



**OKLAHOMA
DEPARTMENT
OF
CENTRAL SERVICES**

RISK MANAGEMENT PROGRAM

**ADMINISTRATIVE RULES
OAC 580:25**

July 2009

(Includes emergency rules approved by the Governor and effective, November 3, 2009, which are denoted with underscoring and strikeouts.)

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**TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 25. RISK MANAGEMENT PROGRAM**

SUBCHAPTER 1. GENERAL PROVISIONS

Section

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580:25-1-1. Purpose

(a) In order to accomplish the objectives contemplated for the Risk Management Program under 74 O.S. Section 85.34 et seq., it will be necessary to establish an on-going relationship between each state agency covered by the act and the Risk Management Division of the Oklahoma Department of Central Services, as well as with any other covered entity.

(b) State agencies and other covered entities which do not presently maintain any Risk Management Program will be directed and instructed to establish a program. Existing programs must be standardized to the extent necessary for their consolidation and administration by the Risk Management Division. Reporting, investigation, adjustment, settlement and litigation of claims must be standardized. Effective means for monitoring and improving agency performance in these areas must be found. These requirements suggest the need for criteria, standards, guidelines, and reporting procedures to govern these activities. Chapter 25 of Title 580 will provide some of the resources.

[Source: Amended at 11 Ok Reg 679, eff 11-16-93 (emergency); Amended at 11 Ok Reg 3933, eff 7-11-94]

580:25-1-2. Definitions

The following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Administrator" means the officer appointed by the Director of Central Services to serve as Risk Management Administrator.

"Agency Risk Management Coordinator" means the individual, officer or employee of any state agency or other covered entity appointed by the state agency or other covered entity as the designated point of contact for the Risk Management Administrator for all risk management purposes, and shall include any employee or agent of the Risk Management Coordinator and such assistants as may be necessary shall be employed or appointed by such state agency or other covered entity to supervise and manage the agency Risk Management Program.

"Agency Risk Management Program" means the system within any individual state agency or other covered entity for coordination of risk management within such state agency or other covered entity for coordination of risk management activities between the state agency or other covered entity and the Risk Management Division, and for elimination, reduction, and minimizing of all insured or self-insured risks through a

continuous effective loss-prevention and loss-control program, under the direction of the Risk Management Division.

"Authorized legal Counsel" means:

- (A) The Attorney General of the State of Oklahoma;
- (B) An attorney authorized to represent a state agency or other covered entity.

"Casualty incident" or **"liability incident"** means:

- (A) Any liability occurrence or event:
 - (i) Taking place upon or within any real property owned or used by the State of Oklahoma; or,
 - (ii) Involving participation by any officer, employee or volunteer of any agency of the State of Oklahoma who may be acting within the scope of his or her employment; or,
 - (iii) Involving the temporary detention of a child in a juvenile detention facility which qualified as an other covered entity under the provision of 74 O.S. Section 85.34D; or
 - (iv) Involving any vehicle or other personal property owned by an agency or other covered entity and operated by an employee or volunteer of that agency or other covered entity; and,
- (B) Any liability occurrence or event:
 - (i) Which results in personal injury or property damage; and,
 - (ii) Where there is probable cause to believe that such occurrence or event may give rise to a claim for damages against the state, an agency, an other covered entity or any of their employees.

"Claim" means the formal notice served upon proper legal authority by any claimant or the representative of any claimant, as provided by the Tort Claims Act, 51 O.S. Section 151 et seq., or any civil lawsuit brought against the state or its employees, or any administrative or arbitration proceeding brought against the state or its employees.

"Claimant" means the person or his authorized representative who files notice of a claim in accordance with 51 O.S. Section 151 et seq.

"Liability Insurance" means any type of commercial insurance, including self-insurance, administered or procured by the Risk Management Division including Directors and Officers Liability and any other liability insurance coverage for professional liability or errors and omissions coverage, including but not limited to, Law Enforcement Liability, Accountants Errors and Omissions, and Legal Liability.

"Loss Prevention and Loss Control" means any and all programs and systems designed to transfer, prevent, eliminate, mitigate, manage, and minimize the risk of loss due to any physical or financial cause, human or otherwise, and that may result in or give rise to a claim against the State, an agency, and any other covered entity, or any officers, directors, or employees of any group participating in the Risk Management Program.

"Other covered entity" means any organization or entity other than a state agency for which the Risk Management Administrator is authorized or required by law to obtain or provide insurance coverage.

"Payment of claim" means partial or full payment of a claim in compromise thereof by the appropriate lawful authority, and subject to any procedural requirements imposed by statute, resolution or written policy.

"Premiums" means the fees or payments levied and collected for the purpose of providing insurance coverage through a self-insurance program, or purchased insurance or a combination thereof.

"Property incident" means:

- (A) Any occurrence or event involving any real or personal property owned by the state or in the possession of the state for safekeeping; and
- (B) The result of which the property is damaged lost or destroyed by accident, misfortune or mishap.

"Reportable vehicle incident" means any occurrence or event involving a vehicle resulting in a liability incident including acts arising out of law enforcement practices. The term also includes any incident involving any vehicle or property used to conduct business within the scope of authority or employment of any employee, volunteer or official of the state, any agency or any other covered entity.

"Risk Management Division" means the organizational unit of the Oklahoma Department of Central Services which administers the Risk Management Program under the direction of the Risk Management Administrator.

"Risk Management Program" means the consolidated and centrally administered system for coordination of risk management activities between any state agency or other covered entity and the Risk Management Division for acquisition through the Risk Management Division of property and casualty insurance for the management of all property, casualty and liability incidents, and for eliminating, reducing and minimizing all risks through a continuous, effective loss-prevention and loss-control program, under the direction of the Risk Management Administrator.

"State" or "Agency" means any board, commission, committee, institution, department, instrumentality or entity designated to act on behalf of the State of Oklahoma.

"Vehicle" means:

- (A) In case of other covered entities extended services by authority of 74 O.S. Section 85.34A, any vehicle, vessel or aircraft used for or in fire fighting by any such entity;
- (B) In case of other covered entities extended services by authority of 74 O.S. Section 85.34C, any vehicle used for transportation of elderly or handicapped person by such entity;
- (C) In the case of other covered entities extended services by authority of 74 O.S. Section 85.34D, any vehicle used to provide for the temporary detention of children in a juvenile detention facility by such entity;
- (D) In the case of the state or any agency, any self-propelled vehicle or mobile equipment which is owned by the state, or operated by any state employee who may be acting within the scope of state employment, whether or not the equipment is licensed for road use.

