditor's Office by SDCL 1-24A-1.

STATE OF SOUTH DAKOTA
CONSULTING CONTRACT

Agreement made and entered into this _____ day of _____,
_____,

by and between _____, a state
agency, of _____ (Name of Agency)
_____, _____,
_____, _____,
(Address) (City) (State)
_____, (the "State") and
_____,
(Zip Code) (Name)
of _____,
_____,
(Company Name) (Address)
_____, _____,
_____, _____,
(City) (State) (Zip Code)
_____, (the "Consultant").
(Phone Number)

The State hereby enters into this Agreement for services with Consultant in consideration of and pursuant to the terms and conditions set forth herein.

1. The Consultant will perform those services described in the Work Plan, attached hereto as Exhibit A and by this reference incorporated herein.

2. The Consultant's services under this Agreement shall commence on _____ and end on _____, unless sooner terminated pursuant to the terms hereof.

3. The Consultant will not use State equipment, supplies or facilities. The Consultant will provide the State with its Employer Identification Number, Federal Tax Identification Number or Social Security Number upon execution of this Agreement.

4. The State will make payment for services upon satisfactory completion of the services. The TOTAL CONTRACT AMOUNT is an amount not to exceed \$_____. The State will not pay Consultant's expenses as a separate item. Payment will be made pursuant to itemized invoices submitted with a signed state voucher. Payment will be made consistent with SDCL ch. 5-26.

5. The Consultant agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as the result of

performing services hereunder. This section does not require the Consultant to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

6. The Consultant, at all times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits as follows:

A. Commercial General Liability Insurance:

The Consultant shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit.

B. Professional Liability Insurance or Miscellaneous Professional Liability Insurance:

The Consultant agrees to procure and maintain professional liability insurance or miscellaneous professional liability insurance with a limit not less than \$1,000,000.00.

C. Business Automobile Liability Insurance:

The Consultant shall maintain business automobile liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.

D. Worker's Compensation Insurance:

The Consultant shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.

Before beginning work under this Agreement, Consultant shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement. In the event a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, the Consultant agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Consultant shall furnish copies of insurance policies if requested by the State.

7. While performing services hereunder, the Consultant is an independent contractor and not an officer, agent, or employee of the State of South Dakota.

8. Consultant agrees to report to the State any event encountered in the course of performance of this Agreement which results in injury to the person or property of third parties, or which may otherwise subject Consultant or the State to liability. Consultant shall report any such event to the State immediately upon discovery.

Consultant's obligation under this section shall only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable law. Consultant's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the State under this section shall not excuse or satisfy any obligation of Consultant to report any event to law enforcement or other entities under the requirements of any applicable law.

9. This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Consultant breaches any of the terms or conditions hereof, this Agreement may be terminated by the State at any time with or without notice. If termination for such a default is effected by the State, any payments due to Consultant at the time of termination may be adjusted to cover any additional costs to the State because of Consultant's default. Upon termination the State may take over the work and may award another party an agreement to complete the work under this Agreement. If after the State terminates for a default by Consultant it is determined that Consultant was not at fault, then the Consultant shall be paid for eligible services rendered and expenses incurred up to the date of termination.

10. This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

11. This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

12. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

13. The Consultant will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.

14. The Consultant may not use subcontractors to perform the services described herein without the express prior written consent of the State. The Consultant will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. The Consultant will cause its subcontractors, agents, and employees to comply, with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.

15. Consultant hereby acknowledges and agrees that all reports, plans, specifications, technical data, miscellaneous drawings, software system programs and documentation, procedures, or files, operating instructions and procedures, source code(s) and documentation, including those necessary to upgrade and maintain the software program, and all information contained therein provided to the State by the Consultant in connection with its performance of services under this Agreement shall belong to and is the property of the State and will not be used in any way by the Consultant without the written consent of the State. Papers, reports, forms, software programs, source code(s) and other material which are a part of the work under this Agreement will not be copyrighted without written approval of the State.

16. The Consultant certifies that neither Consultant nor its principals are presently debarred, suspended, proposed for debarment or suspension, or declared ineligible from participating in transactions by the federal government or any state or local government department or agency. Consultant further agrees that it will immediately notify the State if during the term of this Agreement Consultant or its principals become subject to debarment, suspension or ineligibility from participating in transactions by the federal government, or by any state or local government department or agency.

17. Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to _____ on behalf of the State, and by _____, on behalf of the Consultant, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

18. In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

19. All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

In Witness Whereof, the parties signify their agreement effective the date above first written by the signatures affixed below.

STATE

CONSULTANT

BY: _____
(NAME)

BY: _____
(NAME)

(TITLE AND AGENCY)

(TITLE)

(DATE)

(DATE)

- State Agency Coding (MSA Center) _____.
- State Agency MSA Company for which contract will be paid _____.
- Object/subobject MSA account to which voucher will be coded _____.
- Name and phone number of contact person in State Agency who can provide additional information regarding this contract _____.

Section 6

Safety and Loss Prevention

SAFETY AND LOSS PREVENTION

Loss Control Audits

At an agency's request, the Office of Risk Management will conduct a loss control audit. These audits are designed to assist in the identification of exposures to property, liability, or workers' compensation losses and provide corrective actions to minimize these losses. In addition to a walk-through of agency facilities, the audits consist of:

- ◆ An examination of policies and procedures to ascertain that they are current, communicated, necessary and followed;
- ◆ A review of employee training efforts to determine if training needs have been identified and addressed and training is documented;
- ◆ A sample review of contracts to ensure appropriate risk management language is utilized;
- ◆ An evaluation of fire and life safety practices including but not limited to proper storage practices, fire extinguisher placement and handling, fire detection system inspections, evacuation procedures, fire drills, etc.;
- ◆ An evaluation of the handling, labeling, storage, and disposal of hazardous materials;
- ◆ Determination that personal protective equipment is provided, used and properly maintained where appropriate;
- ◆ Identification and elimination of unsafe work conditions and practices.

Upon completion of the audit, the agency administration is furnished a written report of findings and recommendations to address exposures.

Risk Management Contacts

Each agency and institution has appointed a risk management contact who reports directly to the agency head. This person serves as a liaison between the agency/institution and the Office of Risk Management. Responsibilities include:

- ◆ Ensuring accidents, incidents, unsafe conditions, claims (potential and actual) and lawsuits (potential and actual) are appropriately handled;
- ◆ Assisting in the identification of workers' compensation, property and liability loss exposures within the agency or institution and the implementation of corrective actions;

- ◆ Overseeing the agency and institution loss control committee to ensure its duties and responsibilities are performed;
- ◆ Regularly reviewing risk management related policies and procedures to ascertain that they are necessary, relevant, communicated and followed;
- ◆ Providing risk management technical assistance and training as necessary.

The risk management contact person is responsible for providing a written response to risk management audits conducted by the Office of Risk Management, identifying which audit recommendations outlined in the Loss Control Activities Findings and Recommendations section have been implemented and establishing a timeline for those yet to be implemented. The written response must be submitted within thirty days after the audit report has been received.

Loss Control Committees

Each state agency and institution is to have an active loss control committee as mandated by the Governor. The committee, which should be comprised of a cross-section of agency employees, has the following responsibilities:

- ◆ Develop a loss control and safety policy appropriate to the agency or institution and ensure that the policy is communicated to all employees within the department;
- ◆ Review liability and workers' compensation losses to identify trends and determine appropriate courses of action to reduce future losses;
- ◆ Periodically inspect agency facilities to ensure that all employees are complying with established loss control and safety practices and to identify and correct hazardous conditions;
- ◆ Determine loss control and safety related training needs and ensure necessary training is accomplished;
- ◆ Assist in the development of loss control and safety orientation programs for new employees;
- ◆ Assist in the review of the agency's policies and procedures manual to ensure it remains current and that documentation practices are in effect which provide written evidence that policies and procedures are followed;
- ◆ Ensure that personal protective equipment needs are met;

- ◆ Meet on at least a quarterly basis or as needed. Minutes of each meeting should be kept on file for three years, with an annual report of committee activities sent to the Office of Risk Management.

Risk Management Training

Seminars:

State agencies may provide the following seminars to its employees by contacting the Office of Risk Management:

- ◆ *Employee Liability and PEPL Seminar-* A one hour seminar that explains employee liability, how the State addresses it and the liability coverage included in the Agreement between the State and PEPL.
- ◆ *Management's Responsibility for Risk Control Programs-* A two to four hour seminar that is designed for management and supervisory personnel. It addresses the objectives and elements of a risk control program, including risk management techniques, job safety analysis, facility audits, management's responsibilities in risk control programs, and how management can meet those responsibilities, including major targets for loss control and program elements to fulfill the loss control management function.
- ◆ *Workplace Safety Seminar-* A one-hour seminar designed to communicate the concept of risk management and loss control as the opportunity and responsibility of the individual state employee. This seminar is tailored to address specific agency requirements. We discuss: workplace ergonomics (proper workstation set-up); handling of hazardous materials; proper use of personal protective equipment; proper equipment use; methods of identifying and reporting accidents, incidents and unsafe conditions; causes and costs of accidents; and the function of loss control committees.

With its own staff and available contract resources, the Office of Risk Management can provide additional training seminars. State agencies having needs for training in matters relating to risk management should contact the Office of Risk Management for assistance in training program design.

Ergonomic Workstation Evaluations:

The Office of Risk Management has trained individuals to conduct workstation evaluations. These evaluations assist employees in proper workstation setup to prevent repetitive stress injuries and reduce subsequent workers' compensation claims.

Employees who would like to have their workstation evaluated should contact their risk management contact or the Office of Risk Management.

State Government Risk Management Training Videos:

The Public Entity Pool for Liability has produced the following videos to assist in training state employees on their liability coverage and risk management topics:

- ◆ *The Public Entity Pool for Liability*- This 17 minute presentation will ensure your employees understand the liability to which they are exposed; the extent of liability coverage afforded them by the PEPL Fund; steps they can take to mitigate damages resulting from liability exposures, including proper accident reporting procedures; and what to expect if named in a lawsuit. This videotape is part of a presentation kit which includes handouts of relevant definitions, as well as a PEPL Fund coverage document.
- ◆ *Risk Management in South Dakota State Government*- This 11 minute presentation defines risk management, explains the costs and consequences of accidents, and outlines the risk management responsibilities of state employees and the services provided by the Office of Risk Management.
- ◆ *Risk Management in South Dakota State Physical Plant Operations*- The first half of this 30 minute video looks at loss exposures physical plant employees face every day. Issues include special events, confined spaces, exposure to electrical and moving mechanical parts, power equipment and machinery, chemicals, and bloodborne pathogens. The second half of the video discusses risk management techniques to reduce these exposures. Issues include emergency procedures, fire safety, knowing and following policies and procedures, documented loss control training and inspections, and proper reporting of accidents, incidents and unsafe conditions.
- ◆ *Working with Inmates*-This video provides state employees and municipalities with do's and don'ts when working with inmates.
- ◆ *Risk Management at the Buffalo Roundup and Auction*-This video will provide safety tips to all participants of the roundup.
- ◆ *Risk Management in South Dakota's State Parks and Recreation Areas*-This video is designed to increase awareness in the practice of risk management in our state park system. It identifies exposures, shows examples of safe practices, and how to deal with accidents, incidents and unsafe conditions.

- ◆ *Risk Management at the South Dakota State Fair*-This video will assist those employees working the state fair to recognize and manage risk while conducting their daily operations.

These videos may be obtained by contacting the Office of Risk Management.

Unsafe Condition Reporting

If you become aware of an unsafe condition that you or your supervisor are not able to remedy, report the condition using the Report of Accident, Incident, Unsafe Condition (Exhibit D). Forward a copy of the report to your supervisor or to your agency's Risk Management Contact for transmittal to the Office of Risk Management. Anonymous reports of unsafe conditions will also be accepted and addressed by the Office of Risk Management.

Section 7

No content

The information from the Resource Catalog that was located in this section has been removed due to outdated material. The State Library no longer maintains videos that were previously outlined in this Section. Section VII will be reserved for future development.

Section 8

Glossary of Terms

GLOSSARY

Accident	An <i>undesired</i> event that results in harm to people, damage to property or loss to process.
Actual cash value	Replacement cost of property at the time of loss, less depreciation based on age, condition, time in use, and obsolescence.
Additional insured	A person or entity other than the named insured who is protected by the policy, often in regard to a specific interest.
Adjuster	A person who settles claims for insurers.
Aggregate	Cumulative. An aggregate limit of \$1 million means that when the total of all claims in a year reaches \$1 million, coverage ceases.
Appraisal	An evaluation of a property item prepared according to certain standards for specific usage. Such an evaluation may be based on replacement value, actual cash value, or market value.
Apportionment clause	A provision that establishes the amount each insurer must pay if more than one policy is involved in a loss.
Appreciation	The amount by which property values increase as a result of various economic factors.
Assault	Threat to inflict injury. It may or may not include battery (actual bodily injury).
Attractive nuisance	Conditions of a property that tend to attract children; for example, a sand pile or structures that can be climbed. Owners must take reasonable precautions to protect children, even though they illegally trespass onto the property.
Audit, insurance	A survey of the insured's records to determine the premium due the insurer.
Audit, control	A survey of physical premises to identify hazards, implement loss prevention efforts, assess the adequacy of resources devoted to loss prevention, and evaluate current loss prevention programs.
Bailee	A person or entity having custody of property of others. Examples are warehouses, railroads, and laundries. Bailees for hire have certain responsibilities for safety of property in their custody.
Battery	Use of force against a person.

Binder	A temporary insurance contract pending execution of the policy contract. Except for specified differences, the terms of the binder are, by implication, those of the contract that is intended to replace it.
Blanket policy	An insurance policy that in a single contract insures a number of locations or risks against the same perils for a single limit of coverage.
Bodily injury	Injury, sickness, or disease sustained by a person, including death resulting there from (see also Personal injury).
Boiler and Machinery	Coverage for the loss arising out of the operation of pressure, mechanical, and electrical equipment. It may cover loss to the boiler and machinery itself, damage to other property, business interruption losses, and inspection services.
Bond bid	A guarantee that a contractor will enter into a contract on which he has bid if it is awarded to him and will furnish a contract bond as required by the terms of the contract.
Bond fidelity	A promise to make good financial loss due to the dishonesty of employees; a financial guarantee of the performance of an implied obligation.
Breach	Failure to live up to the warranties or conditions of an insurance contract. For example, a fire sprinkler warranty is breached if the sprinklers are not operational, if the failure is from conditions under the insured's control.
Builder's risk insurance	Coverage to protect a building in course of construction.
Business interruption insurance	Pays for loss of profits and certain continuing expenses, if a covered peril interrupts normal operation of a business. Once called use and occupancy insurance.
Cancellation	The termination of an insurance policy or bond before its expiration by the insured or insurer.
Carrier	An insurance company.

Certificate of insurance	A certificate is a form used to convey information (valid only as of the date it is issued) regarding the client's insurance coverages. It does not confer rights upon a certificate holder or alter, extend, or amend policy coverage.
Chattel	Personal or movable property.
Claim	The amount of damage for which a third party seeks reimbursement from the insured and/or insured seeks reimbursement from his or her insurance company. Once the amount has been determined, it becomes a loss. <i>Claim</i> and <i>loss</i> are often used interchangeably. Self-insured losses are often called claims.
Collision insurance	Insurance against loss to insured property caused by striking or being struck by an object; includes loss caused by upset.
Comparative negligence (versus contributory)	In many states, damages for bodily injury or property damage caused by another's negligence are assessed according to the ratio of each party's negligence. If three parties are involved in an accident, and they are respectively 10 percent, 20 percent, and 70 percent negligent, payment of damages would be charged in accordance with these ratios. Under the <i>law of contributory negligence</i> , which still prevails in some states, no recovery is possible if the injured person has in any degree contributed to the accident.
Completed operations exposure	Liability incurred from an improperly performed work or service after the work or service is completed.
Comprehensive	Covers any direct and accidental loss or damage to describe automobiles, except that caused by collision or upset.
Concealment	Failure to disclose a material fact when applying for insurance. Concealment may void an insurance contract.
Consequential loss	A loss not directly due to a peril, but caused indirectly as a consequence of that peril. For example, spoilage of frozen foods is a loss consequent upon power failure.
Contingent liability	Liability for damages arising out of the acts or omissions of others, not employees or agents.

Contractual liability	Liability assumed by contract or agreement that would not otherwise exist.
Coverage	A term used to designate the type of protection provided by an insurance policy.
Deductible	An amount of loss to be absorbed by the insured before an insurer becomes liable for payment.
Defense costs	Fees and expenses generated by and related to the adjustment, investigation, defense, or litigation of a claim, including attorney's fees, court costs, and interest on judgments before they are paid.
Depreciation	For insurance purposes, the amount by which a property has decreased in value due to age, use, market conditions, obsolescence, and so on. Differs greatly from depreciation used for tax purposes.
Direct loss	Loss resulting directly and immediately from the hazard insured against.
Directors and officers liability (D&O)	Liability that may be incurred by directors or officers of an organization due to acts that result in financial loss to corporate stockholders or outside persons. Such liabilities are not insured by conventional liability policies because such acts are not "occurrences" as defined in the policy and do not result in bodily injury or injury to tangible property.
Dram shop liability	Liquor law liability.
Effective date	The date on which an insurance binder or policy goes into effect; starting date
Embezzle	To fraudulently appropriate money or property in one's care.
Employee	All current and former employees and elected and appointed officers of the State whether classified, unclassified, licensed or certified, permanent or temporary, whether compensated or not. The term includes employees of all branches of government including the judicial and legislative branches and employees of constitutional, statutory and executive order boards, commissions, and offices. The term does not include independent contractors.

Endorsement	An amendment to an insurance policy that in some way modifies the original contract provisions.
Ergonomics	The science of people at work; fitting the task to the worker.
Errors and omissions insurance	Insurance against loss due to failure, through error or unintentional omissions.
Excess insurance	Excess insurance provides coverage after coverage provided by an underlying or primary policy has been exhausted. Excess coverage is designed to respond to large but infrequent losses
Exclusions	Specific items identified as not being covered under a particular policy.
Exemplary damages	Punitive damages awarded in addition to compensatory damages to serve as punishment for wanton misconduct or as a deterrent to others. Many states do not allow insurance for such damages.
Experience	The loss record of an insured or of a class of coverage; classified statistics on events connected with insurance, of outgo or of income, actual or estimated.
Experience modifier	See. Rating, experience
Exposure modifier	A situation or condition that lays one open to loss or to the risk of loss.
Extra expense insurance	Insurance that pays for extra costs incurred to maintain operations after a loss. Business interruption insurance covers only lost profits and expenses necessary to prevent further profit reduction. Extra expense insurance maintains operations regardless of the relation to profits.
Faithful performance bond	A contract whereby a surety guarantees that a principal's failure to perform duties of office will not cause loss to the obligee.
Fidelity bond	A contract whereby a surety guarantees that dishonest acts of the obligor will not cause loss to the obligee.