[Source: Amended at 11 Ok Reg 3933, eff 7-11-94; Amended at 11 Ok Reg 679, eff 11-16-93 (emergency); Amended at 18 Ok Reg 3247, eff 7-26-01; Amended at 21 Ok Reg 2871, eff 7-11-04]

580:25-1-3. Source of authority

The Risk Management Division of the Department of Central Services receives its authority from 74 O.S. Section 85.34 et seq. Section 85.34A explains its creation and

authority. Section 85.34B deals with selection of personnel. Section 85.34C explains powers and duties of the director which govern the activities of the Risk Management Division of the Department of Central Services. Authority for extension of insurance acquisition services or self-insurance program administration services is authorized at 74 O.S. Section 85.34A for vehicles, vessels and aircraft used by certain fire departments and districts; at 75 O.S. Section 85.34C for transportation of elderly or handicapped persons, performed or provided by counties, municipalities, certain community action agencies, certain charitable corporations or certain nonprofit organizations operating pursuant to a contract with the State of Oklahoma or a political subdivision; and at 74 O.S. Section 85.34D for tort liability risks resulting from providing for the temporary detention of children in certain juvenile facilities.

[Source: Amended at 15 Ok Reg 4104, eff 8-27-98]

580:25-1-4. Administration

The Director of the Department of Central Services hires or contracts for the services of a Risk Management Administrator who administers the comprehensive professional risk management program and directs the activities and functions of the Risk Management Division.

[Source: Amended at 11 Ok Reg 679, eff 11-16-93 (emergency); Amended at 11 Ok Reg 3933, eff 7-11-94]

580:25-1-5. Responsibilities and duties

The Administrator is responsible for the acquisition and administration of all insurance purchased by the state or administration of any self-insurance plans and programs adopted for use by the state. On a competitive bid basis, the Administrator has the authority to purchase insurance for the state for any type of coverage which may be necessary to protect the state from financial loss. The Administrator is also empowered to provide insurance acquisition services or self-insurance program administrative services for certain organizations and bodies outside of state government, at the sole expense of such organizations and bodies, as provided by law.

[Source: Amended at 11 Ok Reg 679, eff 11-16-93 (emergency); Amended at 11 Ok Reg 3933, eff 7-11-94]

SUBCHAPTER 3. CASUALTY OR LIABILITY INCIDENT MANAGEMENT

Section

- 580:25-3-1.** Establishment of programs
580:25-3-2. Functions of programs

580:25-3-1. Establishment of programs

There is hereby established the Oklahoma Risk Management Program. Under this program each agency or other covered entity shall appoint an agency risk management coordinator and maintain an agency risk management program.

580:25-3-2. Functions of Program

Each Agency Risk Management Program shall have assigned to it sufficient personnel to fulfill each of the following functions:

(1) Incident scene management.

(A) **General.** The Agency Risk Management Coordinator shall be responsible for assuring that proper steps are taken at the scene of any liability incident to ensure the safety and security of personnel and property, and to otherwise manage the scene in the best interest of the Oklahoma Risk Management Program. Employees of all agencies and other covered entities must be informed and encouraged to promptly report any potential liability incident in which they might be involved, or which they might witness, to proper supervisory and security personnel.

(B) **Reports by witnesses.** Any employee or officer of any agency or other covered entity who is involved in any potential liability incident, as a witness or otherwise, must immediately notify his or her immediate supervisor, as well as the security office or law enforcement officer with responsibility for the area where such incident occurs, if any. In case of any liability incident involving motor vehicles, the following procedure specified in paragraph (2) of this section, shall be followed.

(2) Reporting vehicle liability incidents.

(A) The operator of a vehicle involved in a reportable vehicle incident shall immediately notify the nearest security office or law enforcement officer with responsibility for the area where such incident occurs, unless incapacitated by injury to the extent that notification is impractical. The Scope of Employment form shall be completed and signed by the supervisor of the employee involved in the accident. The Scope of Employment form shall include a full and accurate description of the specific work activity or assignment the employee was engaged in at the time of the accident.

(B) The operator shall remain at the scene until completion of all acts required by law or the rules in 580:25-3 to be performed at the scene, unless injuries sustained require treatment or other extenuating circumstance exist preventing the operator from remaining at the scene.

(C) The operator shall fill out a required "In Case of Accident" form furnished in the glove compartment or other applicable designated place of all vehicles. This form shall be given to the Agency Risk Management Coordinator who will fill out a "Standard Liability Incident Report" from which, together with the "In Case of Accident" form, and "Scope of Employment" form shall be forwarded to the Risk Management Division as soon as the Risk Management Coordinator has completed an investigation of the liability incident.

(D) Any liability incident involving a fatality, personal injury or property damage must be reported immediately to the Risk Management Division. An answering service is available 24 hours a day, seven days a week.

(3) Statements by parties involved.

(A) Employees of any agency or other covered entity, whose conduct or performance of duty give rise to a "Liability Incident" shall be required to cooperate in good faith with the defense of any claim which may be presented in connection with the "Liability Incident". Any such employee's cooperation shall

include, but not be limited to refraining from making any statement or comment, or from executing any writing or document concerning such incident, except as may be required by the employee's employer, authorized legal counsel, the Risk Management Division, any law enforcement authority investigating the "Liability Incident" at the scene, or by statute. No employee involved in a "Liability Incident" has the authority to agree to or promise to settle any claim

(B) Any employee who is a witness to a "Liability Incident", but who did not commit or perform any act or omission contributing to the occurrence giving rise to the "Liability Incident" shall refrain from making any statement or comment, or from executing any writing or document concerning such incident, except as may be required by the employee's employer, authorized legal counsel, the Risk Management Division, or any law enforcement authority investigating the "Liability Incident" at the scene. Providing, however, that all such employees shall remain free to make any statement or comment concerning agency operations which are protected by 74 O.S. Section 841.7 and 841.8.