Fiduciary	A person or entity entrusted to act for another. For example, the fiduciary of an estate is the executor or administrator.
Floater	A policy covering property at locations other than the insured's.
Group insurance	Group insurance provides coverage for a number of people under a single policy.
Hazard	A condition that creates or increases the probability of a loss.
Hold harmless agreement	A clause found in contracts and leases that shifts (or attempts to shift) liability for loss from one party to another.
Improvements and betterments	Improvements paid for by the tenant that improves leased premises.
Incident	An undesired event that, under slightly different circumstances, could have resulted in harm to people, damage to property, or loss to process (a near miss).
Incurred losses	The total of all losses within a fixed period.
Indemnify, indemnity	Making "whole" or restoring financially, after a loss.
Indemnity agreement	Same as a hold harmless agreement.
Independent contractor	One who performs work for another and is not an employee of the party for whom the work is performed.
Inherent vice	Deterioration or damage from within, without outside influence.
Insurable interest	The legal interest of value in property, people, or events for which an insured may seek coverage.
Insurance	Insurance is a social device by which risks of financial loss are transferred from one individual to a group. The group guarantees indemnity to each of its participants for insured losses.
Insured	The person who has purchased an insurance policy and is protected by it; sometimes also referred to as the "assured."
Insurer	The insurance company.

Judgment	The decision of a court or the reason for such decision.
Lapse	Termination of a policy for non-payment of premium.
Leasehold	The right to occupy premises as set forth in a lease.
Lessee	A tenant who has signed a lease.
Lessor	An owner of property who rents it to others under the terms of a lease.
Liability	A legal obligation, responsibility, or duty to do or refrain from doing something. See also Contractual liability and Tort liability .
Liability insurance	Any form of coverage whereby the insured is protected against claims of other parties arising from specified causes.
Liability risks	Exposure of people or property to legal risk of loss or damage as a result of a negligent act by some party or the failure of that party to act prudently.
Libel	A written defamatory statement about another.
Limit	The maximum amount the insured can collect under the terms of a policy.
Loss	Any destruction or disappearance of value.
Loss control	Reducing or eliminating preventable losses.
Malpractice	Professional services that result in harm to the client or patient. May apply to physicians, dentists, lawyers, architects, accountants, engineers, and so on, but usually refers to some bodily as opposed to financial injury. Professional liability is a somewhat broader term that includes bodily injury and financial injury.
Moral hazard	Danger of loss from intentional deed or neglect of the insured rather than from physical cause.
Negligence	The failure to exercise that degree of care that a reasonable person would exercise under the same circumstances.
Occupational Safety and	A federal statute establishing safe and healthy working conditions nationwide. The act sets job safety and health standards

Health Act of 1970 (OSHA)	enforced by Labor Department safety inspectors and provides for compilation of relevant statistics on work injuries and illnesses.
Occurrence	An accident, act, error, omission, or event that results in injury to people or damages to property.
Peril	The cause of a loss insured against in a policy.
Premium	The consideration charged for insuring a particular risk.
Personal injury (Insurance definition)	Non-bodily injury, such as libel, slander, defamation, false arrest, or so on.
Personal property	Chattels or property that is not real property. Real property is land and buildings attached to it.
Pool	Essentially, a cooperative insurance organization to share losses, though not usually formally established as an insurance company.
Power of attorney	A document authorizing a person to act on behalf of another.
Product liability	Liability arising out of manufactured goods after they leave the premises. Applies to the manufacturer and those who handle or distribute the goods.
Proof of loss	A written statement or affidavit of a claim containing all pertinent facts. Required for most property claims.
Property damage	In liability policies, physical injury to or destruction of tangible property, including loss of use, or loss of use of non-injured property arising from an occurrence as defined.
Proximate cause	The factor that directly caused a certain accident or situation without other intervening causes.
Punitive damages	See Exemplary damages .
Rating, experience	Computing a premium based on the historical loss experience of the risk.
Real property	Land and buildings attached.

Replacement value	The cost to replace something with like kind, quality, and capacity.
Reservation of rights	Act of an insurer to notify an insured it retains the right to affirm or deny it liability when coverage for a claim appears questionable.
Reserve	An amount set aside to cover the expected amount of loss, or a fund set up as a contingency to cover future losses.
Retained limit	Deductible.
Risk	The chance or probability of financial loss.
Risk evaluation	The process of assigning an economic value to a particular loss exposure.
Risk identification	The process of identifying possible losses to which an entity is exposed.
Risk management	The process of making and implementing decisions that will minimize the adverse effects of accidental loss.
Risk treatment	The process of managing loss exposures once the exposures have been identified and evaluated.
Safety engineering	The process of planning and implementing loss prevention strategies.
Self-insurance	Retention of risk. Generally refers to a planned program for financing or otherwise recognizing losses. It is not the same as insurance.
Sovereign immunity	A right reserved by government to preclude action against itself by virtue of its sovereignty and the necessity of making judgments in the interest of the state.
Standard policy	A policy generally used or prescribed by law.
Statute of limitations	The time limit allowed by law to bring legal action.
Strict liability	Legal concept applied to certain product liability cases where the manufacturer is responsible for hazardous products whether or not the manufacturer was negligent.

Subrogation	The right of an insurer to recover from a third party an amount paid on a loss when the third party is at fault.
Surety bond	An agreement providing for monetary compensation if there is a failure to perform specified acts within a stated period. The surety company, for example, becomes responsible for fulfilling a contract if the contractor defaults.
Term	The length of time for which a policy or bond is written.
Theft	Taking property without the owner's consent. A broader term than <i>robbery, burglary, or embezzlement</i> .
Third party	Someone other than the parties directly involved in an action or transaction; someone other than the insured and the insurer.
Tort liability	A private or civil legal wrong or injury arising from a duty owed to people generally rather than specifically as by contract.
Umbrella or excess insurance	A broad, high-limit liability policy, usually requiring the insured to carry primary or underlying insurance.
Underwriter	A person who accepts or rejects risks on behalf of an insurance company; an insurer.
Uninsured	State statutes requiring buyers of auto insurance policies to insure to minimum limits against bodily injury to persons in the insured vehicle, if the injury is caused by someone who cannot respond to damages. Sometimes also applied to property damage.
Valuation clause	Method by which an insurance policy plans to establish value and reimbursement; for example, actual cash value or replacement cost value.
Waiver	The relinquishment of a known right; for example, waiver of subrogation under a fire insurance policy.
Warranty	A statement made by the insured on which the insurer bases the contract of insurance. A breach of warranty usually voids the policy.

Section 9

Exhibits and Forms

STATE OF SOUTH DAKOTA ACCIDENT NOTIFICATION INFORMATION

In case of an accident involving a fatality, serious bodily injury, or serious property damage immediately report the accident to Claims Associates, Inc., in Sioux Falls at their 24 hour emergency number, 1-888-430-2249. Then report to your agency contact.

For all other accidents, report to your agency contact as soon as possible.

Make no statement to anyone that you were at fault or liable for the accident.

If you have any questions, contact the South Dakota Office of Risk Management at 605-773-5879.

Please contact the Risk Management Office at
(605) 773-5879 for a Claimant's Report of Accident Form.

FACILITIES USE AGREEMENT INDEMNIFICATION AND INSURANCE CLAUSE

User agrees to indemnify and hold the State, and its officers, agents and employees harmless from any and all liability, damages, actions, claims, demands, expenses, judgments, fees and costs of whatever kind or character, arising from, by reason of, or in connection with the use of the facilities described herein. It is the intention of the parties that the State, and its officers, agents and employees shall not be liable or in any way responsible for injury, damage, liability, loss or expense resulting to the user and those it brings onto the premises due to accidents, mishaps, misconduct, negligence or injuries, either in person or property.

User expressly assumes full responsibility for any and all damages or injuries which may result to any person or property by reason of or in connection with the use of the facilities pursuant to this agreement, and agrees to pay the State for all damages caused to the facilities resulting from user's activities hereunder.

User represents that its activities, pursuant to this agreement, will be supervised by adequately trained personnel, and that user will observe, and cause the participants in the activity to observe, all safety rules for the facility and the activity. User acknowledges that the State has no duty to and will not provide supervision of the activity.

User shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than _____ each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit.

___ days prior to commencement of this Agreement, User shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement and provide that such insurance shall not be canceled, except on 30 days' prior written notice to the State.

I HAVE READ THIS AGREEMENT

Name_____

Address_____

Signature_____

Date_____

RELEASE AND WAIVER OF LIABILITY, ASSUMPTION OF THE RISK AND INDEMNITY AGREEMENT AND CONSENT TO MEDICAL TREATMENT

By my signature below, I acknowledge that I am aware of, appreciate the character of, and voluntarily assume the risks involved in participating in

By my signature below, on behalf of myself, my heirs, next of kin, successors in interest, assigns, personal representatives, and agents, I hereby:

1. Waive any claim or cause of action against and release from liability the State of South Dakota, its officers, employees, and agents for any liability for injuries to my person or property resulting from my participation in the activity listed above;

2. Agree to indemnify and hold harmless the State of South Dakota, its officers, employees, and agents for any claims, causes of action, or liability to any other person arising from my participation in the activity listed above; and

3. Consent to receive any medical treatment deemed advisable during my participation in the activity listed above.

I HAVE READ THIS RELEASE AND WAIVER OF LIABILITY, ASSUMPTION OF THE RISK AND INDEMNITY AGREEMENT AND CONSENT TO MEDICAL TREATMENT, FULLY UNDERSTAND ITS TERMS, UNDERSTAND THAT I HAVE GIVEN UP SUBSTANTIAL RIGHTS BY SIGNING IT, AND HAVE SIGNED IT FREELY AND VOLUNTARILY WITHOUT ANY INDUCEMENT, ASSURANCE, OR GUARANTEE BEING MADE TO ME AND INTEND MY SIGNATURE TO BE A COMPLETE AND UNCONDITIONAL RELEASE OF ALL LIABILITY TO THE GREATEST EXTENT ALLOWED BY LAW.

Name _____ Date of Birth _____

Signature _____ Address _____

Date _____

RELEASE AND WAIVER OF LIABILITY, ASSUMPTION OF THE RISK AND INDEMNITY
AGREEMENT AND CONSENT TO MEDICAL TREATMENT

By our signatures below, we acknowledge that we are aware of, appreciate the character of, and voluntarily assume the risks involved in participating in

By our signatures below, on behalf of ourselves, our heirs, next of kin, successors in interest, assigns, personal representatives, and agents, we hereby:

1. Waive any claim or cause of action against and release from liability the State of South Dakota, its officers, employees, and agents for any liability for injuries to person or property resulting from participation in the activity listed above;

2. Agree to indemnify and hold harmless the State of South Dakota, its officers, employees, and agents for any claims, causes of action, or liability to any other person arising from participation in the activity listed above;

3. Consent to receive any medical treatment deemed advisable during participation in the activity listed above; and

4. Acknowledge that we are signing below as a minor child and as the parent or legal guardian of the minor child named below.

I HAVE READ THIS RELEASE AND WAIVER OF LIABILITY, ASSUMPTION OF THE RISK AND INDEMNITY AGREEMENT AND CONSENT TO MEDICAL TREATMENT, FULLY UNDERSTAND ITS TERMS, UNDERSTAND THAT I HAVE GIVEN UP SUBSTANTIAL RIGHTS BY SIGNING IT, AND HAVE SIGNED IT FREELY AND VOLUNTARILY WITHOUT ANY INDUCEMENT, ASSURANCE, OR GUARANTEE BEING MADE TO ME AND INTEND MY SIGNATURE TO BE A COMPLETE AND UNCONDITIONAL RELEASE OF ALL LIABILITY TO THE GREATEST EXTENT ALLOWED BY LAW.

Minor's Name _____ Date of Birth _____

Signature _____ Address _____

Date _____

Guardian's Name _____ Date of Birth _____

Signature _____ Address _____

Date _____

VOLUNTEER INFORMATION SHEET
(Complete a Separate Sheet for Each Volunteer)

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone #: _____ Social Security #: _____

Department: _____ Division/Office: _____

Work Site/Location: _____

Position: _____

Dates of Service: Start _____ End _____

Approximate hours per week: _____

Supervisor's Name and Title: _____

Supervisor's Telephone #: _____

AUTHORIZATION:

Supervisor	Date
------------	------

Supervisor	Date
------------	------

Department Secretary	Date
----------------------	------

COMPLETE THIS DOCUMENT AND FORWARD APPROVED COPY TO YOUR AGENCY
PERSONNEL OFFICER, 445 EAST CAPITOL, PIERRE, SD 57501-3185.

**SOUTH DAKOTA
VOLUNTEER WORK AGREEMENT**

I, _____ agree to perform the duties and responsibilities of the volunteer position mutually agreed to by myself and the South Dakota Department of _____.

I understand that my services are voluntary, that I will not be compensated and that volunteer workers are provided worker's compensation coverage. I also understand that I will be covered by the same terms and conditions applicable to state employees according to the liability coverage program for public entities while performing volunteer activities.

This agreement may be canceled at any time by notification to either party.

I have read the above agreement, understand it and agree to serve as a volunteer
_____ at _____
from _____ through _____.
(date) (date)

Volunteer	Date
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Supervisor	Date
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Section 10

Risk Management Bulletins

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Risk Management Bulletins

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Bureau of Administration * Office of Risk Management
 1429 East Sioux Avenue
 Pierre, SD 57501-3949
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RISK MANAGEMENT BULLETIN

Issue 1: Handling and Storage of Hazardous Materials

While investigating a claim for damages against the state, it was brought to our attention that the facility involved “had no written regulations” for using a hazardous material. A review of the Material Safety Data Sheet (MSDS) for this material revealed specific instructions for fire fighting; storage; handling and use; and control measures.

The Office of Risk Management recommends that all state facilities establish procedures to ensure all employees are aware of the proper handling procedures for hazardous materials they come in contact with. Steps to take to ensure your institution or agency is addressing this issue include:

- ◆ through inspections, identify all hazardous materials;
- ◆ implement a policy and procedure for the handling of hazardous materials to:
 - I. ensure all hazardous material is stored in properly labeled containers
 - II. obtain MSDS sheets for all such material
 - A. require the review of the MSDS sheets by all employees who will be working with the hazardous material
 - B. file the MSDS sheets in available workbooks;
 - III. determine and provide properly fitted personal protective equipment required for the handling of the hazardous materials;
 - IV. train employees in the proper handling of the hazardous materials including:
 - A. the use of personal protective equipment
 - B. proper extinguishing materials to be used in the event of fire or spill
 - C. control measures to take to avoid exposure to third persons;
 - V. document the training;
 - VI. monitor and enforce the use of the personal protective equipment.

Please share this information with all supervisors and managers in your department to which it pertains.

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RISK MANAGEMENT BULLETIN

Issue 2: AEs (Awfully Embarrassing Accidents)

In FY92, 25 percent of the 368 vehicle accidents involving state employees operating state-owned vehicles were AEs at an average cost of \$808 per accident. There are a variety of causes of AEs: backing into objects; backing into other vehicles; rear ending other vehicles; hitting objects; hitting parked vehicles; running red lights/stop signs; going off the road; etc.

Many of these accidents are the result of drivers hurrying or letting their attention wander. Please share these suggestions with the employees of your agency or department to help prevent AEs involving intersections/traffic lights/stop signs.

At Uncontrolled Intersections:

Some intersections have no stop signs or traffic lights. When there are no controls, your safety depends just on you. Slow down before you enter the intersection. Be ready to stop. Check in both directions for cars and pedestrians.

At Traffic Lights:

At a **steady red** light, stop before the crosswalk or stop line. If there is none, stop clear of the intersection. After you see it is safe, the law often lets you turn with the flow of traffic in the near lane. But if you turn, watch out for and yield to pedestrians. At all intersections, look for pedestrians, not just vehicles.

At a **new green** light, look out for cars who were trying to beat the yellow light on the cross street and pedestrians who are still in the street. Never assume the way will be clear. Never enter an intersection because you think a red light is about to change to green.

If a light has been green for some time as you drive toward an intersection, it is aging. Expect that it may change to yellow as you reach it. Expect that cross traffic may run their red light, thinking it is about to turn green. Be ready to stop.

At a **steady yellow** light, do not "go for it" by stepping on the gas. A yellow light is where you meet the impatient pedestrian or cross traffic driver who took off too soon from their red light. So, expect the yellow light. Stop if you can do so safely. If you cannot safely stop, then proceed with extra caution.

At Stop Signs:

At a **stop sign** or a **blinking red** light, make sure you come to a full stop. If there is no stop line, stop before entering the crosswalk. If there is no crosswalk, stop before the intersection. If the stop sign is at a railroad crossing, stop at least half a car length from the tracks. Always look both ways. If needed, pull forward to where you can see clearly to your left and right. Be sure it is safe before you pull out.

Look For Yourself:

Go only when **you** can see it is clear. Do not rely on a passenger. His driving judgment may not be the same as yours. Do not rely on the car next to you. That car may go because its driver was not paying attention. Besides, even if it was clear for the other car, it may not be clear for you. Look for yourself. Do not rely on others.

Remember, when in doubt, yield the way. It is safest to be as courteous at the wheel as you are on foot. Also, when in doubt, slow down. Take a minute to keep your life. Avoid that AEA.

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RISK MANAGEMENT BULLETIN

Issue 3: Safe Lifting Practices

Back Injuries are the major cause of injury to people in the workplace. Most back injuries are caused by improper lifting. Back injuries not only result in lost time on the job, causing an interruption in vital services, but in addition, the employee who suffers a back injury will probably experience a loss of quality of life that will effect his off-the-job activities as well. Such activities as sitting through a movie, riding in a boat, tossing a ball, may be to painful to enjoy. It is important we all learn proper lifting techniques to protect our backs and avoid injuries.

The most common causes for injuries associated with lifting are incorrect body posture, incorrect gripping and carrying too heavy or large a load. Reminders of safe lifting practices include:

- ◆ Never lift more than you can comfortably carry.
- ◆ Don't carry a load that obstructs your vision.
- ◆ Check the route you will take to ensure that it is clear of obstruction.
- ◆ Check the object to see how you are going to grip it. If it is slippery, rough, or has jagged edges, wear gloves.
- ◆ Wipe off wet or greasy objects before lifting.
- ◆ If the object is heavy or awkward, get help. Use a lifting device, dolly, or cart whenever possible.
- ◆ Place hands diagonally on opposite corners of the load so that one hand pulls it to you while the other lifts.
- ◆ Grip the object with your complete palms and fingers, not just your fingers.
- ◆ Put one foot alongside the object to be lifted, the other in position to give you maximum upward thrust during the lift.
- ◆ Lift in one smooth motion.
- ◆ Stand up slowly, back straight so legs do the lifting.
- ◆ Keep your weight balanced on both feet.
- ◆ Hold the object close to your body.
- ◆ If it is necessary to turn while holding the load, move your feet in a penguin-like motion of short turns rather than twisting your torso and following with your feet.
- ◆ Avoid pinch points, particularly when you are putting the load down.