(4) **Investigation.** The Agency Risk Management Coordinator shall ensure that each liability incident involving the property or personnel of the agency or other covered entity is promptly investigated and that such investigation shall, at a minimum, involve ascertainment of the identities of all possible claimants and all known witnesses. A description of the occurrences giving rise to damages including the date time and location, shall be provided and an estimate of the possible amount of damages shall be made. Photographs of the accident scene or property damage should be taken as close to the date and time of the liability incident as possible. The identification of a party or a witness shall include full name, address, home and business phone numbers, date of birth, social security number and brief summary of what is known or reported by such witness.

(5) **Records keeping.** The Agency Risk Management Coordinator shall keep orderly records, organized so as to be readily retrievable by date, location of incident and names of parties potentially giving rise to liability, of each investigation of any liability incident. The Agency Risk Management Coordinator shall also prepare and keep monthly summary of all liability incidents, recording the date, names of possible claimants, nature of incident, nature of injuries, estimate of damages and date investigation completed. A unique identification number shall be assigned to each liability incident which may be used to specify the matter in any communications between the Agency Risk Management Coordinator and the Risk Management Division.

(6) **Reporting procedures.** The Agency Risk Management Coordinator shall:

(A) **Give telephone notice to the Risk Management Division.** The Agency Risk Management Coordinator shall give telephone notice of any liability incident to the Risk Management Division not later than the next working day following the occurrence of any such incident.

(B) **Fill out "Standard Liability Incident Report".** The Agency Risk Management Coordinator shall fill out and send to the Risk Management Division a "Standard Liability Incident Report" form furnished by the Administrator to all agencies and other covered entities by the Risk Management Division. This report should include but not be limited to the following information:

- (i) The time, date, and location of accident.
- (ii) The department involved, and where a vehicle is involved, vehicle number or tag number, year and make, operator's name and telephone number at home and work. Owner's name if leased or rented.
- (iii) A description of other property or vehicle, if any, year and make, name and address of operator and owner and telephone numbers.
- (iv) The names of injured persons and the name of hospital(s) where such persons may receive treatment.
- (v) The damage to the vehicle, if any, and the vehicle's location.
- (vi) The name of the investigating officer.
- (vii) A brief description of the incident.
- (viii) The names, addresses and telephone numbers of all witnesses.
- (ix) Photographs of the incident scene.

(C) Forward "In Case of Accident Form" and "Scope of Employment Form" to the Risk Management Division. The Agency Risk Management Coordinator shall send to the Risk Management Division the "In Case of Accident" form filled out by the operator of any vehicle involved in a reportable vehicle incident. Be sure to place a new "In Case of Accident" form in the vehicle as soon as possible if the vehicle is to be subsequently used to conduct business after applicable repairs have been procured and the agency or other covered entity is satisfied the vehicle is safe to operate.

(D) Send informational material to the Risk Management Division. The Agency Risk Management Coordinator shall complete all preliminary investigations following a liability incident and send a completed "Standard Liability Incident Report", the "In Case of Accident" report, if any, and any other pertinent information that is the result of a thorough investigation to the Risk Management Division. The Scope of Employment form shall include a full and accurate description of the specific work activity or assignment the employee was engaged in at the time of the accident.

(7) Training and notices. Every Agency Risk Management Program shall make adequate provision for training and notification to all employees regarding their responsibilities under the Oklahoma Risk Management Program. Employees shall be trained or notified regarding necessary reporting requirements in the event they may witness or be participants in a liability incident. Posters and signs shall be posted in conspicuous places informing employees, supervisors and other officers of their various responsibilities under the program.

(8) Risk Management Manual. Every agency or other covered entity shall formulate and adopt an "Agency Risk Management Procedure Manual" consistent with the minimum requirements of the rules and regulations contain in OAC 580:25-3. Such a manual shall fully describe the organization and procedures for the conduct of Risk Management activities within such agency, shall contain samples of all forms in current use, shall describe the proper reporting chain-of-command for routing necessary information to the Agency Risk Management Coordinator, shall identify all personnel having specified responsibilities for risk management activities and shall contain such other information as shall be required from time to time by the Risk Management Division or deemed pertinent by the Administrator. Agency Risk

Management procedures shall be updated from time to time to maintain the currency of the information contained in the manual, and such modifications or revised editions shall be promptly filed with the Risk Management Division.

(9) **Coordination with the Risk Management Division.** One of the primary functions of the Agency Risk Management Coordinator will be to facilitate cooperation between the agency or other covered entity, the Risk Management Division, and legal counsel, when necessary, in cases where a liability incident actually gives rise to a claim for damages against the state or other covered entity. It will often be necessary for meetings, interviews, record reviews and other investigative activities to be arranged between Risk Management Division personnel and covered employees. The Agency Risk Management Coordinator will be the primary source of contact with an agency or other covered entity for purposes of arranging such matters.

(10) **Forms.** From time to time, the Risk Management Division may promulgate forms for use in the various Risk Management activities described above, including forms of notices, reports, manuals, etc. Unless a form has been prescribed by the Risk Management Division, it shall be the duty of the Agency Risk Management Coordinator to establish standard forms for use within the other covered entity to carry out Risk Management activities under 74 O.S. Section 85.34 et seq. and the rules contained in OAC 580:25-3. In any case where such a form has been prescribed by the Administrator for any purpose, it shall be adopted and made the exclusive form for such purpose by each Agency Risk Management Coordinator. Seminars may be conducted from time to time by the Risk Management Division to inform state or other covered entities employee(s), officer(s), Agency Risk Management Coordinator(s), Director(s), manager(s), supervisor(s), and other responsible personnel of systematic changes in standard forms of notices, reports, manuals, etc. Instructions, dates, identity of personnel expected to attend, etc., will be communicated by the Risk Management Division on an as-needed basis.

[Source: Amended at 11 Ok Reg 679, eff 11-16-93 (emergency); Amended at 11 Ok Reg 3933, eff 7-11-94; Amended at 18 Ok Reg 3247, eff 7-26-01; Amended at 26 Ok Reg 2598, eff 7-11-2009;]

SUBCHAPTER 5. CASUALTY OR LIABILITY CLAIMS MANAGEMENT, PAYMENT AND REPORTS

Section

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| 580:25-5-1. | Claims management |
| 580:25-5-2. | Claims payment |
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580:25-5-1. Claims management

(a) Settlement and payment of claims.

(1) **General.** While the Risk Management Division will explore alternatives, most claims may be paid from the state's respective risk pools and not from commercial insurance. This requires that procedures be established to administer and settle

claims. Where the Risk Management Division has approved the acquisition of a policy or contract of liability insurance, the terms of which make it applicable to any liability incident, the Administrator shall, upon receiving notice of any liability incident or claim from an agency or other covered entity, ascertain the existence and applicability of such insurance, and, within a reasonable time thereafter, notify the insurer of the incident or claim, as may be required by the applicable policy or contract of insurance. The terms and conditions of the contract or policy shall govern the rights and obligations of the state, agency or other covered entity and the insurer with respect to the investigation, settlement, payment and defense of claims or suits against the state, an agency, and other covered entity or any of their employees.

(A) With respect to claims subject to a contract or policy of liability insurance the following shall apply:

- (i) A State agency, or any other covered entity, and its authorized attorney shall cooperate with any and all requests for information made by the Risk Administrator, or his/her representative or the insurer, or risk denial of coverage.
- (ii) In the case of any possible settlement, regardless of the deductible or self-insured retention level claim, a state agency or any other covered entity and its attorney, shall notify the Risk Administrator or his/her representative prior to a settlement offer being made.
- (iii) If any State agency, or any other covered entity, or its attorney fails to reasonably cooperate with Risk Management or the insurer, or fails to notify the Risk Administrator or his representative, prior to a settlement offer being made on any claim subject to a contract or policy of liability insurance, the Risk Administrator may refuse to pay the claim.
- (iv) Settlement of claims subject to a commercial contract of policy of liability insurance shall also be subject to the liquidity of any accounts created for the self-insured retention pool established for that particular liability insurance policy or contract.
- (v) Any litigation concerning the Comprehensive Professional Risk Management Program of the Department of Central Services shall be handled by the Attorney General of the State of Oklahoma. [74 O.S., Section 61.4] Accordingly, settlements of matters in litigation shall not be settled without consultation with the Office of Attorney General and the Risk Administrator.
- (vi) Private counsel hired by Risk Management or by any state agency are subject to and must also comply with the rules and regulations of Risk Management with respect to claims subject to a contract or policy of liability insurance.

(B) Claimants shall provide to Risk Management any and all requested information in order for Risk Management to comply with all State and Federal laws. If a claimant fails to comply with such requests, claimant's claim shall be invalid and ineffective unless and until claimant provides the information to Risk Management necessary for it to comply with State and Federal laws. However, nothing in this section shall toll or delay the time limits provided by the Oklahoma Governmental Tort Claims Act governing a claimant's obligation in reporting a claim.

(C) Risk Management shall not be responsible, accountable, or liable for any insurance or self-insurance program outside of those offered by Risk Management under 74 O.S. § 85.58A or any other insurance or self-insurance program which fails to comply with the requirements of 74 O.S. § 85.58A under any State or Federal law.

~~(B)~~(D) Otherwise, in the absence of any applicable contract or policy of insurance, the following regulations shall be controlling:

(2) **"Official State Business" and "Scope of Employment"**. Claims against the state shall be investigated to determine whether the employee was on official state business within the scope of their employment. For the purposes of the Risk Management Program, the determination of whether an employee's negligent actions will be covered is at the sole discretion of the Risk Management Division of the Department of Central Services. Risk Management will first look to see if the employee is paid for their employment from state tax proceeds, in the case of a volunteer, Risk Management will look to the organization utilizing the volunteers services to determine if the volunteer was reported as such in the annual Risk Management state employee/volunteer count. Next, Risk Management will determine whether the activity engaged in by the employee/volunteer at the time of said claim is officially sponsored by the insured organization. This determination is made by review of the information as well as additional investigation if necessary supplied on an official "Scope of Employment" form completed and turned into Risk Management by the organization. The Scope of Employment form shall be completed and signed by the supervisor of the employee involved in the accident. The Scope of Employment form shall include a full and accurate description of the specific work activity or assignment the employee was engaged in at the time of the accident.

(A) In the case of Institutions of Higher Education, for liability coverage purposes all extracurricular activity clubs, associations or organizations shall be treated in the following manner:

(i) Clubs, associations, and or organizations affiliated with a college or university shall be covered under the states self-insured liability insurance program for claims arising under the Oklahoma Governmental Tort Claims Act as long as the members are enrolled students of the college or university and the activity is part of a university/college course, athletic competition, or deemed by the college or university as an official university or college sponsored activity.

(ii) In order to obtain liability coverage for such clubs, associations, and or organizations, the college or university must have paid the annual tort and motor vehicle premiums assessed by State Risk Management. Premiums for such clubs, associations and organizations shall be established by State Risk Management. Any use of state property utilized in the activity sponsored by the university or college shall be in compliance with state law regarding the use of state property.

(iii) Claims arising out of the use of state vehicles or personal vehicles, while on official state business by students, will be deemed denied if the student is acting outside the scope of their volunteer/employment status.

(B) In the case of state agencies, use of state vehicles and liability coverage for such use shall be provided by State Risk Management in the following manner:

(i) Liability coverage will be afforded any state employee operating a motor vehicle while in the scope of their employment and on official state business. For the purposes of this section, motor vehicle includes state vehicles owned or leased by the agency, personal vehicles used by an employee for official state business, and privately leased vehicles.

(ii) State employees provided a state vehicle on a "24 hour" take home basis will be deemed to be covered during their established lunch period if the use of the vehicle is for driving to and from an eating establishment. Personal errands or activities undertaken during a lunch hour will not be covered by State Risk Management. The employee will assume all liability while engaging in such activities.

(3) **Claims settled for amounts not exceeding \$25,000.00.** A claim settlement in which a payment not exceeding \$25,000.00 is agreed upon may be paid by the Administrator pursuant to a settlement agreement negotiated and approved by authorized legal counsel.

(4) **Claims settled for amounts exceeding \$25,000.00.** A claims settlement in which a payment exceeding \$25,000.00 is agreed upon may be paid by the Administrator pursuant to a settlement agreement negotiated and approved by authorized legal counsel, except that the settlement shall not be effective until approved by the district court as provided by law.

(5) **Disposition of claims against the state.** In the case of any claim against the state or an agency, the Attorney General, or other authorized legal counsel representing the state or agency in place of the Attorney General, may defend, settle, deny, compromise or otherwise dispose of any liability incident or claim as may be deemed necessary and proper under existing Oklahoma law.