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RISK MANAGEMENT BULLETIN

Issue 4: Preventing Repetitive Motion Injuries

Repetitive motion injuries are caused by constantly using the same motion, especially when the working limbs are in awkward positions. Our bodies are strongest when we maintain a neutral position. Symptoms of repetitive motion injuries include tingling or pain. Learn to respond to these symptoms so you can adjust the way you are performing a task before the injury becomes serious.

Here are some tips for preventing repetitive motion injuries in the hands, arms and shoulders:

- ◆ Rearrange your work and workstation to keep your hands and wrists in a straight line.
- ◆ Use your whole hand when possible, not just your fingers.
- ◆ Alternate hands when possible.
- ◆ Take breaks from repetitive tasks.
- ◆ If you work at a keyboard, keep your hands, wrists and forearms straight.
- ◆ Keep your back straight by leaning back in your chair.
- ◆ Feet should be squarely on the floor while working at a keyboard.
- ◆ Use a padded wrist rest to ease strain.
- ◆ Learn and do stretching exercises for the neck, back, shoulders, hands, wrists and fingers.
- ◆ Do conditioning exercises for muscles you use continually.
- ◆ Use power tools rather than manual tools.
- ◆ Select tools that are the right size for your hand.
- ◆ Select textured or padded grips that do not dig into the palm.
- ◆ Lift things in your safety zone -- the area between your shoulders and where your knuckles are when your arms are straight at your sides.
- ◆ Keep your elbows close to your body to minimize the force you use to perform a task.
- ◆ When working overhead, lock your elbows.

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RISK MANAGEMENT BULLETIN

Issue 5: Basic First Aid Requirements in the Workplace

Each workplace, no matter what its size, should have adequate and appropriate first aid supplies readily accessible to all employees. To that end, the Office of Risk Management recommends each workplace provide a First Aid Kit containing the following items:

- ◆ Adhesive bandages
- ◆ Adhesive tape
- ◆ Antiseptic wipes
- ◆ Antibiotic ointment
- ◆ Bandage compresses
- ◆ Disposable gloves
- ◆ Gauze compresses
- ◆ Scissors
- ◆ Stretch/elastic bandages
- ◆ Tweezers
- ◆ CPR microshield (may be supplement to kit)

It is important that the provided First Aid Kit contains **no** oral medications.

It is recommended that if you have the following items: ammonia inhalants, mercurochrome swabs, wound/bleed stop powder and snakebite kits that that these are removed and discarded.

Ensure all employees are made aware of the location of the First Aid Kit and that it is inspected regularly to ensure it remains adequately stocked and that all expired items are removed and replaced.

First aid kits can be found on the state contract for office supplies with the current supply company. To access the available products catalog, the agency authorized purchaser can login to the e-procurement system by using the following address <https://eprocurement.esmsolutions.com/?me=sdstate>

If the supplies you are in need of are not available through state contract, speak with your agencies authorized purchasing agent about securing the supplies through a local source.

If your facility has specific occupational health exposures that you would like assistance addressing, contact our office.

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RISK MANAGEMENT BULLETIN

Issue 6: Natural Disaster, Severe Weather and Fire Emergency Plans

During the summer months residents of South Dakota become aware of severe weather conditions that can present life threatening situations unless we are prepared to seek adequate shelter. Each state agency should ensure that it has adopted natural disaster, severe weather and fire emergency policies and that those policies are adequately communicated to employees.

The following procedures will assist your agency in establishing adequate plans to ensure employee safety to the extent possible.

NATURAL DISASTER/SEVERE WEATHER POLICY

Procedures to establish a plan:

- ◆ Determine the safest place to evacuate to in the event of a natural disaster such as a tornado:
 - * A basement that is accessible at all times;
 - * A central area of the building next to a load-bearing wall and away from windows or open expanses;
 - * Bathroom areas.
- ◆ Designate personnel to assist disabled employees or visitors to evacuate the facility. In order to ensure assistance is available when needed, more than one or two people will have to assume this responsibility.
- ◆ Communicate the established plan to all new employees at the time of orientation and review the procedure annually with all employees at a staff safety meeting.

Directions to be communicated to all employees:

1. Take immediate action when a natural disaster alarm sounds to evacuate to the designated shelter area.
2. If you have been designated to assist disabled personnel or visitors, see to their safety.
3. Remain in the shelter area until an all clear signal or message is given.

FIRE EMERGENCY POLICY

Procedures to establish a plan:

- ◆ Ensure an adequate number of fire extinguishers are provided.
- ◆ Ensure employees are trained in the proper operation of fire extinguishers.
- ◆ Determine available exits to be used in the event of a fire evacuation.
 - * Elevators are not to be used;
 - * Route of evacuation must remain unobstructed by stored boxes, furniture, etc. At all times;
 - * Doors in evacuation route must be unlocked and unobstructed at all times;
 - * Identify location of all flammables and combustibles on the premises so that location can be avoided when planning evacuation routes.
- ◆ Assign primary exits to be used by employees from specific work areas in the event of evacuation.
- ◆ Determine secondary exits from all work areas in the event the fire is located in the primary exit area.
- ◆ Designate personnel to assist disabled employees or visitors to evacuate the facility. In order to ensure assistance is available when needed, more than one or two people will have to assume this responsibility.
- ◆ Communicate the established fire emergency plan to all new employees at the time of orientation and review the procedure annually with all employees at a staff safety meeting.

Directions to be communicated to all employees:

1. If you become aware of a fire, activate the alarm system and call the Fire Department (dial 9-911). State your name, location and type of fire.
2. Take immediate action when a fire alarm sounds to evacuate the area using the designated evacuation route.
3. If you have been designated to assist disabled personnel or visitors, see to their safety.
4. Move far enough away from the building to ensure your safety and to not impede access to and from the building.
5. If you decide to fight the fire:
 - Maintain the proper distance (6 to 8 feet for most dry chemical hand portable extinguishers).
 - Position yourself with a means of exit to your back.
 - Pull the safety pin or release any safety locks on unit.
 - Hold extinguisher firmly and begin spraying the agent at the near edge of the fire.
 - Move the stream rapidly side to side covering the entire width of the fire.
 - Advance slowly as the extinguisher pushes the fire back continuing to maintain the optimum distance from the edge of the fire.
 - After the fire is out, step back and watch for possible re-ignition

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RISK MANAGEMENT BULLETIN

Issue 7: Proper Housekeeping Standards = Safety

A tidy workplace is not only good for morale; it also reduces the opportunity for an accident or fire and removes obstacles that may hinder evacuation by personnel in the event of an emergency.

Here are some steps to help in your workplace housekeeping:

- * Keep aisles and walkways clear of stored materials.
- * Make sure electric and telephone cords are not presenting trip hazards.
- * Minimize clutter. Put equipment and tools away when you are not using them.
- * Wipe up spills when they occur.
- * Report holes, loose boards, torn carpet, or other problems which could cause trip and fall hazards.
- * Properly secure cabinets to prevent tipping and falling.
- * Use only non-toxic cleaners for equipment.
- * If it is necessary to have flammable liquids on the premises, ensure they are kept to immediate use levels only and properly stored.
- * Prevent dust or other materials which might cause spontaneous combustion from accumulating.
- * Contact your supervisor if you see an unsafe condition you cannot correct.

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RISK MANAGEMENT BULLETIN

Issue 8: Confined Space Hazards

Are employees of your agency required to work in a confined space and, if so, have the hazards involved in entering and working in those confined spaces been identified and addressed? Annually, approximately 300 workers lose their lives in this country as a result of working in confined spaces; over 50 percent while attempting to rescue other people.

A confined space is a space which has any one of the following characteristics:

- * limited openings for entry and exit
- * unfavorable natural ventilation
- * not designed for continuous worker occupancy

Examples include: boilers, cupolas, furnaces, pipelines, pits, pumping stations, septic tanks, sewers, silos, storage tanks, utility vaults, vats, etc.

If a survey of your agency's work area identifies areas with any of the characteristics listed above, plans should be implemented to protect employees from hazards of entry into those confined spaces.

In determining whether or not a space should be considered a potential hazard area, in addition to the above, consider:

- * a configuration that may impede removing an employee who is injured or incapacitated even if there is no toxic or hazardous materials in the space; (e.g., an employee suffers a heart attack and needs to be rescued in a short period of time).
- * by performing a required task such as welding, hazards can be introduced into a space that previously contained no hazard.

If it is determined that your agency employees are exposed to confined space hazards, it will be necessary to identify all such confined spaces, train employees on the proper procedures for working in confined spaces and provide them with the proper personal protective equipment.

If your agency has specific exposures you would like assistance addressing, contact our office.

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Issue 9: Shortfalls of Quick-Fix Solutions to Cumulative Trauma Hazards

Cumulative trauma disorders (CTDs) have become the leading cause of work-related illness in the United States and the most costly type of workers' compensation injury. CTDs include repetitive motion injuries such as carpal tunnel and back injuries which seldom result from a single event. They generally are cumulative in nature -- a minor, virtually undetectable injury repeating itself until it suddenly results in debilitating pain. Since CTDs are not readily apparent, there is often the mistaken belief that a certain job is actually hazard-free.

In order to address the growing concern of CTDs, vendors have manufactured a number of products they claim will solve ergonomic-related problems and reduce or eliminate risks to employees. These quick-fix solutions include various personal protective equipment such as wrist wraps, braces or splints; wrist rest pads; various gloves and elbow wraps; abdominal belts and harnesses, etc.

This type of quick-fix remedy is attractive to managers because they are easy to implement, per-worker cost is often low, and their addition usually causes no work disruptions. However, by buying into this thinking, we may be overlooking solutions that could provide more substantive, permanent improvements.

CTD problems often indicate some inadequacy in the physical aspects of the worksite the employee uses. Well-designed jobs do not typically require awkward postures or motions that will result in the need for protective equipment. If supports are applied without reviewing the job design, the solution is often a quick-fix at best and the injury risks remain. In some instances a support is necessary to ergonomically adjust a workstation to the user; however, a review of the entire workstation should be completed to determine if there should be changes to the workload, equipment and worksite design.

Please contact our office for assistance in job task and job site analyses in order to address the increasing cost of CTDs to state government.

RISK MANAGEMENT BULLETIN

Issue 10: Office Safety

The average office worker gives little thought to safety because office work is not perceived as being hazardous. Office risks often go unrecognized and unmanaged because many people believe office injuries are minor. This is a mistake and could eventually lead to serious injuries.

Studies of on-the-job office accidents show:

- * each year there are 40,000 disabling injuries at a direct cost of about \$100 million;
- * approximately on half of accidental fatalities occurring to office workers are work related automobile accidents;
- * office workers who have been employed for three to five years have the highest accident percentage rate;
- * the rate of disabling work injuries is about the same between women and men;
- * falls are the most severe office accident and are responsible for 55 percent of days lost due to injuries;
- * cumulative trauma disorders (tendonitis, carpal tunnel syndrome, tennis elbow, etc.) are the leading cause of occupational illnesses;
- * cumulative trauma disorders develop after long-term exposure to repetitive, forceful, awkward movements.

In order to ensure our offices are as safe a workplace as possible we need to:

1. identify existing or potential problems;
2. identify and evaluate risk factors causing the problems;
3. design and implement corrections;
4. monitor and evaluate effectiveness of the corrections.

The Office of Risk Management welcomes the opportunity to assist you in evaluating your office safety exposures.

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Issue 11: “Reasonable Care”

The state is faced with the challenge to ensure that we can document that **reasonable care** is taken to make our premises safe for members of the public who come into contact with state property as services are provided. “Provided services” range from conducting business transactions to using recreational facilities and services.

Since the inception of the PEPL Fund, the state’s tort liability coverage program, there has been an increase in the number of claims for injury resulting from accidents occurring on state property. Unfortunately, we will always be faced with a certain level of claims from the public. The challenge is that we are able to document that **reasonable care** was taken to make the premises safe. If that can be demonstrated, claims will be defensible. The fact that someone was injured is not an automatic presumption that **reasonable care** was not taken.

In order to assist in the defense of filed claims, each agency is requested to maintain documentation of its **reasonable care** activities including:

- * Documentation of regularly scheduled premises safety inspection by staff.
- * Immediate correction of “hidden hazards” such as holes in lawns hidden by grass.
- * Developing written policies and procedures for facility operations and custodial staff specifically stating safety requirements.
- * Establishing written sweeping and mopping schedules signed off by staff as completed.
- * Recording complaints and repair orders.
- * Immediate response to hazardous conditions and documentation of action taken such as repair, placement of warning signs or barriers, etc.
- * Ensure prompt and continuous removal of any accumulated snow and ice on sidewalks and parking lots. (A notation on a calendar is adequate documentation of such activities.)
- * Regular inspection and written documentation of lighting, indoor and outdoor.
- * Immediate notification to Risk Management of accidents, incidents or unsafe conditions.

All documentation is to be retained for at least one year. If you have any specific questions pertaining to reasonable care, please contact the Office of Risk Management.

RISK MANAGEMENT BULLETIN

Issue 12: "Stress Management"

Stress is a necessary part of our lives. Without some stress we would not be motivated, energized or pushed to excel. However, a stress overload may play a contributing role in accidents, injuries and near-misses. Stress management is practicing techniques that will aid you to recognize and handle a stress overload resulting in working productively and safely.

Signs and Symptoms of Stress - The physical changes that occur in our body as a result of stress include increases in adrenaline, heart and respiration rates, blood circulation and tensing of the muscles. Negative reactions to stress are often manifested by:

- | | |
|---------------|----------------------|
| * headaches | * forgetfulness |
| * sweating | * yawning |
| * fatigue | * shallow breathing |
| * dizziness | * change of appetite |
| * depression | * agitation |
| * inattention | * irritability |
| * nightmares | |

To reduce or control these negative reactions exercise regularly, eat healthful foods, get plenty of rest, make time for recreation

Effective time-management strategies that help reduce stress include pacing yourself, taking scheduled breaks, planning your time and organizing your work.

Exercises that help reduce stress and relieve tension include deep breathing, visualization and muscle relaxation.

By managing your response to stress you will find you work more safely, are better organized on the job, more productive, and enjoy a healthier lifestyle.

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Issue 13: “Handling A Mouse Safely”

With the increasing number of state employees using a mouse device, it is important we learn how to make handling of the mouse safer and more comfortable. The mouse was developed for convenience; however, it isn't harmless. As with any repetitive action, the continual clicking and the micro-movements associated with manipulating the device can be harmful.

A recent article of the CTDNEWS* reported that using a mouse can be even tougher on the hands than using a keyboard. Instead of distributing the work between 10 fingers, the burden is placed on one. The need to keep sliding around to position the icon also requires a lot of sustained movement and continuous contraction of various muscles. Many users grip the mouse too hard. According to the article, if you apply 100 pounds of pressure gripping an object with the thumb, which is average for a mouse user, it puts 100 pounds of pressure on the joint at the base of the thumb, which is not equipped to deal with such stress. The same general principles that apply to desk height and wrist rests apply to the use of the mouse. Also, the click button should be level with the keys of the computer.

The article offers the following tips to assist you in working as safely as possible with the mouse:

- 1) Mice should be held loosely. Imagine you are holding a small bird. Gripping creates tension in the other fingers.
- 2) Don't rest your wrist or forearm on the table while you move the mouse.
- 3) Use your whole arm and shoulder to move the mouse, not just the wrist.
- 4) Be careful not to lift your pinkie. Hold the mouse lightly with all your fingers.
- 5) Keep your wrist in neutral position.
- 6) Use a light touch when you click.

Along with frequent breaks, try some of the following exercises several times during the day:

1. Gently press your hands against a table, stretch and hold for five seconds.
2. Stretch and massage your fingers, hands, wrists, and forearms throughout the day. Gently shake you hands and fingers to relieve tension and help blood flow.
3. Rotate your shoulders in a full forward circle four times. Then roll them backward four times. Then rotate each shoulder separately four times. Do this at least twice daily.

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RISK MANAGEMENT BULLETIN

Issue 14: "Safe Operation of Cellular Phones"

Cell-phone users are 500 times more likely to get into an accident than non-users. The Harvard Center for Risk Analysis estimates that the use of cell-phones by drivers may result in approximately 2600 deaths, 330,000 injuries, and 1.5 million instances of property damage in the U.S. each year.

The following are some best practices of cell-phone use while in a vehicle to keep you and other motorists safe. These best practices are recommended by the Office of Risk Management:

- Turn the phone off before you start driving. Let callers leave a message.
- If there are passengers in the vehicle, let one of them take the call. If your expecting an important call, let someone else drive.
- If you have to make or receive a call, look for a safe opportunity to pull over and park.

If for some reason you have no alternative but to use a cellular phone while driving, here are some tips:

- Place the phone where it is readily available so you do not have to try to retrieve it from a briefcase, handbag, or pocket. Retrieving the phone can be dangerous.
- Don't answer the phone until you have checked that it is safe to do so.
- Use speed dial options. If you know you will need to dial an unprogrammed number, dial the number before starting off and send the call at your convenience.
- Driving and talking on the phone is difficult, do not make it worse by trying to take notes. Do pull over and stop.
- Keep calls short and factual.
- It's good etiquette to ask a caller to hold until you can pull over and park, or say you will return the call as soon it is safe to do so.
- Stay in the right hand lane where driving may be less demanding.

Studies have proven that using a speaker phone or hands-free option while driving does not reduce the risk of accidents. Evidence is mounting that the cell-phone conversation itself, not simply the act of holding the phone, is what actually causes the most distraction.

It is important to remember while traveling out of state; a few states have passed laws placing restrictions on using cellular phones while driving. If you are planning on driving in other states, you should be familiar with their restrictions.

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RISK MANAGEMENT BULLETIN

Issue 15: “Preparation For Testifying”

If a state employee is involved in or witnesses an accident, there is the possibility that they may be called on to give testimony at either a deposition or trial. The better prepared, more professional and credible that employee is, the more weight their testimony will carry. This Bulletin has been designed to assist you to better understand the process involved.

What is a deposition? A deposition is a question and answer session where the witness is questioned, under oath, by the attorney for the other party to the lawsuit. The attorney for the state employee is also present. There is no judge or jury present at a deposition, only a court reporter who records all testimony.

A deposition is the best device for attorneys to use to determine the credibility of all witnesses and to evaluate what type of impact the witness would make on a jury. Appearance and demeanor of witnesses at the deposition stage of a lawsuit can play a large role in determining whether or not the case proceeds to trial.

When preparing to give testimony either for a deposition or at trial remember:

- * **Tell the truth.** Armed with the facts, your attorney can help provide you with the best defense possible; and, opposing counsel can make it very uncomfortable for anyone trapped in a lie.
- * **Tell it to the judge (or Jury).** If there is a jury, make eye contact with the jury. If not, direct your answers to the judge.
- * **Dress and speak conservatively.** Dress as if you were attending church. Your appearance gives added weight to the jury's evaluation of your credibility. Never curse nor speak derogatorily about others.
- * **The opposing counsel is not your friend.** Opposing counsel may try to charm you or disarm you with small talk. Never forget that he or she has an ulterior motive. Don't join in even if your attorney banters with the opposing counsel.
- * **Take the lawsuit seriously.** Even if the claim seems minor, treat it as if it were a million dollar case. Before testifying, carefully review all documents, jog your memory with any notes you may have taken and develop an effective plan of action to answer any possible questions.
- * **Cooperate with your attorney.** Learn from your attorney what the potential defenses of the case are, what law is in your favor and the defense theme your attorney has adopted.
- * **Never say never.** Words like “never,” “always,” “definitely,” “without a doubt,” or “absolutely” could come back to haunt you. Avoid them whenever possible. Opposing counsel can destroy your credibility by searching out the one inconsequential exception to your statement.

- * **Strike a balance between making accurate statements and leaving yourself room to maneuver if information later changes.** Don't say it happened on March 6 if you aren't positive it did. Instead, say early March.
- * **Don't volunteer information.** "Just the facts" is the golden rule to remember when testifying. Say only "yes" or "no" if the question can be answered that way. If necessary, supplement with "to the best of my recollection." Accidentally giving more information than necessary can turn a minor lawsuit into a nightmare.
- * **Temper, temper!** This is probably the most important rule to remember. Avoid losing your temper at all costs. Politeness is a cardinal rule. Getting angry, sarcastic or argumentative can make you appear unprofessional.
- * **Never answer a question you do not fully understand.** Put the burden on the opposing counsel to present a clean, understandable question. Simply state, "I'm sorry, but I don't understand your question."
- * **Think before speaking.** Allow *several* seconds to elapse before answering any question to give your legal representative time to formulate objections and to give you time to think through your answer.
- * **Never explain how you arrived at certain answers.** For instance, if you reflect aloud that a meeting had to have been held in January because such and such happened in December, prior to the meeting, that is volunteering possibly damaging information.
- * **When testifying about conversations, make it clear whether you are quoting verbatim or paraphrasing.**
- * **Never label your testimony.** Avoid phrases like "Honestly, I'm doing the best I can." The jury may wonder if your other testimony has been less than honest.
- * **Beware of the "tell-me-everything" question.** Especially in depositions, opposing counsel may ask you to tell them everything you remember about certain events. Respond by "It is very difficult to remember absolutely everything at this time. I am sure there are other things that may have happened but I can't recall them right now." This lets you add details later without having your previous testimony impeached.
- * **Don't refer to your state of mind.** Avoid referring to your reaction by saying things like "I was shocked to read . . .," or "Yes, and I'm sure it was true." Avoid characterizing people or events as "good" or "bad."
- * **When testifying about an exhibit, ask to see it before answering.** By looking at the exhibit you will be able to refresh your memory and be clear about what you are referring to and what it contains.
- * **Don't volunteer information about items that may exist in other documents.** Don't refer specifically to documents not listed as exhibits because the other side may not be aware of their existence.

- * **Don't let opposing counsel put words in your mouth.** Rephrase his or her words into a sentence of your own. Correct any false statements the opposing counsel makes.
- * **If the attorney appears confused about technical aspects of your business, don't try to educate.** This is an attempt to get you to volunteer information.
- * **Recess is "time out."** Use recesses to confer with your attorney in private. If you feel upset, use this time to vent your anger.
- * **Respond courteously to interruptions.** If opposing counsel interrupts you, wait for them to finish and then state courteously that you were interrupted before you could finish. Then answer the question completely. By the same token, do not interrupt opposing counsel.
- * **Don't agree with any summaries of your testimony.** If opposing counsel attempts to summarize your overall testimony state, "The record will show what I said."
- * **Once you've answered the question, remain silent.** Sometimes the opposing counsel will look at you as if waiting for you to say more. Sit quietly, maintain eye contact with the attorney and wait for the next question.
- * **If your attorney objects to a question, don't answer it unless your attorney instructs you to do so.** Listen closely to the objection to understand how the question should be handled. For example:
 - 1) "Objection, compound question." A warning the question has two parts and may be too complex to answer correctly.
 - 2) "Objection, calls for speculation." Your answer should be "I don't know."
 - 3) "Objection, assumes facts not in evidence." The question may contain facts not known by you.
 - 4) "Objection, asked and answered." You have already answered that or a similar question.
- * **Avoid making jokes.** You will appear less credible if it appears you are not taking your solemn oath seriously
- * **Discuss flashes of insight with your attorney first.** Don't disclose any sudden recollections until you first confer with your legal representative.
- * **Inconsistencies happen.** If you are caught in an inconsistency, don't get upset. State the reason for the inconsistency if you are asked to. Discuss it with your attorney who can decide if it is necessary to rectify the mistake.

Preparation is the key to credible, professional testimony that will protect your interest - and your agency's.

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RISK MANAGEMENT BULLETIN

Issue 16: “Back Belts”

To address the growing number of employee injuries and consequent workers’ compensation costs, some state facilities have inquired as to whether or not they should provide back belts to their employees who perform lifting activities. Unfortunately, there is no “conclusive” data that shows by using back belts injuries will be prevented. In fact, some experts argue that they may present more problems than they solve.

The publication *CTDNEWS** has featured numerous articles discussing the pros and cons of back belt use. The research community largely seems to be sending cautionary signals. The following are excerpts from that publication.

Pros:

- ◆ A survey of North American companies showed that 88 percent of industrial and service companies encouraged the use of or provided back supports to their workers. A substantially smaller percentage of occupational health care provider companies, 34 percent, said they use back supports as a part of a general safety program.
- ◆ Another survey showed the use of back belts resulted in 69 percent fewer complaints from employees; 23 percent fewer workplace cumulative trauma disorders and 33 percent reduced workers’ compensation costs.
- ◆ A 1990 study of 90 warehouse workers at a grocery distribution center showed a substantial decrease in lost work time due to back injuries amount subjects who wore a support and *attended a back-school training program*.
- ◆ Dr. Anil Mital of the University of Cincinnati’s Ergonomics and Engineering Controls Research Laboratory states, “There is no question these devices are helpful during the recuperative period, *but at work we need to be very careful. Unless we know more, I would not use them.*”

Cons:

- ◆ The National Institute for Occupational Safety and Health’s (NIOSH) recently published *Workplace Use of Back Belts: Review and Recommendations* contains the following finding: “NIOSH does not recommend the use of back belts to prevent injuries among uninjured workers and does not consider back belts to be personal protective equipment.
- ◆ A survey of 1,316 workers who perform lifting activities at Tinker Force Base shows that the expense of injury while wearing a belt was found to be higher than if the worker was not wearing a belt.

- ◆ Critics say the belts may cause muscles to atrophy, which could lead to further injury. Critics also say that use of the belts may encourage a false sense of security in workers who then might be motivated to lift heavier, unsafe loads.
- ◆ Stuart McGill, a spinal biochemist and associate professor and associate professor of kinesiology at the University of Waterloo, Ontario, Canada, has been studying back belts for a period of 10 years. He finds that many clinical studies performed on back belt use are flawed and makes the following recommendations:
 1. All wearers should be screened medically before use;
 2. Back belts must not take the place of other changes in the workplace;
 3. An exercise program should be required of workers who are given the back belts.

From a review of available information, it is our recommendation that use of back belts be discouraged unless recommended by a medical professional. If it is determined back belts are to be used, the employee should be trained in the proper use of the belt as well as proper lifting techniques. For additional information on proper lifting techniques, see Issue 3 of the Risk Management Bulletin and the numerous back care and lifting videos on file with the Loss Control Resource Center at the State Library

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RISK MANAGEMENT BULLETIN

Issue 17: “Effective Training for Handling Caustic or Hazardous Materials”

A claim was recently presented to state government for injuries caused by improper mixing of cleaning solvents. The products that were incorrectly mixed were common cleaning products that had been used separately by the injured party a number of times. By mixing the two products together a caustic substance was created that resulted in permanent injuries and could have been life threatening. The injured person’s supervisor was in the vicinity but was unaware of the unsafe activity.

The Office of Risk Management recommends that all state facilities establish procedures to ensure that anyone handling caustic or hazardous materials are aware of proper handling procedures. Steps to take to ensure your institution or agency is addressing this issue include:

- * through inspections, identify all caustic or hazardous products;
- * ensure all such products are stored in properly labeled containers;
- * determine and provide properly fitted personal protective equipment required for handling the product;
- * train anyone who will be working with the product on its proper use;
- * establish a policy that using a product in any way other than as instructed during training requires authorization by the supervisor;
- * prohibit mixing one or more products without express consent from the supervisor;
- * document all training;
- * monitor and enforce the proper handling of all caustic or hazardous products.

Remember, even common household products can become dangerous if not handled properly.

Please share this information with all supervisors and managers in your department to whom it pertains.

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Issue 18: “When Not to Put it In Writing”

During a lawsuit there is a process called “discovery” which is the phase of the lawsuit where the parties find out what the other side’s position is going to be with regard to the factual disputes in the case. Discover is accomplished by 1) taking depositions, the process of giving testimony under oath, 2) sending and responding, under oath, to questions called interrogatories and, 3) responding to requests for production of documents.

When a lawsuit is filed naming a state employee as the defendant, the plaintiff in the action is going to try to locate any and all documents that the State has that pertains to the case. The courts have granted wide latitude in the type of documents that can be discovered: an office diary, letters, reports, notes, copies of e-mail messages, even computer disks and information stored on hard drives. In other words, those items you use to perform your every day activities.

Accordingly, it is very important that state employees do not include information in any written document that could be detrimental to theirs or another state employee’s position. When evaluating your method of documenting and retaining sensitive information, be sure you include your e-mail messages. In many instances, a state employee may not consider an e-mail message to be a written document. However, it must be remembered that the message receiver usually has the capability of printing the message and, therefore, creating a permanent, discoverable record.

Remember, anything written by you is potentially subject to review by the other side. If you have any questions concerning your procedures for dealing with documentation of investigations, correspondence, e-mail messages, do not hesitate to contact our office.

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Issue 19: “Use of State Vehicles When Responding to an Emergency”

Many employees of the State of South Dakota volunteer their time as a volunteer firefighter or emergency medical technician (EMT). We are very fortunate to have men and women who actively volunteer to protect the lives and property of others.

Many have asked if they are in a State of South Dakota automobile while on duty, can they respond to an emergency. This would eliminate the need to travel back to their personal vehicle delaying the response. The answer is “yes;” you can respond while in a state vehicle to the emergency.

However with that being said, the employee should ensure all “rules of the road” are followed. Responding to an emergency while in a State of South Dakota vehicle does not give you permission to break any laws. **The only exception to this rule would be authorized emergency vehicles as stated in SDCL 32-31-1.** Additionally, preauthorization should be granted from your immediate supervisor to ensure this is an allowable practice in your agencies.

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RISK MANAGEMENT BULLETIN

Issue 20: “Winter Driving Safeguards”

Winter can be a lot of fun. Slipping and sliding over ice and snow is great on skates or skis, but terrifying in a vehicle if winter driving situations get out of control. Whether driving on state business and operating a state vehicle, or on a pleasure trip with your personal vehicle, remember the following safety tips:

Be Prepared:

- ◇ Before departing for a trip, get the latest road and weather conditions updates.
- ◇ Warm engine while removing snow and ice from the windshield and lights.
- ◇ Check your car’s tire pressure--low tire pressure reduces traction.
- ◇ Recommended emergency equipment to carry in your vehicle: snow shovel, sand, jumper cables, gas line antifreeze, tow rope, flashlight, snow brush/scrapper, repair tools.
- ◇ Recommended emergency survival supplies in the vehicle include: heat-reflecting blanket, metal bucket (as a toilet or to provide heat by placing candle inside), matches, candle, enamel cup in which to melt snow, high energy food/non-perishable food, flashlight and first aid kit.
- ◇ If stranded in an isolated area, stay in your car and wait for help to arrive. Do NOT leave your car running. To avoid carbon monoxide poisoning: start your vehicle periodically to provide heat, then turn it off; occasionally open a window for fresh air; be sure exhaust is clear of snow.

Driving Tips:

- ◇ Avoid quick accelerations and hard braking.
- ◇ Maintain greater following distance. If you must stop suddenly on vehicles without anti-lock brakes, pump the brakes rapidly and repeatedly; do NOT pump the brakes on vehicles with anti-lock brakes.
- ◇ For a front wheel drive car, if only your rear wheels are skidding, accelerate gently and steer in the direction you want to go. For a rear wheel drive car, if your car begins to skid, take your foot off the gas and the brake pedals, and turn the steering wheel gently in the direction of the skid.
- ◇ Avoid braking on a curve--slow down well before by steadily releasing the gas pedal.

Further Information:

If your agency or institution is interested in ordering winter survival kits for their vehicles, contact the South Dakota Safety Council at 1-800-952-5539. Kits are \$20 each. Special prices are available if ordering more than one.

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Issue 21: “Visual Display Terminals”

For many office workers, the computer is their primary tool. Consequently, many state employees will spend hours each day staring at their visual display terminal (VDT). While there is no medical evidence to suggest that VDT usage causes permanent visual damage, there have been studies to suggest that symptoms of discomfort can occur. Employees should be made aware of the risks and the appropriate usage of VDT's.

Those at risk:

Employees who use VDT's extensively throughout the day
Employees with poor positioning of their VDT causing them to strain to read the VDT
Employees with prescription glasses, especially bifocals or trifocals

Possible warning signs:

Headaches
Blurred vision
Eye strain

Safety measures:

Insert five to ten minute alternative task breaks during the day that allow the employee to focus their eyes on tasks not involving the VDT.

Properly position the VDT: The VDT should be twenty to twenty-four inches from the eyes (approximately arm's length), ten to fifteen degrees below eye level, tipped back at an angle similar to that used when reading a book.

Eliminate glare: Rotate workstation to avoid facing a window, turn off or block problem light, and periodically clean the screen.

The employee who wears bifocals or trifocals should adjust the VDT distance and tilt to their comfort level.

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RISK MANAGEMENT BULLETIN

Issue 22: “Policies and Procedures”

The title of this month's bulletin may not evoke great excitement or interest from our readers. The mere thought of reading about policies and procedures can bore even the most devoted employee. Yet policies and procedures are critically important, not only because they provide the guidelines for our work, but because they are the standard by which we will be held accountable for our actions during the course of our employment. State employees should ask themselves, "Have I read the policies and procedures which relate to my job?" And supervisors should ask themselves, "Are our agency's policies and procedures actually being carried out by our employees?" The answer to both questions should quite obviously be YES. It is important that all employees understand and be held accountable for following policies and procedures relevant to their positions.

The following example demonstrates the importance of knowing and carrying out agency policy. Recently a state employee was deposed in a lawsuit. The opposing attorney grilled this employee with question after question concerning his agency's policies. The employee responded honestly that he had never seen the policies. Needless to say, this kind of situation is not only embarrassing to the employee and to the State of South Dakota, it could also prove costly.

Supervisors have the responsibility to ensure that these kinds of occurrences do not happen. The following steps should be taken to guard against embarrassing and costly consequences:

1. Review your agency's policies and procedures.
2. Ensure that policies and procedures are up-to-date.
3. Ensure that documentation practices are in effect which provide written evidence that policies and procedures are adhered to.

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RISK MANAGEMENT BULLETIN

Issue 23: "Office Ergonomics"

In the past, the Risk Management Bulletin has provided important information on office ergonomics. Bulletins like "Visual Display Terminals," and "Shortfalls of Quick-Fix Solutions to Cumulative Trauma Hazards" have stressed the importance of adjusting the workstation to the employee's needs, utilizing proper working techniques, and breaking up repetitive activity. Unfortunately, state employees continue to suffer from cumulative trauma disorders related to sedentary work. For those employees looking for relief, the following suggestions should help:

- Arrange work station materials according to frequency of use to avoid reaching, twisting and bending. For instance, if one's job requires frequent use of the telephone, the phone should be placed to the right (if right-handed) and close to the body to avoid bracing the phone between the head and shoulder.

- Appropriately adjust the levels of the chair, desk, keyboard and monitor:
The chair should be adjusted to allow the feet to lie firmly on the floor without placing excessive pressure below the thighs. The chair should also provide the necessary back support to take pressure off the lower back. Sit all the way back in the chair to where the back rest meets the seat. Be sure to sit up straight with shoulders back. If necessary, roll up a towel and place behind the back to support the normal curvature of the back.

The desk should be high enough so that it does not touch your legs. To ensure the desk is at the appropriate level for writing, place your elbows 2 1/2" below the desk surface and touch your shoulders without bending over. When keyboarding, forearms should form a right angle with the upper arms, and wrists should remain flat. When using a mouse, rest the entire forearm on the desk, hold the mouse gently and move with the whole arm.

The visual display terminal should be approximately arm's length away, ten to fifteen degrees below eye level, tipped at an angle. Eliminate glare from the visual display terminal by closing blinds, or readjusting the terminal, rather than twisting or straining your neck to read.

- Interrupt repetitive tasks with other tasks which allow you to stand up and move around.
- Exercise: Stretch stiff muscles throughout the day. For example, if back muscles feel stiff, stretch them by arching back in your chair or bending forward; or slowly roll your head in a circular motion to stretch your neck muscles.
- Instead of waiting for a serious problem to develop, heed warning signs of stiffness, numbness, tingling or pain. If these symptoms occur, reevaluate your relationship to your workstation.

State employees should be aware that the Office of Risk Management does provide Workplace Safety Seminars--a one hour training which includes proper workstation setup. If any agency is interested in providing this training to its employees, contact the Office of Risk Management.

Alert: The state health insurance plan covers neither ergonomic evaluations performed by medical providers, nor assets purchased as a result of these evaluations.

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RISK MANAGEMENT BULLETIN

Issue 24: “Grounds Maintenance Safety”

Though in South Dakota we never know exactly when Spring will arrive, we know the warm weather is just around the corner. While this long-awaited season initiates sunny days of recreation, it also commences a season of outdoor labor. Soon many will find themselves at work with power equipment such as lawn mowers, weed trimmers, power blowers, and chain saws. These pieces of machinery may not only present hazards to the user, but also to persons and property nearby. The following suggestions can help prevent costly injuries whether they occur on or off the job.