(6) **Disposition of claims against a political subdivision and other covered entities.** In the case of any claim against any other covered entity which is also a political subdivision as defined by the Oklahoma Governmental Tort Claims Act, 51 O.S. Section 151 et seq. (the Act), defense, settlement or compromise of any claim or liability incident may be made by authorized legal counsel for the political subdivision, and payment or settlement may also require approval of the governing body, if any, of such political subdivision, as required by the Act, in addition to the approvals specified in 580:25-5-1(a)(2) and (3).

(7) **Limitations.** In no event shall self-insurance coverage provided to the state, an agency or other covered entity exceed the limitations on the maximum dollar amount of liability specified by the Oklahoma Governmental Tort Claims Act, which limits are codified at the time of adoption of these rules at 51 O.S. Section 154. These limits shall be applicable in cases of liability incidents involving any other covered entity, without regard to whether the other covered entity is qualified for treatment as a political subdivision as that term is defined in the Oklahoma Governmental Tort Claims Act. Where the Risk Management Division has approved the acquisition of a policy or contract of liability insurance, the terms of which make it applicable to any liability incident, the applicable limits of liability shall govern the dollar amount of

indemnity available to the state, any agency or an other covered entity, and no self-insurance coverage shall be provided or paid.

(b) **Collection of liability claims owed to the state.** In the case of any incident where the state has incurred a loss through the wrongful or negligent acts of a private person or other entity, the following procedures will apply:

(1) Money damages collected by the Risk Management Division in any case of loss of property belonging to the state by a private person or other entity is liable for a wrongful act, will be paid to the Risk Management Division and subsequently disbursed through the agency clearing account by the Accounting Division of the Department of Central Services to the injured agency having charge of such damaged or lost property pursuant to 74 O.S., Section 85.9A.

(2) In the event a private person or other entity, whether insured or uninsured, is liable for a wrongful act giving rise to damage or loss of property of the state and such person, entity, or its insurer declines or refuses to pay or settle a written demand by the Risk Management Division for damages within a reasonable time, the Administrator shall refer the matter to the Attorney General who may take whatever action he deems necessary and proper to collect all money damages owed to the state for its loss. All money damages collected pursuant to this provision by the Attorney General, less any amounts properly credited to the Attorney General's Evidence Fund, will be paid to the Risk Management Division and subsequently disbursed through the agency clearing account by the Finance Division of the Department of Central Services to the injured agency pursuant to 74 O.S., Section 85.9A.

[Source: Amended at 11 Ok Reg 679, eff 11-16-93 (emergency); Amended at 11 Ok Reg 3933, eff 7-11-94; Amended at 18 Ok Reg 3247, eff 7-26-01; Amended at 21 Ok Reg 2871, eff 7-11-04; Amended at 26 Ok Reg 2598, eff 7-11-2009; Amended at 27 Ok Reg 320, eff 11-03-2009 (emergency);]

580:25-5-2. Claims payment

The Risk Management Division has several methods in which to pay claims against the state or other covered entities. Methods of paying claims for liability incidents include:

(1) Issuance of a state warrant.

(A) Upon approval of a claim payment by authorized legal counsel, the Risk Management Division shall:

- (i) Forward a request for a warrant to be issued with copies of documents showing all required approvals for claim payment.
- (ii) Attach to the request for a warrant to be issued, a fully and properly executed release of liability, if available, or a copy of the court approval.

(B) The Accounting Division of the Department of Central Services shall:

- (i) Review all documents and ensure that payment of the claim complies with all applicable procedures, rules, and laws.
- (ii) Issue a warrant.

(2) Agency special account voucher.

(A) Upon approval of claim payment by authorized legal counsel, the Risk Management Division shall:

- (i) Forward a request for a voucher to be issued from the Risk Management "Quick Settlement Account", pursuant to 74 O.S. Section 85.38.

- (ii) Attach to the request for a voucher to be issued, a release of liability form, if available, and copies of documents showing all required approvals for claim payment.
 - (iii) The "Quick Settlement Account" shall not be used for payment of claims, settlements or judgments against other covered entities.
- (B) The Accounting Division of the Department of Central Services shall:
- (i) Review all documents and ensure that payment of the claim complies with all applicable procedures, rules, and laws.
 - (ii) Issue the voucher.
- (3) **Limitations on payments in connection with other covered entities.**
- (A) Because other covered entities, as defined in Chapter 25 of Title 580 largely constitute political subdivisions or private entities, and further because the State of Oklahoma is constitutionally prohibited from assuming the debts of such bodies, it is necessary that the funds, reserves and other financial resources for payment of claims, settlements and judgments against other covered entities be drawn entirely from contributions and premiums paid by such other covered entities which shall be maintained in one or more segregated revolving funds and which shall not be commingled with funds of the State of Oklahoma.
- (B) The Risk Management Division shall also be empowered to charge against the premiums and contributions paid into the above-described segregated revolving fund or funds the actual, reasonable administrative expense of all services provided to other covered entities under Chapter 25 of Title 580.

[Source: Amended at 11 Ok Reg 679, eff 11-16-93 (emergency); Amended at 11 Ok Reg 3933, eff 7-11-94]

580:25-5-3. Reports and recommendations

- (a) The Risk Management Division shall:
- (1) Immediately notify the Attorney General of any claims against the state presented to the Risk Management Division.
 - (2) Transfer to the Attorney General or other authorized legal counsel all investigative material available.
 - (3) At the request of the Attorney General or other authorized legal counsel, submit a recommendation of the division as to whether any claim should be paid, compromised or denied, and forward with such recommendation all evidence or other informational material supporting the recommendation.
- (b) The Attorney General shall:
- (1) Periodically report to the Risk Management Division a summary of all monies collected in behalf of the state and designate the agency to whom the collected monies must be paid.
 - (2) Submit a report at least monthly to the Administrator of the status and expected disposition of all claims against the state which the Risk Management Division may be required to pay, including an updated estimate of the amount of any expected judgment, settlement, payment, costs and claimant's attorney fees.
- (c) The authorized legal counsel handling each claim shall submit a report at least monthly to the Administrator of the status and expected disposition of all claims which

the Risk Management Division may be required to pay, including an updated estimate of the amount of any expected judgment, settlement, payment, costs and attorney fees.

[Source: Amended at 11 Ok Reg 679, eff 11-16-93 (emergency); Amended at 11 Ok Reg 3933, eff 7-11-94]

SUBCHAPTER 7. ESTABLISHMENT OF CENTRALIZED STATE RISK AND INSURANCE MANAGEMENT PROGRAM

Section

580:25-7-1. Source of authority

580:25-7-2. Functions of Oklahoma Risk Management Program

580:25-7-1. Source of authority

Pursuant to 74 O.S. Section 85.34(A)(1), the Department of Central Services is directed to identify and evaluate tort liability risks for state agencies; and, pursuant to 74 O.S. Section 85.34(A)(2), identify and evaluate all risks for state agencies. In addition, the Department of Central Services is directed to eliminate, reduce or minimize all risks through a continuous, effective loss-prevention and loss-control program pertinent to all state agencies and other covered entities authorized by law to utilize the services of the Risk Management Division.

[Source: Amended at 11 Ok Reg 679, eff 11-16-93 (emergency); Amended at 11 Ok Reg 3933, eff 7-11-94]

580:25-7-2. Functions of Oklahoma Risk Management Program

(a) In order to protect the assets of the state or any other covered entity against liability loss, the Risk Management Division shall consolidate and administer:

(1) All plans to transfer liability risks, if it is economically advantageous to do so, by acquiring commercial liability insurance, by pass-off of liability or by other means.

(2) All plans and programs pertaining to Risk Management including liability self-insurance programs, except workers' compensation insurance and state employees group, health, dental and life insurance.

(3) All plans and programs pertaining to Risk Management for consolidation of any combination of the above types of insurance or re-insurance programs or policies.

(b) In order to protect the assets of the state against property or casualty loss, the Risk Management Division shall consolidate and administer:

(1) All plans to transfer property or casualty risks, if it is economically advantageous to the state to do so, by acquiring property or casualty insurance, pass-off of responsibility through transfer of risk, or by other means.

(2) All plans and programs pertaining to Risk Management including property or casualty self-insurance programs.

(3) All plans and programs pertaining to Risk Management for consolidation of any combination of the above types of insurance or re-insurance programs or policies.

(c) In order to take every practical measure to eliminate or prevent injury to employees, private persons, entities or others, the Risk Management Division shall consolidate and administer a continuous effective loss-prevention and loss-control program designed to:

- (1) Protect the state's assets.
- (2) Ensure a safe environment for state employees and for the public who come into contact with state employees or property.
- (3) Minimize the possible interruption of vital public services.
- (4) Safeguard that all exposures to financial loss are discovered and handled appropriately.
- (5) Reduce the costs and consequences of accidents, including insurance premiums, through effective safety management.

(d) In order to ensure the continuity of services to the state or other covered entities:

- (1) The Risk Management Division shall protect the assets of the state or any other covered entity against liability loss by:
 - (A) Insuring through either commercial liability insurance or other commercial insurance for the protection of the state and any other covered entity; and,
 - (B) Administering of a self-insured retention plan for providing insurance for the state and any other covered entity against liability.
 - (C) Insuring through a combination of self-insured retention and commercial insurance for the state and any other covered entity against liability.
- (2) The Risk Management Division shall protect the assets of the state against property or casualty loss by:
 - (A) Insuring through either property insurance or other commercial insurance for the protection of the state against property or casualty loss.
 - (B) Administering of a self-insured retention plan for providing insurance for the state against property and casualty loss.
 - (C) Insuring through a combination of self-insured retention and commercial insurance for the state against property or casualty loss.

[Source: Amended at 11 Ok Reg 679, eff 11-16-93 (emergency); Amended at 11 Ok Reg 3933, eff 7-11-94]

SUBCHAPTER 9. DRIVER AND VEHICLE SAFETY STANDARDS FOR MOTOR VEHICLE OPERATIONS

Section

580:25-9-1. Driver and vehicle safety standards for motor vehicle operations

580:25-9-1. Driver and vehicle safety standards for motor vehicle operations

In order to help protect the general public, as well as the state and other covered entities' property and their employees, the rules contained in OAC 580:25-9 shall apply:

- (1) **Primary requirements.** It being imperative that in order to assure the driving public that state vehicles will be operated properly and by trained individuals, State Risk Management reserves the right to insure for liability insurance only those state employees or volunteers it deems insurable. In order to facilitate this right, Risk Management may, from time to time, request Motor Vehicle Records (MVR's) from the Department of Public Safety. Any information found on the report that may be

negative towards the driving record of the individual employee may be cause for Risk Management to inform the employing agency of said employee that the driver is uninsurable and that in the event of a loss involving said employee, Risk Management will refuse to pay for such loss(es) out of the Risk Management Comprehensive Risk Pool. Losses incurred under such conditions shall be borne by the employing agency. In addition to the above, the following are minimum requirements:

- (A) To operate a vehicle of any type, an individual must have a valid driver's license. Risk Management may assist agencies in checking whether or not an employee has a valid Oklahoma drivers license.
- (B) Driver will use the vehicle only for state or other covered entity business within the scope of the driver's employment/authority.
- (C) Driver will wear his/her safety belt.
- (D) Driver will observe all traffic laws.
- (E) Driver will not allow an unauthorized person to drive the vehicle.
- (F) Consumption of alcoholic beverages or narcotics prior to the operation of a vehicle is prohibited.

(2) General requirements.

- (A) Backing of vehicles where the driver does not have a clear view of the entire area behind the vehicle will be accomplished with an assistance of a guide. If a second person is in the vehicle, he/she should guide the vehicle back using the appropriate hand and voice signals. If the driver is alone, he/she should check the area behind his/her vehicle before backing.
- (B) Drivers will ensure that windows, headlights, taillights, and wipers are clean and operational at all times.
- (C) In order to give ample warning to oncoming and following vehicles, turn signals must be utilized by drivers at all times, when making a turn or changing lanes.
- (D) Do not "tail-gate". When following other vehicles in normal traffic and under good weather conditions, a time gap of two seconds should be allowed.
- (E) On hills, curves, intersections or in any area where your vision is obstructed, do not make a turnabout, i.e., u-turn.
- (F) Vehicles and equipment shall not be parked or left adjacent to the roadway in such a manner as to constitute a traffic hazard to the driving public. Vehicles will not be parked where they will obstruct the sight of other drivers.