Power Equipment

When operating power equipment:

- Do not allow untrained persons to operate power equipment.
- Review the manual: Whenever using any power equipment, always review the manual to identify potential hazards, to identify what personal protective equipment is necessary, and to locate and understand the equipment’s safety features.
- Inspect the equipment: Before operating the equipment, be sure to look for any deficiencies like loose screws, bolts, or belts, missing guards or protective devices.
- Use caution when fueling: Avoid fueling the equipment on grass. Be sure to fuel in well-ventilated areas. Do not re-fuel while the engine is running or still hot. Use caution to avoid spills, and thoroughly wipe up any spilled fuel.
- Disengage the blade when not in use: An unmanned piece of equipment can cause serious damage to people and property.
- Hold hand-held equipment comfortably close to the body with a firm grip.

Mowers

When operating mowers, the following guidelines also apply:

- Before mowing, clear the area of debris. With push mowers, mow across slopes, and do not rush. Avoid raising the front end of the mower to prevent flying debris. With riding mowers, mow up and down slopes, watch for pedestrians, dismount the mower from the left side, and never carry passengers on the mower. Always be sure the blade is disengaged when the mower is unmanned. When cleaning the underside of the mower or the chute, the mower should be turned off.

For additional safety information related to power equipment, and many other work-related topics, employees are encouraged to utilize the Office of Risk Management’s Loss Control Resource Center video library. These videos not only supplement employee training programs, but are an excellent resource on and off the job.

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RISK MANAGEMENT BULLETIN

Issue 25: "Electrical Safety"

One of the most powerful forces we come into contact with on a daily basis is electricity. From turning on the electric razor, the hair dryer and the toaster in the morning to turning off the television and the lights at night, we depend on the power of electricity to get us through the day. Despite our heavy reliance on it, electricity is not very well understood. Being ignorant of electrical power can prove harmful, and even fatal, to the user. The common household current possesses 60 volts--enough to stop a beating heart.

The current is the flow of electricity through a conductor, like water through a pipe. Current is measured in amperes (amps), just as water flow is measured in gallons per minute. Volts are the measurement of pressure that drives the current, similar to water pressure. To ensure that the current is conducted safely from the source to the tool or machine, wires are insulated with a non-conductive material such as rubber. Most machines and tools are grounded for additional protection which connects the power to the earth, away from you. You can determine if equipment is grounded, if there is a three pronged plug in three hole receptacles.

The following list of do's and don'ts will assist you in giving electricity the respect it deserves:

- ◆ Only allow trained and authorized personnel to conduct electrical repairs.
- ◆ Follow established lockout/tagout procedures when conducting electrical repairs.
- ◆ Before repairing or using electrical equipment, check to see if it is properly grounded.
- ◆ Ensure wire insulation is in good condition before operating electrical equipment.
- ◆ Keep the work area clean. Especially clear the area of organic or flammable materials.
- ◆ Follow the manufacturer's instructions when operating or repairing electrical equipment.
- ◆ Report all electrical hazards such as worn cord insulation to the supervisor.

If a fellow employee becomes electrocuted, do not touch the person. Pull the plug, or shut off the power at the fuse or circuit-breaker box. Immediately call for emergency medical assistance. Persons certified in CPR can revive the injured if necessary. Treat minor burns with cool water and cover with a clean, dry cloth. Treat major burns with a sterile dressing and get immediate medical attention.

Supervisors should encourage employees to report all electrical hazards; allow only authorized personnel near exposed electrical parts; ensure employees have read and understand the lockout/tagout procedure; and ensure employees know what to do in case of an emergency.

For additional training materials on electrical safety, contact the Office of Risk Management or the Loss Control Resource Center.

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RISK MANAGEMENT BULLETIN

Issue 26: “The Art of Defending Claims”

Effective risk management is thought to mean preventing claims before they occur. However, risk management simply means being pro-active. In addition to taking strides to prevent claims, agencies should anticipate and be prepared to defend against potential claims. By meticulously documenting everything, and conducting thorough accident investigations, you can provide critical information which greatly improves the State’s ability to defend against a claim. The following recommendations identify steps you can take on a regular basis to pro-actively prepare for potential claims.

Document everything:

- ◆ Keep written policies and procedures current and ensure that they are read by all employees. Require employees to initial their policies and procedures manual and training manual indicating that they have read it.
- ◆ Utilize the performance communication document to thoroughly, honestly and accurately document employee performance problems.
- ◆ When accidents occur, or an unsafe condition is identified, immediately remedy the exposure and document your efforts.
- ◆ Ensure all contracts and agreements contain the appropriate risk management language, including appropriate insurance requirements and hold harmless/ indemnification language. Require certificates of insurance in all contracts. File these certificates with the contract.
- ◆ Utilize your agency’s loss control committee to conduct routine inspections of your facility. Document inspections.
- ◆ File loss control committee meeting minutes, as well as the minutes of meetings where accidents, incidents, or unsafe conditions are addressed.

Know what to do when an accident occurs:

- ◆ To the extent possible, preserve the evidence of an accident scene until the accident investigation has been completed.
- ◆ Obtain the names, addresses and phone numbers of all witnesses.
- ◆ If possible, take photographs and measurements identifying the exact location of an accident. On the back of the photographs, write the date, time, location, as well as the name and phone number of the photographer.

When providing information to the Office of Risk Management, the information should be accurate, specific and truthful. Provide as much detail as possible. Even if the facts of the accident are damaging to the State, they are very important in assisting our defense attorney in developing a litigation strategy. The better the report filed at the time of an accident, the better the defense provided to State employees.

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RISK MANAGEMENT BULLETIN

Issue 27: “Fire Extinguishers”

Fire extinguishers are a necessary part of any fire safety plan. In order to obtain proper protection from your fire extinguishers, you must ensure the appropriate extinguishers have been selected for each work area, the extinguishers are properly distributed, and regular documented inspections of extinguishers are conducted. The following suggestions will help you determine whether your work place meets these three criteria.

Types of fires:

To determine the type of extinguisher needed in your work area, first identify the types of fires which can occur. There are four types of fires.

- Class A:** Organic fires, fueled by materials such as paper, wood or cloth
- Class B:** Flammable liquid fires, creating a burning vapor
- Class C:** Live electrical fires
- Class D:** Combustible metal fires, fueled by metals like magnesium

Types of fire extinguishers:

Once you have determined the type of fire(s) which can occur, select the appropriate extinguisher. Extinguishers are labeled according to the type of fire for which they are designed:

- A:** Water - to be used on organic fires only. Water would cause flammable liquid fires to spread, and if used on electrical fires, could cause the person extinguishing to be electrocuted. Water would also react violently with combustible metals.
- ABC or BC:** Dry chemical
- ABC:** Halon - leaves no residue and does not damage computers. (Note: Halon is currently being phased out by the industry due to its low flash point and its harmful environmental effects.)
- C:** Carbon dioxide
- D:** Dry powder - covers combustible metals to put out fire.

Placement of extinguishers:

Fire extinguishers are to be no more than 75 feet apart (under normal conditions), located in normal paths of travel, unobstructed from view, mounted so that the top is no more than 5 feet from the floor, and clearly marked according to the type of fire they will extinguish.

Inspecting, maintaining and recharging extinguishers:

Whether conducted in-house or contracted out to a service organization or the manufacturer's representative, ensure extinguishers are inspected on a monthly basis.

Inspections should verify:

- 1) The appropriate extinguisher is provided;
- 2) The extinguisher is in its designated place;
- 3) Access and visibility of the extinguisher are not obstructed;
- 4) The operating instructions of the extinguisher are legible and face outward;
- 5) Pressure and fullness are adequate;
- 6) The seal remains unbroken, the hose is not clogged, and the extinguisher is undamaged.

Annual maintenance must also be performed to examine mechanical parts, the extinguishing agent and expelling means. Recharging of extinguisher contents should be performed annually as well. Tags identifying the date of the most recent inspection, maintenance check, and recharging should be attached to each extinguisher.

When using a fire extinguisher:

- ◆ Pull the safety pin or release any safety locks on the unit.
- ◆ Aim the nozzle at the base of the fire.
- ◆ Squeeze the handle.
- ◆ Spray the base of the fire, moving the spray from side to side covering the entire base.
- ◆ Maintain proper distance from the fire (6 to 8 feet for most dry chemical hand portable extinguishers), moving closer as it becomes extinguished. Watch for re-ignition.
- ◆ If outside, always stand upwind from the flames.
- ◆ If indoors, position yourself between the fire and an exit to allow yourself a chance to escape.
- ◆ Lay a used fire extinguisher on the ground on its side so others know it is empty.

Portable extinguishers in vehicles:

Maintenance employees who drive vehicles to their work sites should be sure the vehicle is equipped with a fire extinguisher. Generally, a BC extinguisher is most appropriate in these cases. The extinguisher should be conveniently located and securely fastened to the vehicle to prevent accidental discharge.

Recently, while a State employee was driving a vehicle, the extinguisher slid across the vehicle floor hitting the side panel causing its contents to discharge. This scenario posed four serious risks: The chemical from the extinguisher damaged property in the vehicle; the employee's skin and lungs were unnecessarily exposed to the extinguishing chemical; the employee was distracted from the safe operation of the vehicle because of the discharging extinguisher; and the extinguisher may have rolled under the seat and not been available in case of an actual fire emergency. To ensure the proper placing of vehicle extinguishers, include vehicle extinguishers in the regular inspection and maintenance schedules.

For further information or training resources on fire extinguishers, consult the Loss Control Training Resource Center Catalog found in the Risk Management Manual.

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RISK MANAGEMENT BULLETIN

Issue 28: “Heat Disorders”

While heat disorders may be more frequent during the summer, they are neither limited to the summer season nor to outdoor activities. In order to properly address the health risk heat disorders present, it is important to know what causes heat disorders, as well as how to identify, treat and prevent them.

Factors contributing to heat disorders

- ◆ High temperature
- ◆ High humidity
- ◆ Lack of air movement
- ◆ Strenuous physical activity
- ◆ Inappropriate clothing
- ◆ Excessive body weight
- ◆ Poor physical fitness
- ◆ Use of alcohol or drugs

HEAT DISORDERS	SIGNS/SYMPTOMS	TREATMENT
Heat stroke	confusion, irrational behavior, loss of consciousness, convulsions, lack of sweating/dry skin, and high body temperature	immediate professional medical attention; do not allow the person to be left unattended until a physician has examined them; place person in a shady, cool area, with increased air movement; wet the person's skin
Heat exhaustion	headache, nausea, vertigo, weakness, thirst and giddiness	move to a cooler environment; replenish fluids
Heat collapse	fainting	keep moving; gradually become acclimated to the hot environment
Heat cramps	painful muscle spasms usually resulting from a lack of salt	replenish fluids (an electrolyte-filled sports drink may be beneficial)
Heat rashes	a prickly sensation and red bumps on the skin	move to an area with increased air circulation; remove clothing over affected skin to allow it to dry

Prevention

- ◆ Dress appropriately.
- ◆ Drink water frequently to replenish fluids the body loses when it produces sweat. Avoid beverages high in sugar as well as alcoholic beverages.
- ◆ Moderate outdoor activities. If possible, avoid outdoor activities between 10 A.M. and 2 P.M. Take frequent breaks in a shady, cool area.
- ◆ If working indoors, ensure adequate air movement. If necessary, use fans or open windows to promote air movement.
- ◆ Stay physically fit.

Response

Use the chart above to help identify heat disorders. Take complaints seriously and respond appropriately.

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RISK MANAGEMENT BULLETIN

Issue 29: "Torchiere Lamps with Tubular Halogen Bulbs"

The use of halogen lamps has become a hot trend over the past few years, both literally and figuratively. Cost conscious consumers appreciate the long life of the halogen bulb as well as the increased light it produces.

However, consumers need to be aware that lamps using the tubular halogen bulb produce significantly more heat than traditional incandescent bulbs. For instance, the U.S. Consumer Product Safety Commission reports that a 150 watt incandescent bulb operates at a temperature of about 340 degrees, while a 300 watt tubular halogen bulb operates at 970 degrees.

According to the U.S. Consumer Product Safety Commission (USCPSC), at least one hundred fires leading to ten deaths have been associated with Torchiere lamps with tubular halogen bulbs.

The USCPSC recommends, therefore, that these lamps be treated with greater care. Suggestions by the USCPSC and the Underwriters Laboratories, Inc. include:

- Never allow Torchiere halogen lamps to be placed where the tubular bulb could come in contact with curtains or other cloth window treatments.
- Keep halogen Torchiere lamps away from bunk beds where bedding may get too close to the bulbs.
- Do not drape clothes over the lamps.
- Never leave a Torchiere halogen lamp on when you leave the room or are not at home.
- If the Torchiere lamp is equipped with a dimmer switch, operate the lamp at a setting lower than the maximum.
- Place Torchiere lamps in locations where they cannot be tipped over by children, pets or a strong draft from an open window.
- Never use a light bulb wattage higher than 300, even though the lamp may specify 500 watts; and never use a higher wattage than indicated by the manufacturer's instructions.
- UL listed halogen lamps are required to use particle containment barriers to keep glass inside the lamp. This barrier should remain in place at all times when the lamp is operational.
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RISK MANAGEMENT BULLETIN

Issue 30: Revised Accident Reporting Information

Effective July 1, 1997 GAB Robins will no longer be providing claims administration services for the Public Entity Pool for Liability (PEPL) Fund. Claims Associates, Inc., of Sioux Falls will handle the state's liability claims adjusting and investigations. GAB Robins will continue to handle claims filed prior to July 1, 1997.

Your agency/institution risk management contact person has been provided reporting forms containing the updated information.

In case of an accident involving a fatality, serious bodily injury, or serious property damage immediately report the accident to Claims Associates, Inc., in Sioux Falls at their 24-hour emergency number, 1-888-430-2249. Then report to your risk management contact. As always, make no statement to anyone that you were at fault or liable for the accident.

Please direct any questions you have regarding this change to your risk management contact or the Office of Risk Management.

NOTE: NEW EMERGENCY REPORTING TELEPHONE NUMBER IS 1-888-430-2249.

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RISK MANAGEMENT BULLETIN

Issue 31: Contractual Risk Management

This bulletin is designed to supplement the Contract section of the Risk Management Manual in enabling State employees to practice contractual risk management. Often contractors, insurance agents or underwriters will question the reason for risk management language in State contracts and will request that the language be modified or omitted. It is important to convey to these individuals that the language has been carefully crafted to adequately protect State employees from liability claims and lawsuits. Those employees responsible for reviewing State contracts should find this bulletin helpful in establishing terms and conditions which both meet the State's risk management needs and address the concerns of the contractors, insurance agents and underwriters.

- 1. What is the purpose of hold harmless language? Does it require the contractor to defend the State for all acts of negligence, including those of State employees? Can this language be modified?**

All contracts should contain a hold harmless/indemnification provision to clarify which party is responsible for claims arising from the contract activity. The State's language asks that the contractor pay claims or damages arising from the contract activity. It does not ask that the contractor hold harmless and indemnify the State against claims or damages arising solely from the errors or omissions of the State or its employees. Any modifications to this language must be approved by the Office of the Attorney General.

- 2. Why does the State require liability insurance of the contractor?**

The State requires the contractor carry liability insurance to ensure the contractor has the financial means to pay damages in the event of a claim or lawsuit.

- 3. Does the State have some flexibility in the amount of coverage it requires of a contractor, or is it appropriate to require the same amount of liability coverage of all contractors?**

Coverage limits should vary, depending on the risk of the contract activity. In general, contractors should carry coverage limits higher than the State's \$500,000 per occurrence exposure because, in the event of a claim for damages, the contractor's coverage may be shared by the contractor and the State employees as additional insureds. However, some contracts present very little risk, in which case it may be appropriate to accept lower limits, or omit the insurance requirements altogether. State agencies must evaluate the risk involved and use discretion in determining the appropriate amount of insurance to require. The Office of Risk Management can assist in this process.

4. Why is it necessary to require the contractor to submit certificates of insurance?

Certificates of Insurance provide written proof that the contractor is carrying the insurance coverage required in the contract.

5. Why is it necessary to require the contractor's policy to name State employees additional insureds?

The additional insured requirement allows the PEPL Fund to tender defense of State employees to the contractor's insurance company in the event of a claim or lawsuit arising from the contract activity. The requirement also restricts the contractor's insurer from recoveries against the PEPL Fund if the insurer pays a claim resulting from the contract activity.

6. Why is it necessary to name State employees additional insureds, rather than the State of South Dakota, or a specific State agency or institution?

South Dakota law stipulates that the State of South Dakota, including its agencies, institutions, boards and commissions, enjoys sovereign immunity (exemption from liability) to the extent no coverage has been provided for the State. Naming the State of South Dakota as an additional insured on a contractor's liability policy may waive that immunity. Consequently, when a third party seeks damages they name employees, rather than the State. Therefore, all liability coverage must only cover State employees. The Public Entity Pool for Liability (PEPL) Fund covers only State employees for this reason.

7. When is it necessary to require a copy of the contractor's insurance policy?

Contracts for certain types of services may present a high level of risk, or an unusual risk possibly not covered by a standard general liability policy. (As stated on page 5-2 of the Risk Management Manual, the amount paid for goods or services is not an accurate indication of a contract's loss exposure.) In such cases, request copies of the contractor's insurance policies to review for adequate coverage and limits, and acceptable deductibles. If you need assistance in reviewing insurance policies, please contact the Office of Risk Management.

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RISK MANAGEMENT BULLETIN

Issue 32: Facilities Use Agreements

State agencies and institutions have been utilizing facilities use agreements whenever state facilities are made available to outside groups. These agreements require the user to indemnify the state for claims arising from bodily injury incurred by one of the group's members (or another third party), or from property damage resulting from the user's activity. While this language adequately protects the state from liability in the vast majority of cases, there are many activities which warrant the need for additional protection. Users of state facilities engaging in high risk activities should be required to carry and show proof of liability insurance. For example, a group using a classroom or conference room for an oral presentation need only sign a facilities use agreement with the traditional indemnification clause; whereas a group using an athletic facility for a basketball tournament should also be required to carry liability coverage. When an informal group of individuals use a state facility for a high risk activity, it is not always practical to require insurance. In these cases, obtain a signed Waiver of Liability, Indemnification and Medical Release from each participant.

Please update the Risk Management Manual with the attached items:

1. A Facilities Use Agreement Indemnification Clause revised to include insurance requirement language
2. Revisions to the Contract section of the Risk Management Manual addressing the revised clause

If you have any questions regarding when it is necessary to require insurance of a user, or if you need assistance in determining acceptable limits of insurance, please contact the Office of Risk Management.

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RISK MANAGEMENT BULLETIN

Issue 33: *Falling Down on the Job*

'Tis the season for slipping and sliding on wet and icy surfaces. State employees and the public using our facilities are at-risk for falls over the next few months more than any other time during the year. However, slips, trips and falls are a year-round occurrence. Review the causes of these accidents, and consider the corrective actions you can take to keep everyone on their feet.

According to the National Institute for Occupational Safety and Health (NIOSH), there are three factors which primarily contribute to falls at the work site. They are (according to rank):

1. Unsafe housekeeping
2. Changes in the physical condition of the surface
3. Inattention on the part of the walker

So what can you do to reduce the number of slips, trips and falls at the work place?

Follow Proper Housekeeping Practices:

Store those tools and other materials in their proper place. Keep walkways and aisles free of debris. Avoid stretching electrical cords across aisles and walkways. Report holes, loose boards, torn carpet or other problems which could cause trips and falls.

A Dry Floor Is A Safe Floor:

Floors should be kept as dry as possible. Wipe up spills as soon as they occur. Encourage employees and visitors to wipe their feet upon entering a building. Consider slip-resistant surfacing in inevitably wet areas such as kitchens and entryways. Monitor the condition of floor mats. Mats that have deteriorated, curled at the edges or become excessively wet present slip or trip hazards and should be replaced.

Install Warnings:

Deviations in the slopes of floor surfaces should be marked with bright colors (such as safety yellow or orange), or should be indicated with posted signs. Caution cones should always be placed to indicate wet floors.

Words of Wisdom for the Winter Walker:

- Pay attention to the surface on which you are walking
- Walk with your weight slightly forward, not on your heels
- Take small steps
- Wear footwear with good traction
- Do not run
- When stepping in and out of a vehicle do not place your weight on one foot. Instead, turn to face outside the vehicle while sitting on the seat. Place both feet on the ground, holding on to the door as you stand or sit.

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RISK MANAGEMENT BULLETIN

Issue 34: Volunteer Protection Act

In today's litigious society, it is becoming more and more difficult to find volunteers. Many are justifiably fearful of being sued, or they are deterred by the hassle or cost of procuring liability coverage.

At a June 18, 1997 ceremony at the White House, President Clinton vowed to protect Americans giving of their time to make a difference by signing Public Law 105-19, known as the Volunteer Protection Act. The Act was almost immediately touted as a common sense solution to defend kind-hearted Americans from the encroaching threat of legal liability. Unfortunately, the excitement about this legislation was short-lived.

A careful reading of the law reveals that rather than providing volunteers with immunity, it defines those actions for which a volunteer can and can not be held liable. Immunity applies only if:

1. The volunteer was acting within the scope of their responsibilities;
2. Where applicable, the volunteer was properly licensed, certified, or authorized to act;
3. The harm was not caused by willful or criminal misconduct; gross negligence, reckless misconduct, flagrant indifference to the rights or safety of the individual;
4. The harm was not caused by the volunteer operating a motor vehicle, water vessel or aircraft.

Volunteers are still liable, according to the Act, for crimes of violence or international terrorism, hate crimes, sexual offenses, violations of federal or state civil rights law, or conduct occurring while under the influence of alcohol or drugs.

Eager plaintiffs and their attorneys are not prevented from filing a suit against a volunteer. The basis for their claims will now emphasize how a volunteer's actions fall outside the protection of this law. Translation: Volunteers are still exposed to lawsuit and the subsequent costs of legal defense.

Volunteers for the State and State employees need to be aware that the Volunteer Protection Act does not necessarily decrease your liability exposure. As with all laws, until challenges are made in court, it is impossible to determine the exact consequences. Therefore, PEPL Fund coverage still applies to volunteers for the State as well as employees responsible for managing those volunteers and volunteer programs.

It remains as important as ever that State employees hiring volunteers make every effort to provide thorough and documented training.

If you have any questions regarding the Volunteer Protection Act, or the liability coverage afforded to State volunteers through the PEPL Fund, please contact the Office of Risk Management.

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RISK MANAGEMENT BULLETIN

Issue 35: Lockout/Tagout... The Control of Hazardous Energy

Many employees of the State of South Dakota have the task of maintaining and servicing equipment in their respective areas of employment. Maintaining and servicing can pose additional safety issues if the hazardous energy is not controlled. This bulletin is intended to provide an overview of the lockout/tagout (LOTO) system. It is **not** intended to serve as training on the proper procedures of LOTO practices. Additional training should be pursued if LOTO practices are warranted in your respective areas.

OSHA 1910.147 establishes minimum performance requirements for the control of hazardous energy. This would include servicing and maintaining of machines and equipment in which the “unexpected” energization or start up of the machines or equipment, or release of stored energy could cause injury to employees. Additional OSHA standards for LOTO can be found at the website <http://osha.gov/> and clicking on the “Regulations” tab and searching for the 1910.147 standard.

Lockout is defined as the placement of a lockout device on an energy isolating device, in an accordance with an established procedure, ensuring the energy isolating device and the equipment being controlled cannot be operated until the lockout device is removed.

Tagout is defined as the placement of a tagout device on an energy isolating device, in accordance with an established procedure, to indicate that the energy isolating device and the equipment being controlled may not be operated until the tagout device is removed.

Hazardous energy that may need to be controlled prior to maintaining or servicing equipment may be one of the following:

- Electrical...such as shock hazards or arc flash
- Mechanical...such as caught in or on equipment, getting struck, getting caught between equipment
- Chemical
- Thermal
- Flow...such as liquids, dry bulk material
- Steam or other gases

Anytime you are faced with servicing and maintaining equipment and there is a chance of unexpected energizing of the equipment, LOTO should be used. All machines and equipment

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that are undergoing this type of maintenance or service should be at a “zero energy state.” This means there should be no potential of movement, electrical energy, stored energy, material flow, or extreme temperatures. LOTO will also give the employee conducting the service and maintenance physical control of all the energy hazards.

Training on LOTO can be obtained through the South Dakota Safety Council.

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RISK MANAGEMENT BULLETIN

Issue 36: PEPL Fund Coverage Limits

Effective July 1, 1998 the Public Entity Pool for Liability (PEPL) coverage limits were raised from \$500,000 per occurrence to \$1 million per occurrence. As has been the case since Fiscal Year 1996, the PEPL Fund retains the first \$100,000 of loss and commercially reinsures the excess of \$100,000.

The increased coverage was made possible by the sound risk management practices instituted by state employees, and the successful marketing of our risk financing program.

PEPL Fund coverage otherwise remains the same. Coverage details are outlined in the Participation Agreement Between the Public Entity Pool for Liability and the State of South Dakota, and the Memorandum of Liability Coverage to the Employees of the State of South Dakota. Copies of the coverage document may be obtained through your risk management contact.

RISK MANAGEMENT BULLETIN

Issue 37: Working With Inmates

Many state employees are supervising, directing and working with, or in indirect contact with minimum security inmates. This program benefits South Dakota taxpayers as well as the inmates participating in the work programs. **Prior to supervising inmates, it is mandatory that employees attend a training session developed by the Department of Corrections.** Any employee who works with or has indirect contact with an inmate should visit with the workplace inmate supervisor if they have questions or concerns regarding an inmate.

Be mindful in daily interactions with inmates that they are NOT state employees. They are convicted felons who are serving time in the state penal system for the commission of a crime. They operate under a strict set of rules. These rules are necessary to maintain order within the corrections system. There are no gray areas within these rules. The rules or an infraction of the rules are by necessity black and white.

When we allow corrections policies or rules to be violated, we are not helping inmates but are exposing them to reprimand or disciplinary action within the correctional system. More importantly, we are telling them that as a society we believe it is only necessary to pay attention to the rules we like or personally believe in. That is the message that more than likely resulted in them becoming incarcerated in the first place.

That is not to say that you cannot be nor should not be civil to inmates working under your supervision or in your agency. You are advised **to be friendly but do not be their friend.** Keep your relationship on a professional level at all times. Do not do favors such as mailing letters or provide items such as cigarettes or pop to the inmates. Providing items that are prohibited in the correctional system is a class 6 felony in the state of South Dakota as is having intimate contact with an inmate.

From a risk management viewpoint there is one other very important issue to address when working with inmates. Just like new employees, they need proper training, direction and appropriate safety equipment when performing tasks they are assigned. If a task requires a training period, special instruction or special equipment it should be provided to the inmate just as it would be to an employee.

Please share this information with employees in your agency.

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RISK MANAGEMENT BULLETIN

Issue 38: Providing Emergency Assistance in the Workplace

It's the news that no one wants to hear...John Doe in admissions has just collapsed. You are now faced with some serious decisions that could mean life or death for John. What do you do?

For those employees that have received training in cardio-pulmonary resuscitation (CPR), first aid, and automated external defibrillator (AED) use the decision process becomes a lot easier than those who have not. The training is simple. CPR, first aid, and AED training is provided not only through the Bureau of Personnel, but by many local organizations in your community. The Office of Risk Management always encourages employees to get the training they need to know in the event of an emergency.

We also know that not everyone is going to be able to receive training in CPR, first aid, and AED use. With that in mind, here are a few recommendations that you should use when responding to an emergency in your workplace.

1. If there is ever any indication that the emergency would dictate the need for an ambulance...you should not hesitate on calling one. This is true not only for employees but also for visitors entering your workplace. If it is later determined the ambulance were not needed, it can always be turned around and cancelled.
2. If the emergency dictates the need to administer some level of medical aid...it can be administered by any person as long as it is in good faith. All people providing or attempting medical assistance are granted immunity under SDCL 20-9-4.1 "General immunity from liability for emergency care" (Similar to a Good Samaritan law). This could be anything from providing CPR, first aid, use of an AED, removing an injured person from a hazardous environment, or other medical incidents you may find yourself involved with.
3. Emergency medical technology has made its way into the workplace. Many agencies now have an AED located within their building. An AED can be used by any person with or without training; however it is much more effective when used in conjunction with CPR. (See Risk Bulletin 46-Automated External Defibrillator)
4. All emergencies should be reported to your immediate supervisor and you should follow any policy/procedures your agency may have established. The emergency should also be reported to your agency risk contact as-soon-as-possible in the event the emergency may need some additional follow-up or an investigation from our office is warranted.

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RISK MANAGEMENT BULLETIN

Issue 39: Volunteers

Now that summer is upon us again, several state agencies will be utilizing volunteers to perform tasks or services that are part of the business of the agency. It is recommended when using volunteers to perform services on behalf of the State of South Dakota, that we screen these individuals to ensure that they are capable of performing the duties that will be required and assigned to them. Also, remember that it remains as important as ever that agencies hiring volunteers make every effort to provide thorough and documented training.

Attached is a Volunteer Work Agreement that requires signing prior to volunteering any tasks or services and a Volunteer Information Sheet that requires completion for each volunteer. Please ensure that these signed forms are filed with your agency's Human Resources Manager.

The State's Workers Compensation Program and the PEPL Fund cover volunteers who have signed the Volunteer Work Agreement form.

You may also want to review Federal Public Law 105-19, better known as the Volunteer Protection Act, which is explained in Risk Management Bulletin, Issue #34.

If you have any questions regarding the use of volunteers, or the liability coverage afforded to state volunteers through the PEPL Fund, please contact the Office of Risk Management.

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SOUTH DAKOTA
VOLUNTEER WORK AGREEMENT

I, _____ agree to perform the duties and responsibilities of the volunteer position mutually agreed to by myself and the South Dakota Department of _____.

I understand that my services are voluntary, that I will not be compensated and that volunteer workers are provided worker's compensation coverage. I also understand that I will be covered by the same terms and conditions applicable to state employees according to the liability coverage program for public entities while performing volunteer activities.

This agreement may be canceled at any time by notification to either party.

I have read the above agreement, understand it and agree to serve as a volunteer

_____ at _____

from _____ through _____.
(date) (date)

Volunteer Date

Supervisor Date

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RISK MANAGEMENT BULLETIN

Issue 40: Cellular Phone Use Near Potentially Explosive Areas

MOTOROLA has recently posted the following warning to cellular phone users near potentially explosive areas:

Turn your phone OFF when in any area with a potentially explosive atmosphere. It is rare, but your phone or its accessories could generate sparks. Sparks in such areas could cause an explosion or fire resulting in bodily injury or even death.

Areas with a potentially explosive atmosphere are often, but not always, clearly marked. They include, but are not limited to: fueling areas such as gas stations, below deck on boats, fuel or chemical transfer or storage facilities, and areas where the air contains chemicals or particles, such as grain dust, or metal powders.

The Office of Risk Management recently became aware of one such documented incident in another state. A driver suffered burns and his car was severely damaged when gasoline fumes ignited an explosion while he was talking on his mobile phone while standing near the attendant who was pumping the gasoline. **READ YOUR CELLULAR PHONE HANDBOOKS!**

Please share this information with all employees in your agency.

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RISK MANAGEMENT BULLETIN

Issue 41: Safety Training Guidelines

It is a fact that many injuries are related to the use of power equipment such as grass trimmers, mowers, chain saws, etc. The process of examining, defining and developing a total safety culture in our organizations is a task that must be continually addressed to protect the state's assets. Managers and supervisors are charged with the responsibility of ensuring employees, clients, inmates, students and volunteers are properly trained and supervised in the use and care of the equipment they utilize. All training should be documented.

Following are general guidelines to be utilized in developing training agendas along with a model training ledger that can be used to document all training provided:

- Pre-operation, operation, and post-operation – *Generally this will involve reading the operator's manual prior to use, operation instruction and checking equipment after use and prior to storage (If necessary, repair equipment or lock and tagout equipment)*
- PPE (personal protective equipment) requirements - *ALWAYS ensure that appropriate protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers are provided, used, and maintained in a sanitary and reliable condition and receive periodic inspections.*
- Maintenance – *ALWAYS ensure regularly scheduled maintenance procedures are followed and repairs identified are corrected in a timely fashion and prior to use of the equipment.*
- Written test – *OPTIONAL*
- Proficiency demonstration and signoff by trainer and employee - *see sample form below.*

Class Listing _____

Instructor _____

Date of Training _____

<i>Name</i>	<i>Department</i>	<i>Phone #</i>	<i>Initial Attendance</i>

The process of developing a total safety culture is more than just training. It is, indeed, an ongoing process. It will take time and commitment from all of us to guarantee State Government is a safe place to work and volunteer.

RISK MANAGEMENT BULLETIN

Issue 42: Litigation Against State Employees

Being involved in a lawsuit is often frightening and confusing. One of the main reasons for that is that often the lawyers seem to be speaking a foreign language which doesn't get translated. This bulletin hopefully will help you develop a little fluency with the language of litigation commonly encountered by state employees.

The first thing to understand is how state employees get sued. The most common basis for a lawsuit is *negligence*. Negligence is doing something that a reasonable person would not have done or failing to do something a reasonable person would have done under the circumstances.

State employees are also frequently sued under 42 U.S.C § 1983; which lawyers refer to as *Section 1983*. Section 1983 is a federal statute that allows lawsuits against government representatives who violate civil rights while acting on behalf of the government. Section 1983 is not an independent basis for a lawsuit, but is a device to pursue claims for violations of constitutional or statutory rights like the First Amendment or the Americans with Disabilities Act. Simple negligence, however, cannot be the basis for a section 1983 action; there must be some degree of intentional action. Prevailing parties in section 1983 actions are entitled to recover their attorney fees which make these cases more appealing to plaintiff's attorneys and more frightening for defendants.

Although section 1983 actions can be pursued in either state or federal courts, negligence actions cannot generally stand-alone in federal court. They are often combined with section 1983 actions under a federal law concept called supplemental jurisdiction.

Another difficult idea to get used to is that each state employee can be sued as two different people. State employees can be sued in both their *official capacity* and *individual capacity*. When a state employee is named in their official capacity, they stand in the place of the state as an agent. Individual capacity targets an individual who happens to be employed by the state. This distinction is very important because it controls the legal defenses that may be available. Employees sued in their official capacity are entitled to those defenses available to the state itself, for example, sovereign immunity and the Eleventh Amendment. Employees named in their individual capacity are entitled only to those defenses available to an individual such as qualified immunity. This distinction is also crucial because states, and state employees in their official capacities, are not subject to actions under section 1983. It is common, however, for a lawsuit to name an employee in both their official and individual capacity for the same conduct.

State employees sued in their individual capacity can assert two main forms of immunity. *Qualified immunity* prevents lawsuits against individuals unless their actions violate another's

clearly established rights, and the individual should have known that at the time they acted. *Absolute immunity* exists for individuals in very rare circumstances such as police officers acting as witnesses, legislators on the statehouse floor, and judges in court.

The state itself and state officials named in their official capacity are entitled to two separate forms of immunity. *Sovereign immunity* prevents a lawsuit against states in their own courts. It is important to remember that under South Dakota law, sovereign immunity is limited to state employees engaged in discretionary acts. *Discretionary acts* are those acts for which a statute, administrative rule, agency policy, or other official source does not specifically direct the time, place, and manner of performance. *Ministerial acts* were defined by the Court as “that which involves obedience to instructions, but demands no special discretion, judgment or skill.”

While sovereign immunity is a defense in state court, a similar protection exists in federal actions under the Eleventh Amendment of the United States Constitution. The Eleventh Amendment prohibits lawsuits by individuals against states in federal court. It is important to recognize that it does not prevent lawsuits against state employees in their individual capacity, by other states, or by the United States. Another crucial exception is referred to by lawyers as *Ex Parte Young* for the case in which it was created. That exception allows actions for prospective injunctive relief; in other words, court orders to prevent state officials from violating a law in the future. The test ends up being whether the lawsuit attempts to get money from the state for past improper actions, or a court order to prevent future misconduct. Only the latter is allowed by the Eleventh Amendment.

A final point to consider about the Eleventh Amendment is how it can be avoided. States may consent to be sued in federal court by *waiver*, but that waiver must be clearly expressed. Additionally, Congress may subject states to suit in federal court by an *abrogation* of the Eleventh Amendment immunity. Like a waiver, an abrogation must clearly express its intent to subject states to suit in federal court, and they must be based on section 5 of the Fourteenth Amendment. That section of the constitution gives Congress authority to pass laws to remediate violations of constitutional rights. This limitation is vitally important because it substantially limits the grounds for a lawsuit against state employees. The clear trend is to limit abrogation to laws which address discrimination based on traditionally protected classifications such as race, gender, or religion. If you have questions about a particular law, you should seek legal counsel. Additionally, it is important to remember that the Eleventh Amendment is just a protection from suit, it does not excuse states from complying with federal laws.

Obviously this summary does not cover everything, but it does provide some background to understand litigation involving state employees. Having a basic understanding of these concepts will help state employees understand the world of litigation if they are involved in a lawsuit and help them more effectively communicate with their lawyers.

If you have any questions regarding litigation matters, please contact the Office of Risk Management and please share this information with employees in your agency.

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RISK MANAGEMENT BULLETIN

Issue 43: Anthrax Threat Guide for South Dakota

The South Dakota Division of Emergency Management has developed the following Anthrax Threat Guide for the State of South Dakota and asked our office to assist in distributing this information to all of you.