(3) Specific requirements.

- (A) It shall be unlawful for any driver of any vehicle to operate said vehicle without a valid drivers license, pursuant to 47 O.S. 1981, Section 6-101 et seq. Drivers will carry a valid drivers license at all times, pursuant to 47 O.S. 1981, Section 6-112.
- (B) Any volunteer or employee who operates a state or other covered entity vehicle regularly or occasionally is required to report suspension or revocation of his/her license to their agency. Failure of an employee or volunteer to report a change in license status may result in denial of insurance coverage by the Risk Management Division in the event of an accident, pursuant to 580:25-9-1(3)(A).
- (C) All items or materials, which may move around during transport by truck or trailer, will be secured or tarped.

(D) No more than three (3) persons will ride in the front seat of a state or other covered entity vehicle. Where only two single seats exist, only one rider may ride in each seat.

(E) Drivers of state or other covered entity vehicles will drive in a courteous manner at all times.

(F) Emergency vehicles under emergency situations are exempt from normal motor vehicle laws, but are required to exercise due regard for the safety of all persons pursuant to 47 O.S. 1981, Section 11-106.

(G) Any Driver of a motor vehicle involved in an at fault accident or accidents while functioning as an agent of the State and in which the driver acted negligently (and caused personal injury and/or property damage) shall be required to attend and successfully complete a Motor Vehicle Improvement (MVI) course. Such course shall be approved by the State Risk Management Division and must be attended within six (6) months of the date of the second accident. Failure to successfully complete an approved MVI course shall result in the driver of the state vehicle being declared uninsurable by the State Risk Management Administrator until such time that the driver successfully completes the required course. The Risk Management Administrator may waive this requirement and paragraph H upon proper application and for good cause.

(H) Any driver of a motor vehicle, while functioning as an agent of the State, that is involved in two at fault accidents in a twenty four (24) month period shall, in addition to paragraph G, be declared uninsurable by the Risk Management Administrator for a period of three (3) months following the second accident.

(I) Special equipment such as tractor-trailers, mowers, construction equipment, mobile cranes, fork lifts and emergency vehicles shall not be operated without adequate training provided by the Agency and authorization by the agency in charge.

(4) Maintenance requirements.

(A) Before operating a state or other covered entity vehicle, the driver is responsible for checking to see that all necessary safety equipment and control devices are in good condition before he/she operates it. These items should include;

- (i) Lights.
- (ii) Directional signals.
- (iii) Steering wheel.
- (iv) Brakes
- (v) Rear-view and side-view mirrors.
- (vi) Horn.
- (vii) Tires.
- (viii) Safety belts
- (ix) Windshield wipers.
- (x) Defroster.

(B) For vehicles used to transport people, such as an activity bus or van, the following items in addition to those listed in 580:25-9-1(4)(A) should be checked for emergency use:

- (i) Reflectors.

(ii) Fire extinguisher, type B-C.

(iii) First aid kit.

(C) No state or other covered entity vehicle will be operated without a current state safety inspection sticker.

(5) **Accident reporting.** Any state or other covered entity vehicle involved in an incident with a third party shall report the incident to his Agency Risk Manager or the Risk Management Division not later than the next working day following the occurrence of the incident. Risk Management, in order to adequately investigate and come to a timely determination as to whether or not a claim is valid, relies on the agency Risk Coordinator to assist them in the investigation. Risk Management may require additional information other than the initial incident report and claim report. Information request(s) by Risk Management must be responded to within four (4) weeks of date of the request by the agency. If it is determined that an agency has not responded or is not acting in good faith to assist State Risk Management, Risk Management reserves the right to make a determination on the information received which could result in the approval of a claim when it might not otherwise be. In that case, Risk Management will pay the claim and invoice the full amount back to the responsible agency. The Risk Management Administrator reserves the right to waive this requirement for good cause.

(6) **Safety standards for other covered entities entitled to services from the Risk Management Program.** To meet eligibility criteria for approval and participation under the State Risk Management Program, drivers and vehicles shall meet or exceed the following requirements;

(A) Drivers of fire apparatus shall have a valid drivers license to drive the vehicle.

(B) There shall be documentation of the drivers license for any individual who drives or may be required to drive a vehicle.

(C) Drivers of fire apparatus must be thoroughly trained and the training documented.

(D) Each other covered entity shall have a written policy that sets forth speed limits for its vehicles on emergency runs.

(E) All emergency vehicles shall be provided with audible and visible warning devices. These devices shall be kept in proper working order and utilized without fail on emergency runs.

(F) Every covered vehicle shall have a current state safety inspection sticker displayed on the front windshield, unless the vehicle is exempt pursuant to 47 O.S. 1981, Section 851.

(G) Wheel chocks must be used for rear wheels while using any aerial ladder apparatus to help prevent the apparatus from slipping.

(H) There shall be a preventive maintenance program in place to ensure that all emergency vehicles are maintained in a safe condition. This list is not meant to be a complete listing, but only a guide. The IFSTA 106 Manual, sixth edition, Chapter 8, provides good examples of maintenance schedules. The following items are suggested safety areas that should be checked:

(i) Visible and audible signals

(ii) Lighting system.

(iii) Tires.

- (iv) Steering
 - (v) Brake system air tanks.
 - (vi) Brake fluid.
 - (vii) Windshield wipers.
 - (viii) Rear view mirrors.
- (I) Applications of risk management coverage, pursuant to Section 85.34 of Title 74, are subject to review by the Administrator. The review may include a physical inspection of the vehicles and related records.
- (J) Other covered entities are subject to random safety and loss prevention inspections of equipment for as long as they choose to participate in the State Risk Management Program.
- (K) Non-compliance with safety standards as required by the Administrator could result in a denial to participate in the program or cancellation of coverage.