ATTENTION: In the event of any TERRORISM THREAT - CALL OR HAVE SOMEONE CALL the agencies noted below. Tell them the manner of the threat and the specifics about what is happening and give them your exact location so they can find you. GO TO "Immediate Actions" on back page of this BULLETIN!

1. Call 911, or local law enforcement and explain the nature of the threat. This will usually dispatch Fire, Law, EMS, and in some cases HAZMAT and public health.
2. Call FBI at 605-334-6881 (Sioux Falls), 605-367-7500 (Pierre), 605-343-8632 (Rapid City) or Minneapolis Office after hours number 612-376-3200.
3. Call South Dakota Division of emergency Management Duty Officer 605-773-3231 and explain the nature of the threat this will activate all pertinent state agencies.
4. For immediate health consultation call the Department of Health at 1-800-592-1861 or 605-280-4810.

This Guide is intended to provide recipients of letters and packages containing an anthrax threat with useful information and guidance to help them deal more effectively with an incident, should one occur. (If you have any questions about this guide or need further information to assist with anthrax threat planning, contact LaJean Volmer, Bioterrorism Preparedness and Response Coordinator at 605-773-7593 or Mike Smith Director SO Public Health Laboratory 605-773-3368)

Background

In the past few years there have been numerous threats of exposure to Anthrax through letters and phone calls. During threatening phone calls, the person is usually told anthrax has been placed somewhere in the building or the ventilation system. Typically, the letter threats have advised the reader that anthrax is present in the envelope. Some envelopes contain nothing other than a threatening note, while others contain a variety of non-toxic substances (i.e., cleaning compounds or baby powder). To date all threats have been hoaxes, but reactions to these threats (i.e., quarantine, evacuation, decontamination, and medicating victims) have disrupted many lives, stressed many individuals and interrupted businesses.

Anthrax is a disease caused by bacteria (*Bacillus anthracis*). It can cause disease if a sufficient amount of bacteria is inhaled, ingested or introduced into an open cut or wound. If inhaled, the disease may characteristically begin with mild flu-like symptoms (i.e., muscle aches, fever, fatigue, slight cough) usually 1-6 days after exposure, which may then progress after 2-4 days to more severe symptoms (i.e., high fever, shortness of breath). Anthrax is generally treatable with antibiotics! It is not contagious, (spread from person to person), nor is it easily aerosolized!

Pre-incident Planning: While it is difficult to fully prepare for such incidents, there are a few things that can be done before an incident occurs to promote effective and orderly response

1. Discuss this issue ahead of time and create a response plan that everyone understands, especially mail handlers and secretaries who are likely to open mail.

2. Coordinate your plan with local authorities and have their phone numbers readily available.
3. Be suspicious of letters that do not have a return address and consider opening all mail in a specially designated mail area away from workstations.

Immediate Actions: Do not panic

Unopened letter or letter that appears empty.

1. Place envelope in a plastic ziplock bag or glassine envelope.
2. Keep others away.
3. Wash hands and exposed skin (arms) with SOAP and WATER.
4. NOTIFY your supervisor, local law enforcement, FBI and SD Division of Emergency Management. Phone numbers on front page of this Bulletin.

Envelope with powder and powder spills out onto surface.

1. DO NOT clean powder up. Keep others away.
2. WASH hands and exposed skin (arms) with SOAP and WATER.
3. DO NOT brush off your clothes.
4. NOTIFY your supervisor, local law enforcement, FBI and SD Division of Emergency Management. (Phone number on front page of this Bulletin.)
5. REMOVE clothing and place in a plastic bag, as soon as possible. Close bag and place in second plastic bag. Clearly label and identify contents, retain for law enforcement, may be evidence.
6. SHOWER with SOAP and WATER as soon as possible at home. DO NOT use bleach or other disinfectant.
7. PUT on fresh clothing.
8. MAKE a list of all people (names, addresses and phone numbers) who had contact with the powder and give to local public health authorities. They may be instructed to watch for fever or other symptoms over the next couple of days.

Package marked with threatening message such as "Anthrax".

1. DO NOT OPEN.
2. LEAVE it and EVACUATE the room.
3. KEEP others from entering.
- 4.
5. NOTIFY your supervisor, local law enforcement, FBI and SD Division of Emergency Management. (Phone number on front page of this Bulletin.)

Aerosolization, small explosion, or letter stating "Anthrax in Heating System".

1. LEAVE room immediately.
2. SECURE entry.
3. SHUT down air handling system.
4. NOTIFY your supervisor, local law enforcement, FBI and SD Division of Emergency Management. (Phone number on front page of this Bulletin.)
5. REMAIN on premises until responders arrive.
6. MAKE list of all people (names, addresses and phone numbers) who were in the building at the time and give to local public health authorities. They may be instructed to watch for fever or other symptoms over next couple of days.

For all suspicious unlabeled mail notify law enforcement. Do not open.

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RISK MANAGEMENT BULLETIN

Issue 44: Assisting Individuals with Disabilities in an Emergency

The following information is provided for you to plan for individuals who need assistance in the event of an emergency requiring evacuation.

Planning

- Identifying these individuals is essential, never losing sight of the fact that some of these people may not recognize their own need for assistance. In addition, allowances for visitors present in the building must also be made.
- Once identified, individuals should be consulted about their specific limitations and how best to provide assistance.
- Finally, the methods for accommodation and assistive devices should be selected and discussed. This is necessary to assure a safe "emergency" evacuation from the building for the individual with a disability.

Put it in Writing

Identify and plan for times (of the day and the week) plus locations in the workplace where the basic life safety or emergency contingency plans have not been put in place or due, to some other factor, might not work.

Periodic Review

Practice will instill confidence in one's ability to cope in an emergency.

Practice consists of three types of activity, - walk through procedures, announced drills or surprise drills.

Walk through procedures entail practicing separate parts of the plan one at a time. This allows you to concentrate on particular parts of the plan and is a good way to introduce newly hired employees to the plan. Members of an emergency response organization (e.g., fire authorities) would be prime candidates for this practice.

Announced drills are intended more to train than to evaluate. Such drills will help identify crucial coordination activities and communication links.

Surprise drills should be used infrequently. Depending on the situation, this might be done once or twice each year.

Employees with disabilities are entitled to THE SAME level of safety as everyone else (no more/no less). Further, we cannot predict when any one of us may need assistance, such as in the case of a broken leg or the development of heart disease.

The following is a list of assistance techniques.

Vision Impairments

When assisting persons with vision impairments there are some basic rules to follow in order to be effective.

- Announce your presence; speak out when entering the work area.
- Speak naturally and directly to the individual and NOT through a third party. Do not shout.
- Don't be afraid to use words like "see," "look," or "blind".
- Offer assistance but let the person explain what help is needed.
- Describe the action to be taken in advance.
- Let the individual grasp your arm or shoulder lightly, for guidance. He/she may choose to walk slightly behind you to gauge your body reactions to obstacles; be sure to mention, stairs, doorways, narrow passages, ramps, etc.
- When guiding to a seat, place the person's hand on the back of the chair.
- If leading several individuals with visual impairments at the same time, ask them to hold each other's hands.
- You should ensure that after exiting the building that individual is not abandoned, but is led to a place of safety.

When assisting individuals with guide dogs.

- When the dog is wearing its harness, he is on duty, if you want the dog not to guide the owner, have the person remove the dog's harness.
- Plan for the dog to be evacuated with the owner.
- In the event that you are asked to take the dog while assisting the individual, it is recommended that you (the helper) hold the leash and not the dog's harness.
- Finally, be aware that a guide dog could become confused or disoriented in a disaster. Be prepared to assist the visually impaired individual if this were to occur.
- Do not pet or offer the dog food without the permission of the owner.

Hearing Impairments

When assisting an individual with a hearing impairment there are some things to keep in mind. These include:

- Flick the lights when entering the work area to get the person's attention.
- Establish eye contact with the individual, even if an interpreter is present.
- Face the light, do not cover or turn your face away, and never chew gum.
- Use facial expressions and hand gestures as visual cues.
- Check to see if you have been understood and repeat if necessary.
- Offer pencil and paper. Write slowly and let the individual read as you write. Written communication may be especially important if you are unable to understand the individual's speech.
- Do not allow others to interrupt or joke with you while conveying the emergency information.
- Be patient, the individual may have difficulty comprehending the urgency of your message.
- Provide the individual with a flashlight for signaling their location in the event that they are separated from the rescuing team and to facilitate lip-reading in the dark.

Learning Disabilities

Persons with learning disabilities may have difficulty in recognizing or being motivated to act in an emergency by untrained rescuers. They may also have difficulty in responding to instructions which involve more than a small number of simple actions. Some suggestions for assisting such persons include:

- Their visual perception of written instructions or signs may be confused.
- Their sense of direction may be limited, requiring someone to accompany them.
- Directions or information may need to be broken down into simple steps. Be patient.
- Simple signals and/or symbols should be used.
- A person's ability to understand speech is often more developed than his/her own vocabulary. Do not talk about a person to others in front of him/her.
- The individual should be treated as an adult who happens to have a cognitive or learning disability. Do not talk down to them or treat them as children.

Mobility Impairments

Someone using a crutch or a cane might be able to negotiate stairs independently. One hand is used to grasp the handrail the other hand is used for the crutch or cane. Here, it is best NOT to interfere with this person's movement. You might be of assistance by offering to carry the extra crutch. Also, if the stairs are crowded, you can act as a buffer and "run interference".

Wheelchair users are trained in special techniques to transfer from one chair to another. Depending on their upper body strength, they may be able to do much of the work themselves. If you assist a wheelchair user, avoid putting pressure on the person's chest. Such pressure might cause spasms, pain and even restrict breathing. Carrying someone slung over your shoulders is like sitting on their chest and poses a danger for several individuals who fall within categories of neurologic and orthopedic disabilities. Appropriate carrying techniques include:

One-Person Carry Technique

- The CRADLE LIFT is the preferred method when the person to be carried has little or no arm strength. It is safer if the person being carried weighs less than the carrier's weight.

Two-Person Carry Technique -- The Swing or Chair Carry

- Carriers stand on opposite sides of the individual.
- Take the arm on your side and wrap it around your shoulder.
- Grasp your carry partner's forearm behind the person in the small of the back.
- Reach under the person's knees to grasp the wrist of your carry partner's other hand.
- Both carry partners should then lean in, close to the person, and lift on the count of three.
- Continue pressing into the person being carried for additional support in the carry

Assist in Moving a Wheelchair Downstairs

- When descending stairs, stand behind the chair grasping the pushing grips.
 - Tilt the chair backwards until a balance is achieved
 - Descend frontward.
- .

- Stand one step above the chair, keeping your center of gravity low and let the back wheels gradually lower to the next step.
- Be careful to keep the chair tilted back.
- If possible, have another person assist by holding the frame of the wheelchair and pushing in from the front.
- Do not lift the chair, as this places more weight on the individual behind.

Other Impairments

Pregnancy is not usually considered a disability, but it can result in reduces stamina or impaired mobility, especially in negotiating stairs. In these cases, offer to walk with the woman and be of support both emotionally and physically. Remain with her until you have reached safety.

Respiratory disorders such as asthma or emphysema, the onset of symptoms can be triggered by stress, exertion, or exposure to small amounts of dust or smoke. Remind the individual to bring inhalation medication before leaving their work place.

Cardiac conditions may cause reduced stamina and may require frequent rest periods. Remind the individual to take their medication and offer them assistance in walking.

In addition to the assistance provided to an individual during an emergency, an employer may provide manual items for detection and notification of an emergency. Such items might include:

- Strobe or horn alarms.
- Textural displays.
- Tactile/vibratory pagers.
- Talking signs.
- Wheelchair lifts.
- Evac+Chair TM

Should you have any question regarding working with people that may have a disability please contact the South Dakota Department of Human Services at (605) 773-5990 or the Office of Risk Management at (605) 773-5879.

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RISK MANAGEMENT BULLETIN

Issue 45: State Employee Blood Borne Pathogen Procedures

A Significant Blood borne Exposure is an occupational risk exposure to blood or potentially infectious body fluid by:

1. needlestick, puncture or cut by an object through the skin
2. direct contact of mucous membrane (eyes, mouth, nasal, etc)
3. exposure of broken skin to blood or other potentially infectious body fluids such as:
 - semen
 - vaginal secretions
 - any body fluid visibly contaminated with blood
 - human tissues (including dental extractions)

Employee's Immediate Responsibility

If a Significant Exposure Occurs:

“Immediately”

- Needle-sticks, Cuts & Skin Exposures should be washed with Soap & Water. (*Do NOT use bleach*)
- Splashes to the Nose, Mouth, or Skin should be flushed with Water.
- Splashes to the Eyes should be flushed with Clean Water or Saline.

“After” the Above Steps are Completed

- **Report** the Exposure to your Immediate Supervisor Right Away “Do Not Delay”
If HIV Post-Exposure Treatment is recommended, you should start treatment within **1-2 hours** after the exposure. (*This can reduce HIV infection by up to 79%*)

Supervisor's Immediate Responsibility

- **Without Delay** – If a significant blood borne exposure has occurred, get the exposed individual to the nearest Emergency Room for evaluation.
- **Testing the employee and the source is strongly recommended when a high-risk exposure has occurred.** The employee has the right to request or decline testing. The source fluid/object should be collected (if possible) for testing. If the source is a person, they cannot be tested without consent, except under the circumstances described in SDCL 23A-35B (laws dealing with sexual assault and exposure to law enforcement personnel). The exposure to the employee should be explained to the source and testing of the source requested.

- **Complete a First Report of Injury and Accident Report** for all bloodborne pathogen exposures. This form must be completed and filed with the Workers Compensation office/Bureau of Personnel within seven (7) days of the exposure/incident. An official written report is necessary for reporting the incident and to claim worker's compensation benefits for initial treatment and post exposure testing. If testing is declined this should also be reported.
- **Consult and the comprehensive "Blood borne Pathogens Exposure Guidelines"** for the complete policy, testing and forms required for this event. These guidelines may be found in your department's safety manual, from your Human Resource Manager, Risk Management Contact or from the Department of Health.
- **Ensure that the employee complete any follow up testing required in the comprehensive guidelines.** The Department of Health at **1-800-592-1861** can provide you with the guidelines, additional information, assistance & guidance or check the comprehensive guidelines at <http://intranet.state.sd.us/bop/index.htm>
- **Report exposure to your next level supervisor.**

Healthcare Provider's Responsibility

- Determine the nature & severity of the exposure.
- Evaluate source patient (if information is available).
- Counsel/treat exposed employee as applicable.
- Also evaluate employee for Hepatitis B & C as applicable.

Time is critical with this exposure. Know what you are going to do before an exposure occurs. When in doubtreport the exposure right away and seek guidance.

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RISK MANAGEMENT BULLETIN

Issue 46: Automated External Defibrillator

Background

Sudden Cardiac Arrest remains a significant cause of death in America's workplaces. OSHA attributes 13 percent of all workplace fatalities to Sudden Cardiac Arrest, and health experts estimate that more than 400,000 individuals die of Sudden Cardiac Arrest in the United States each year. According to medical experts, the key to survival is timely initiation of a "chain of survival", including CPR (cardiopulmonary resuscitation). Because of recent technological advances a portable lifesaving device, called an "**automated external defibrillator**" or "**AED**" has recently become an important medical tool. Trained non-medical personnel can use these simplified electronic machines to treat a person in cardiac arrest.

Definition of "AED"

The Automated External Defibrillator is a computerized device that can check a person's heart rhythm. It can recognize a rhythm that requires a shock and it can advise a rescuer when a shock is needed. The AED uses voice prompts, lights, and text messages to tell the rescuer the steps to take. If used properly, the AED is an effective tool when faced with sudden cardiac arrest in the workplace.

Use of an AED

Anyone can use an AED in the event of an emergency. However, it is strongly recommended that they be used by individuals trained in CPR and AED use. Use of the AED by an individual trained in CPR greatly increases the effectiveness of the resuscitation attempt.

Liability Concerns

SDCL 20-9-4.4 provides civil immunity for emergency use or nonuse of AED by a lay person.

Placing an AED in an Office Building or Other Facility

Many state agencies are placing or are considering placing AEDs in their office buildings or other state-managed facilities. There is no magical number of occupants or visitors or any other special conditions that would dictate when an AED is recommended. Each agency is responsible for determining the need for the placement of an AED in an office building or other state facility under their management. They are also responsible for the purchase of the AEDs. When multiple agencies occupy the same facility, they should coordinate their AED placement activities. AEDs should be strategically placed where they can be retrieved and taken to the location of the emergency in no more than three to five minutes.

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Training

Prior to the purchase and placement of an AED, the authorizing agency should develop an AED response program within their building or facility. The program would include appropriate CPR and AED training of the response team personnel. CPR and AED training is offered by the SD Bureau of Personnel.

Maintenance

AEDs must be adequately maintained to ensure that they will function properly in the event of an emergency. Maintenance is simple and must be done according to the operation and maintenance guidelines provided by the manufacturer. At a minimum, this will include checking for readiness after each use and at least once every 30 days. Records of the periodic checks should be maintained.

A supply kit shall be maintained at the facility and be readily available for use with the AED. The kit should contain:

- ✓ Back-up battery set
- ✓ Extra set of pads
- ✓ Safety razor for shaving chest hair when necessary to apply the pads
- ✓ Cardiovascular pulmonary resuscitation barrier (face shield or mask) for protection from infectious disease
- ✓ Two pairs of unused medical examination gloves

Purchasing an AED

State agencies wishing to purchase an AED can do so through the South Dakota Office of Procurement Management. (605)773-3405.

The Office of Risk Management will be maintaining an inventory of all AEDs in the state and should be contacted whenever an AED is purchased or is moved to a different location.

If you have any questions or would like additional information on AEDs, please contact the Office of Risk Management. (605) 773-5879 or email at ian.paul@state.sd.us.

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RISK MANAGEMENT BULLETIN

Issue 47: “State Business Travel”

As a state employee, it is often necessary to travel in and out of the state in order to fulfill your job duties. However, it is important to be aware of the laws and regulations that coincide with traveling.

State-owned or leased vehicles are to be used for state business only (SDCL 5-25-1.1.).

State vehicles are to be operated only by state employees, authorized students at state educational institutions, and consultants to the State who possess a valid driver's license. Unless otherwise provided by law, anyone other than those listed above should not operate state vehicles. Further, they should not be passengers in a state vehicle unless they are on official state business.

Liability to other persons (bodily injury and property damage) due to State employee or consultant negligence in the operation of a state vehicle will be covered by the state's Public Entity Pool for Liability (PEPL) Fund (SDCL 3-22), provided the employee or consultant was operating the vehicle while conducting official business within the course and scope of their employment.