[Source: Amended at 11 Ok Reg 679, eff 11-16-93 (emergency); Amended at 11 Ok Reg 3933, eff 7-11-94; Amended at 15 Ok Reg 4104, eff 8-27-98; Amended at 18 Ok Reg 3247, eff 7-26-01; Amended at 26 Ok Reg 2598, eff 7-11-2009;]

SUBCHAPTER 11. COVERAGE FOR STATE OWNED BUILDINGS, CONTENTS AND OTHER

Section

- 580:25-11-1.** Deductible levels and premiums
- 580:25-11-2.** Basic coverage
- 580:25-11-3.** Claims payment

580:25-11-1. Deductible levels and premiums

- (a) Deductible amounts payable by the agency or other covered entity for losses to buildings, contents, and other property will be set by the Administrator with the approval of the Director of Central Services. Deductible amounts or percentages may vary by types and use of property, and by actual or replacement value.
- (b) An annual premium will be levied and collected from each state agency pursuant to 74 O.S. Section 85.37, in order to cover the purchase of excess insurance against catastrophic losses and to cover future losses using verifiable loss histories. Each state agency shall pay in full the premiums billed to them by the Risk Management Division for property and casualty insurance coverage. An invoice is due and payable upon receipt. Delinquent accounts will be collected pursuant to 74 O.S. Section 85.37.
- (c) Annual premiums will be determined using a combination of identified markets available for acquisition of commercial excess insurance and verified loss history. The annual premiums will be reasonable and determined by the Risk Management Administrator with the approval of the Director of Central Services.
- (d) Property losses will be determined by the Risk Management Division and/or a third party administrator under contract. These losses will be based on industry accepted investigations and resulting appraisals of estimated damages.

[Source: Amended at 11 Ok Reg 679, eff 11-16-93 (emergency); Amended at 11 Ok Reg 3933, eff 7-11-94]

580:25-11-2. Basic coverage

(a) **Property covered.** Property losses covered will be specified in an annual statement of coverage issued by the Risk Management Administrator.

(b) **Property excluded.** Property losses excluded from coverage will be specified in an annual statement of coverage issued by the Risk Management Administrator.

(c) **Perils covered.** Perils covered will be specified in an annual statement of coverage issued by the Risk Management Administrator.

(d) **Perils not covered.** Perils not covered will be specified in an annual statement of coverage issued by the Risk Management Administrator.

(e) **Amount payable for losses.**

(1) The amount payable for covered losses will be specified in an annual statement of coverage issued by the Risk Management Administrator.

(2) The amount payable for any loss to property shall not exceed the lesser of the actual replacement cost or the reported value of the property.

(3) The amount payable for any loss shall be reduced by the amount of any delinquent premiums or fees for coverage under the Risk Management Program.

(f) **Conditions under which coverage is provided.**

(1) The building and/or contents must have been reported to Risk Management in writing prior to the date the loss occurs.

(2) For boiler explosion losses to be covered, boilers must have been reported to Risk Management and all inspections required by the Oklahoma Department of Labor must have been completed.

(3) The loss must be reported to Risk Management immediately upon learning of the occurrence of a loss. Failure to report a loss in a timely manner may negatively impact your recovery or result in denial of coverage.

(A) The Agency Risk Management Coordinator shall give telephone notice of any property loss incident to the Risk Management Division immediately upon learning of the occurrence of such incident.

(B) The Agency Risk Management Coordinator shall fill out and send to the Risk Management Division a "Standard Property Loss Report" form. This report shall be submitted within three working days from the date of first awareness of a loss and shall include but not limited to the following information:

(i) The time, date, and location of the loss

(ii) The department involved.

(iii) A description of the property damage.

(iv) A brief description of the incident.

(v) An estimate of the amount of loss

(C) The Agency Risk Management Coordinator shall complete all preliminary investigations following a property loss incident and send a completed "Standard Property Loss Report" and any other pertinent information that is the result of a thorough investigation to the Risk Management Division. All investigative information and loss data shall be submitted within ten working days from the date of first awareness of a loss, unless an extension of date is approved by the Administrator.

(4) Losses occurring due to the negligence of the insured or insureds contractor may result in no coverage being provided under the Risk Management property insurance program. In such case, Risk Management reserves the right to make a determination as to liability, extent of loss and amount which Risk Management may reimburse insured for the loss. It is the responsibility of the insured to determine whether contractors are adequately insured prior to any remodel, renovation or new construction.

(5) Other conditions under which coverage is provided will be specified in an annual statement of coverage issued by the Risk Management Administrator. Failure to comply with any condition in 580:25-11-2(f) or in the annual statement of coverage may result in denial of coverage.

(g) **Questions and loss reporting.** If there are any questions or to report a loss, contact the Risk Management Division.

(h) **Time Limit to File a Claim.** A final claim along with the requested supporting documentation must be submitted to Risk Management within 2 years of the date of the incident or the claim will be considered invalid.

[Source: Amended at 11 Ok Reg 679, eff 11-16-93 (emergency); Amended at 11 Ok Reg 3933, eff 7-11-94; Amended at 15 Ok Reg 4104, eff 8-27-98; Amended at 18 Ok Reg 3247, eff 7-26-01; Amended at 26 Ok Reg 2598, eff 7-11-2009;]

580:25-11-3. Claims payment

The amount payable for each loss shall be determined by the Administrator. Payment of claims shall be made as funds are available and upon the approval of the Administrator. Final payment shall not be made until a loss affidavit and a release of all claims has been properly executed and the covered entity has complied with all procedures for claim payment as set forth in the Annual Statement of coverage. On a loss where the property covered is to be replaced under the terms of the Annual Statement of Coverage, and a final settlement has been reached, the Administrator reserves the right to require that the covered entity be paid only that portion of the actual cash value until the property suffering the loss has been put back whole. At that time, all remaining settlement funds will be released.

(1) The Risk Management Division shall:

(A) Acquire a release of all claims and a loss affidavit by the chief administrative officer or other authorized official of the agency where a property loss has occurred; or,

(B) Acquire an attestation from the chief administrative officer of the agency where a property loss has occurred that the agency does not intend to replace the property loss and will accept actual cash value in lieu of replacement; and,

(C) Forward a request for a warrant for either replacement value or actual cash value to be issued reflecting all approval(s) necessary under the rules and regulations contained in 580:25-11.

(2) The Accounting Division of the Department of Central Services shall:

(A) Review all documents and ensure that payment of the claim complies with all applicable procedures, rules, and laws; and,

(B) Issue a warrant, such warrant and subsequent endorsement serving as indicia for proof of payments of a property loss.

[**Source:** Amended at 11 Ok Reg 679, eff 11-16-93 (emergency); Amended at 11 Ok Reg 3933, eff 7-11-94; Amended at 15 Ok Reg 4104, eff 8-27-98; Amended at 18 Ok Reg 3247, eff 7-26-01]