Personal belongings in state vehicles are not insured by the State. Coverage for these items may be provided by your personal homeowner, renter or private auto policies. Check your personal policy or contact your insurance agent for more information.

State owned vehicles are exempt from “proof of insurance” laws (SDCL 32-35-124). However, a South Dakota Liability Coverage Card is located in every state-owned vehicle.

Personal Vehicles

The State pays a mileage rate to employees when you use your own vehicle on the job. However, this does not relieve you of the responsibility to insure, safely operate, maintain and protect your own vehicle. In addition, with respect to liability, the employee's personal insurance will be primary and any coverage provided by the PEPL Fund will be secondary and available only after all other coverages have been exhausted. In addition, PEPL Fund coverage will not include damage to your own personal vehicle should you be involved in an accident.

Rental Vehicles

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Like state-owned vehicles, the PEPL Fund provides liability coverage when your employment necessitates renting or leasing a vehicle. Many vehicle rental companies require you to either purchase insurance through them, or document that you already maintain the necessary coverage. A Certificate of Coverage is a written verification from the State PEPL Fund of the existence of coverage, the policy amount, the insured(s), and the period for which the coverage is effective. If you know you will be using a rental vehicle while conducting state business, you are instructed to contact the Office of Risk Management and request a Certificate of Coverage. When making a request, please provide the dates when the rental vehicle will be operated, the name and address of the rental company, and locations of the anticipated travel. The Office of Risk Management will issue a Certificate to you, and will mail a copy of the Certificate to the rental company prior to your arrival. Because liability coverage is available through the PEPL Fund, it is not necessary to purchase additional insurance through the rental agency. If an employee elects to purchase additional insurance, the costs associated with this purchase will not be reimbursed by the State.

PEPL Fund coverage will be afforded as long as the rental vehicle was operated in an appropriate manner

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RISK MANAGEMENT BULLETIN

Issue 48: "Working in Cold Weather"

The winters in South Dakota can make working conditions extremely difficult. Most of us cope the best we can and carry on with our usual activities, but the cold can be a serious occupational hazard for many workers. Workers need not be exposed to below zero temperatures to experience cold related conditions such as hypothermia. Indoor workers in refrigerated rooms or unheated buildings can also be at risk. Frostbite and hypothermia are two conditions of particular concern.

Frostbite occurs when the skin tissue actually freezes, causing ice crystals to form between cells and draw water from them, which leads to cellular dehydration. Although this typically occurs at temperatures below 30°F, wind chill effects can cause frostbite at above-freezing temperatures. Frostbite can lead to scarring, tissue damage, and possible amputation that lead to permanent disability. Symptoms of frostbite vary from swelling of the skin accompanied by slight pain in mild cases to tissue damage without pain or with burning pain or prickling in severe cases. Frostbitten skin is subject to infection and therefore must not be treated lightly. Affected area should be warmed slowly to normal temperatures. Medical attention should be received for severe cases.

Hypothermia occurs when the deep body or "core" temperature drops below 90°F. At this point the body loses its ability to prevent heat loss. The onset of hypothermia is a gradual process. Initially the victim has a sensation of cold, followed by pain. As exposure time or cold increase the sensation of pain is reduced and overall numbness develops. Additional symptoms include a decrease or absence of shivering, reduced memory and confusion, drowsiness, slurred speech, irritability, impaired coordination, dexterity and general muscular weakness. Hypothermia is a serious condition and can lead to coma and death if not treated quickly. Victims of mild hypothermia should be rewarmed in a warm bed or bath or with warming packs and blankets. Victims with severe hypothermia must receive immediate medical care from experienced medical personnel.

There are several factors that contribute to the risk of cold injury: temperature, wind speed, moisture (sweat or working near water), exposure duration, type of clothing, work/rest schedule, type of work performed, use of certain medications, degree of acclimatization (previous exposure to the cold) and age and physical state of the worker. Many of these factors can be controlled to reduce the potential for injuries - prevention is the key.

Preventing Cold-Related Disorders

Personal Protective Clothing is perhaps the most important step in fighting the elements is providing adequate layers of insulation from them. Wear at least three layers of clothing:

- ❖ An outer layer to break the wind and allow some ventilation (like Gore-Tex® or nylon);

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- ❖ A middle layer of wool or synthetic fabric to absorb sweat and retain insulation in a damp environment. Down is a useful lightweight insulator; however, it is ineffective once it becomes wet.
- ❖ An inner layer of cotton or synthetic weaves to allow ventilation.

Pay special attention to protecting feet, hands, face and head. Up to 40 percent of body heat can be lost when the head is exposed. Footgear should be insulated to protect against cold and dampness. Keep a change of clothing available in case work garments become wet.

Safe Work Practices, such as changes in work schedules and practices, are necessary to combat the effects of exceedingly cold weather.

- ❖ Allow a period of adjustment to the cold before embarking on a full work schedule.
- ❖ Always permit employees to set their own pace and take extra work brakes when needed.
- ❖ Reduce, as much as possible, the number of activities performed outdoors. When employees must brave the cold, select the warmest hours of the day and minimize activities that reduce circulation.
- ❖ Ensure employees remain hydrated.
- ❖ Establish a buddy system for working in cold environments.
- ❖ Educate employees to the symptoms of cold-related stresses – heavy shivering, uncomfortable coldness, severe fatigue, drowsiness, or euphoria.

Despite all the reasonable efforts to minimize the chances of cold weather stress on workers, risks are increased when the employees:

- ❖ Have predisposing health conditions such as cardiovascular disease, diabetes, and/or hypertension.
- ❖ Are currently taking certain medications. Employees should ask their doctors if any of the medications they are taking affect them when working in cold environments.
- ❖ Are in poor physical condition, have a poor diet, or the employee is older in age.

The quiet symptoms of potentially deadly cold-related ailments often go undetected until the victim's health is endangered. Knowing the facts on cold exposure and using good common sense while following a few simple guidelines can ensure that this season is a safe and healthy one.

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RISK MANAGEMENT BULLETIN

Issue 49: “Identifying Common Workplace Hazards”

The Office of Risk Management has the primary responsibility for implementing the risk management objectives of the state to ensure its operations are not impaired by loss. To accomplish that goal, the Office of Risk Management routinely conducts life / safety audits at state-owned institutions and facilities. Through these organized and systematic inspection programs, workplace hazards are identified and corrective measures are recommended before accident, injuries or illnesses can occur. This bulletin outlines recommendations commonly made so that each agency's loss control committee has a better understanding of what type of items are routinely found.

1. Access

- Ensure fire protection equipment such as pull stations, sprinkler risers, inspectors test valves, fire hydrants, and fire extinguishers are free of any and all obstructions.
- If concrete is broken up or is starting to heave, ensure steps are taken to either replace or repair this surfacing, or at a minimum, identify these areas so that they are clearly visible.
- Ensure the edge along walking surfaces is backfilled and flush with the adjacent surface to limit the potential for trips and falls or cause someone to lose their balance.

2. Exits

- Ensure exit doors and aisles remain unobstructed at all times.
- Provide exit signs to indicate exit paths and egress points.
- Adjust and repair self-closing doors properly. Do not prop fire rated doors open.
- Ensure exits are appropriately identified and the signs are visible at all times.
- Do not store combustible materials under stairways.

3. Fire Protection Systems

- No storage is permitted within 24" of the ceiling (18" within sprinkler heads)
- All fire protection control valves must be locked in the open position.
- Ensure hood extinguishing systems are serviced semi-annually by a certified professional.
- Ensure grease filters on cooking hoods are in place before use; filters, fans, ducts, fire suppression nozzles, etc. must be kept clean.
- Ensure fire extinguishers are inspected monthly by staff and annually by a certified professional.
- Mount extinguishers in a clear visible location so that the top is not more than 5 feet and the bottom is no less than 4 inches from the floor.

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4. Electrical

- Do not use extension cords as a substitute to permanent electrical wiring.
- Do not use multi-plug adapters as a substitute to permanent electrical outlets.
- Ensure there are no power cords running through ceilings, walls, or doorways
- Repair or replace damaged electrical cords (splicing is prohibited).
- Replace damaged or missing electrical components (i.e., outlets, junction box plates, light switch covers, etc.).
- Ensure blanks are installed in all missing circuit breakers
- Identify each circuit breaker and door to electrical rooms
- Maintain a minimum clearance of 36" around all electrical panels.
- Ensure there is no storage in electrical rooms, mechanical, boiler, and panel rooms, and maintain a minimum of 30" clearance around water heaters.
- Unplug small appliances (i.e., coffee makers, toasters, etc.) when not in use.

5. General Fire Safety

- Maintain all storage in a neat and orderly manner
- Ensure all compressed gas cylinders are secured at all times whether they are full or not.
- Maintain fire resistive construction by patching holes in walls and/or ceilings throughout the building
- Ensure oily rags and similar materials are stored in a metal or other approved container with a tight fitting cover.

6. Flammable Liquids

- Remove all flammable liquids that are not stored in original containers or approved safety cans, i.e. gasoline. All hazardous materials must be properly labeled.
- Ensure all flammable or combustible liquids are stored in an NFPA-approved flammable liquid cabinet.

These recommendations are commonly made as a result of hazards identified during a life / safety audit. The Office of Risk Management is committed to working closely with each agency's loss control committee. If you would like our office to conduct a life / safety audit of your facility, or conduct a training seminar with your loss control committee, please let us know and we will be happy to schedule a date.

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RISK MANAGEMENT BULLETIN

Issue 50: “Dangers of Homemade Equipment”

It is necessary that employees have the right tools and equipment in order to perform the job duties assigned to them. However, often times these tools and equipment are very costly or sometimes unavailable. As a result, employees often times fabricate the tools and equipment themselves using their ingenuity and talents. Although this is one way to obtain the needed equipment specifically fabricated for a designed task, and often times at a much lower cost, it is unlikely that this equipment will meet any federal or state inspection requirements. Therefore, the agency which owns the equipment would likely assume liabilities should an accident occur due to the design or construction of the equipment.

For example, a shop-built hoist may be less expensive than if a commercial hoist was purchased. However, one must consider the risks associated with this piece of equipment. Because the equipment was built "in-house", there are no warranties associated with the piece of equipment. In addition, the State will assume liabilities associated with the hoist should an accident, injury or death occur.

Because of the wide-variety of homemade or shop-built equipment that may be present at state facilities, it is difficult to segregate what is and is-not acceptable. Therefore, the Office of Risk Management provides the following recommendations as they relate to homemade or shop-built equipment.

- All equipment should be purchased from a reputable manufacturer that has appropriate liability insurance.
- If a piece of equipment will be seldom used and subsequently too expensive to purchase, consideration should be given to renting this piece of equipment before attempting to fabricate a similar item.
- All homemade or shop-built equipment must be approved by a supervisor in conjunction with the Office of Risk Management before use.
- Homemade or shop-built equipment that is required to be plugged into an electrical source or are gas-operated are strictly prohibited.
- Homemade or shop-built equipment that is used for hauling, hoisting, or similar function are prohibited unless it is inspected, certified, and documented on an annual basis by a qualified engineer competent in this field. In addition, the load capacity rating must be affixed to the equipment and must be clearly visible.

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RISK MANAGEMENT BULLETIN

Issue 51: “Safety Standards for Towing Trailers”

Routinely in State Government, trailers are used for hauling various equipment and other items. The following information should be reviewed prior to using towing trailers. All information in this bulletin applies to both open and closed cargo trailers.

Drivers Responsibilities

- Read the information outlined in this document.
- Should have experience and training in towing trailers, especially on public roadways.
- Should conduct a pre-trip safety check. Included in this document is a recommended pre-trip checklist that should be used when completing this process.

Tow vehicle

- Each vehicle equipped with a trailer hitch should have a label identifying the vehicle payload, towing capacity, type of hitch, size of hitch ball, etc.
- The operator must verify that the towing capacity for the tow vehicle is adequate. Gross Combined Vehicle Weight (GCVW) is the gross combined vehicle weight of the tow vehicle and coupled trailer. Operator must refer to the towing label.
- The operator must verify that the trailer hitch and the ball on the tow vehicle are the proper class and size for the trailer being towed. For those State agencies using a pintle hitch system for heavier loads, the operator must refer to the towing label.
- The operator must verify that the hitch, hitch ball, trailer coupler, safety chains, and wiring harness are in good condition.

Trailer

- The trailer must be of type designed for the intended usage.
- If the trailer does not have fenders, wheel flaps are recommended.
- The trailer must be equipped with lights and safety chains to secure the trailer to the tow vehicle.
- If the trailer has a gross weight of over 3,000 pounds, the trailer must be equipped with brakes.

Cargo

- The trailer should be loaded from front to rear and balanced from side to side. (When connected, the trailer and the tow vehicle should be level at the hitching point.)
- All cargo should be secured with tie downs and/or chains.
- The four-point tie down system should be used at each corner to secure rolling cargo stock.
- During the trip, the cargo should be checked periodically to ensure cargo is secure.

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Operation

- Travel at a reduced speed and maintain a safe following distance.
- Comply with posted speed limits, but do not exceed the trailers designated speed capacity.
- Tires should be blocked, both front and rear, before uncoupling the trailer.
- Whenever possible, a spotter should be used when backing. When a spotter is not available, the driver must exit the vehicle to make sure the path is clear of obstacles to the rear, and that there is adequate side and overhead clearance. It is recommended the driver roll down the window and turn off the radio before backing.

Pre-trip checklist for towing trailers

- Check tires for proper tire pressure on the trailer and tow vehicle.
- Make sure all wheel lug nuts are tight.
- Check hitch to make certain it is secured and the correct hitch ball is installed.
- Make sure the receiver hitch is secured with a safety pin.
- Check the pintle hitch to make certain the safety pin is in place.
- Make sure all the lights are working properly.
- Make sure the safety chains are in place and secured. The chains should be crossed below the trailer tongue.
- Check that all cargo is securely fastened on the trailer.
- Be sure the trailer jack is raised and in place.
- Remove all debris from the trailer.
- Check and adjust all mirrors before driving.
- If equipped, check to make sure the trailer brakes are operational.

All identified defects that are noted from the pre-trip checks should be reported to your supervisor and maintenance personnel. The trailer should not be used until repairs are completed.

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RISK MANAGEMENT BULLETIN

Issue 52: “Supervisors Role in Risk Management”

Supervisors play a very important role in risk management. A successful risk management program starts at the top of the organization. It is essential that supervisors take the lead by requiring that employees are properly trained and are well-equipped to safely and effectively perform their duties. Supervisors should assure top-to-bottom compliance with both statewide and program-specific policies. This should be well-communicated and incorporated into the day-to-day operations of the organization.

As a supervisor, some key things you can do to assure a safe working environment and minimize liability include:

- Inform all employees of both state-wide and agency-specific policies. Employees should be required to review the policies and have copies available at all times.
- Routinely review and update policies and keep employees informed on any additions or changes.
- Provide the necessary training for employees to perform their assigned duties. All training should be documented and, at a minimum, be kept with the employees personnel file. In addition, tracking and documentation of training is maintained by the Bureau of Personnel on the state’s Human Resource Information System. Instructions have been provided to agency managers and supervisors on the process for using the state’s Human Resource Information System. Training and necessary certifications should be reviewed routinely and kept up to date.
- Follow-up on any reported accidents, incidents, and unsafe conditions and document corrective actions taken.
- Use the performance communication document too thoroughly, honestly, and accurately document employee performance problems.

A supervisor’s responsibilities go beyond just monitoring the performance of their employees. They have the duty of assuring a safe work environment for their employees and providing them with the training and other tools they need to do their jobs safely and effectively with minimal risk or potential for liability.

The supervisor’s involvement in risk management increases the ability to aggregate and better understand risks across the organization. Understanding of risk helps both the supervisor and employee develop internal controls that are designed to mitigate risk. Adhering to the recommendations in this bulletin will help in providing a safer workplace.

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RISK MANAGEMENT BULLETIN

Issue 53: Certificates of Insurance issued through the Office of Risk Management

The Office of Risk Management is frequently asked to issue certificates of insurance to third party groups requesting proof of insurance. A certificate of insurance is often demanded where liability and large losses are a concern.

The certificate of insurance is a document evidencing the fact that an insurance policy has been written and includes statement of coverage and limits at the time of issuance of the certificate. Certificates cannot modify or change the terms of the insurance contract. The certificates are issued regarding the State of South Dakota's officers, agents, and employees.

Certificates of insurance should be requested by the state employee or state agency conducting business with the third party. The third party should not be directed to contact the Office of Risk Management. When requesting a certificate the following information must be provided:

- **Who will be the certificate holder?** This is the third party asking for proof that the insurance is in effect. The certificate holder's name and address should be included here.
- **Description of activity or event.** This will need to include the type of activities that are being covered by the certificate. Examples of this are: a university using a third party's facility for basketball practice or other activity; leasing a third party's equipment; leasing a vehicle; etc.
- **The dates of the event,** (if applicable). This will need to be included if the certificate is specific to an event set for a predetermined timeframe. Keep in mind that the fiscal year runs from July 1 to June 30, of which the certificate will automatically expire on June 30. If coverage is needed beyond the expiration date, a new certificate should be requested with information outlined in this bulletin.
- **The type of coverage needed.** Identify what type of coverage is being requested by the certificate holder such as; general liability, automobile liability, etc.
- **Your address.** This will allow us to send a copy directly to you if needed. A copy will always be provided to you either by hard copy or electronic copy.

Once the above information is received to the satisfaction of the Office of Risk Management, a certificate of insurance will be issued directly to the certificate holder with a copy being sent to the requesting agency. In some circumstances, additional information may be needed to ensure we are able to provide coverage as the certificate holder is requesting. The request should indicate if the certificate is time sensitive so it can be issued accordingly.

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RISK MANAGEMENT BULLETIN

Issue 54: State Vehicle Usage

A frequently asked question about State vehicles is can I take a vehicle home if I am leaving really early in the morning? Do I have to drive all the way to the office to get a vehicle just to drive back by my residence? If I take a State vehicle home can I “hide” it in the garage so no one will know I have it?

Below are the answers to those questions:

- In order to take a fleet vehicle home, your supervisor must first obtain prior approval from the Fleet Director at Fleet and Travel Management
- They need to give specific reasons why taking a vehicle home is an efficient use of State resources and how it will benefit the State rather than the employee.
- Each request will be looked at on a case by case basis. It is not a blanket approval. If there are any questions the Fleet Director will be in contact with your supervisor and give final approval or disapproval for the request.
- If approval is granted fleet vehicles are **NOT** to be parked in a garage. If possible best practice would still be to make arrangements to park at a state lot like DOT shops.
- Please allow enough time for Fleet and Travel to review the request

Factors that may be considered are:

- Hazardous weather conditions
- The amount of time driving in the very early or late hours of the day
- Cost saving (Not having to get a hotel room)

If you have any questions please feel free to call the Office of Risk Management or Fleet and Travel.

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