PROPERTY & LIABILITY MANUAL

State of Wisconsin
Department of Administration
Bureau of State Risk Management
PO BOX 77008
Madison WI 53707-1008

December 2018

P R O P E R T Y &
L I A B I L I T Y
Program Contact Information

Property & Liability Program Manager
Bradley Templin
(608) 267-0643
Bradley.Templin@wisconsin.gov

Property & Liability - Property Specialist
Andrew Eisler
(608) 266-0168
Andrew.Eisler@wisconsin.gov

Property & Liability – Liability Specialist
Paula Sohn
(608) 267-2731
Paula.Sohn@wisconsin.gov

State of Wisconsin
Department of Administration
Bureau of State Risk Management
PO Box 77008
Madison WI 53707-1008

REVISIONS –

Last Major Revision of Entire Manual	August 2005
Updated Property Section of Manual	August 2013
Updated Contact Information & Hyperlinks	April 2015
Updated Contact Information & Hyperlinks	March 2016
Updated Contact Information & Hyperlinks	March 2018
Updated Contact Information	December 2018

I STATEMENT OF POLICY

I.1 Purpose

The purpose of this manual is to provide a method of communicating the Bureau of State Risk Management's policies, procedures, and guidelines pertaining to its statewide risk management responsibilities. The manual should provide a common basis of understanding between the Bureau of State Risk Management and State agencies and clarify procedures in the State Self-funded Property and Liability Programs.

Information on policies and procedures contained in the manual may be changed periodically. Updates will be issued when appropriate. Whenever a link appears in a section, you can click on it to go to a different section in the manual; to do so, double click so that the link is highlighted, and then press CTRL and click your mouse at the same time to go to the related manual section. You are advised to read the entire manual but can click on specific topics through the Table of Contents or the links provided herein.

I.2 Background Information

The Bureau of State Risk Management (BSRM) is located in the Department of Administration within the Division of Enterprise Operations. Wisconsin's statewide risk management program was created when the State Self-funded Liability Program was established in 1975 to pay for liabilities incurred by State officers, employees and agents while acting within the scope of their employment. In July 1980, the State Self-funded Property Program was established. Prior to that time, state-owned properties were included with a program administered by the State Insurance Commissioner's Office that included local government and other municipal properties.

I.3 Risk Management Decision-Making

Essentially, risk is the potential for loss in the future. Risk managers attempt to minimize the adverse consequences of risk through a decision-making process meant to examine three elements of risk: exposures, perils, and hazards.

EXPOSURE: A loss exposure is a potential event that could result in a financial loss to the State caused by an identifiable peril. An example of a loss exposure is a state fleet vehicle driving down the street.

PERIL: A peril is the potential cause of a loss. Perils include such things as fire, flood, wind, theft, negligence, collisions, and accidents. An example of a peril is a state fleet vehicle running into a parked car, causing damage to the state fleet vehicle and/or the parked car.

HAZARD: Hazards are conditions or situations that create or increase the probability or extent of a loss from a peril, such as unsafe conditions or poor building materials. An example of a hazard is an ice-covered street. The ice is the hazard because it increases the chances that a state fleet vehicle will hit another vehicle.

The six steps of the risk management process are:

1. **Identification of Loss Exposures**
   Identification occurs through the use of techniques in which potential sources of loss are identified by conducting complete examinations of possible events that could occur by negligence, oversight, or accident. Examples of these techniques are surveys, inspections, and questionnaires related to property and liability.

2. **Analyzing Loss Exposures**
   Measurement of exposures through analysis of the probability of loss can help reduce the variability in future outcomes and allow for planning. Measurement also determines the maximum possible loss and the maximum probable loss. Maximum possible loss is the largest loss that could happen and maximum probable loss is the largest loss likely to happen. For example, a building could burn completely to the ground, which would be maximum possible loss. Or, the more likely event is that a building could sustain severe damage but still have some of the building remaining due to the fire department's help and a sprinkler system installed in the building. This would be maximum probable loss.

3. **Examine the Feasibility of Risk Management Techniques**
   Alternative risk management techniques exist for every exposure the State faces. These include the following:

   Risk Avoidance - eliminate the exposure or never take it on.

   Loss Control - prevent and reduce the frequency and/or severity of loss.

   Risk Transfer - transfer risk through insurance or contractual language.

   Self-Insured Retention - bear the risk at a calculated and accepted level.

4. **Select the Appropriate Risk Management Techniques**
   Based upon careful analysis of available risk management techniques for the identified exposures, specific methods are selected based on cost effectiveness and the ability to minimize risk to the state. This can be a combination of risk avoidance, loss control, risk transfer and retention.

5. **Implementation**
   Since the State has a self-insured retention for most of its property and liability losses, it is in our best interest to implement loss control and risk avoidance procedures as much as possible to reduce the amount of loss the State may sustain.

6. **Monitoring**
   Monitor the results of the risk management process and make necessary adjustments to maximize gains. The process then continues in a cyclical manner. This effort is ongoing and part of the day-to-day work of BSRM and agency risk managers.

I.4 Authority of BSRM

Wis. Stats., s. 16.865 authorizes the Bureau of State Risk Management's responsibility for statewide risk management coordination, including the following:

1. Protect the State from losses that are catastrophic in nature and minimize the total cost to the State of all activities related to the control of accidental loss.
2. Emphasize the reduction of loss through professional attention to scientific loss control techniques and by motivational incentives, prompt claims payment, and other loss prevention measures.
3. Identify and evaluate loss exposures to the State and its employees or injury to the public as the result of fire, accidents or other fortuitous events at state-owned/leased properties or facilities.
4. Recommend changes in procedures, program conditions or capital improvements for all agencies that would satisfactorily eliminate or reduce the variability in future outcomes inherent in state operations.
5. Manage statewide self-funded programs to finance losses arising from state liability and damage to state property.
6. Arrange appropriate insurance contracts for the transfer of risk on the part of the State or its employees, to the extent such loss cannot reasonably be assumed by the individual agencies or the self-funded program. Approve all insurance purchases.
7. Train, upgrade and guide appropriate personnel in the agencies in the implementation of sound risk management practices and industry standards for best practices for claims management.
8. Contract for investigative and adjustment services as provided in s. 20.865 (1)(fm) Wis. Stats., which can be performed more economically or efficiently by such contract.

I.5 Risk Management Related Statutes

Wis. Stats., s. 20.505(2)(k) provides funds to pay for costs incurred by the State's Self-funded Property and Liability Programs.

Wis. Stats., s. 895.46 provides for the payment of judgments taken against State officers, employees and agents while performing duties within the scope of their employment.

Wis. Stats., s. 893.82 establishes claim procedures and sets time requirements for filing a notice of claim against a state employee. It also places a limit on the amounts recoverable in civil actions or civil proceedings against any state officer, employee or agent.

I.6 Estimates

Though private insurance companies often only require one estimate when handling insurance claims, the State liability program is not subject to that limitation and requires two (2) estimates.

BSRM requires two estimates when damages to state property, including autos, is $2,500 and above. When appropriate for business purposes, exceptions can be made with BSRM approval. A minimum of one estimate is required for property claims under $2,500. If subrogation is involved for a loss of under $2,500, it is recommended the agency obtain two estimates to support its claim to the party who caused the damage. There may also be other times that an agency will obtain two estimates even though a loss is under $2,500.

II PROPERTY

II.1 Introduction

The following guidelines are set forth for the purpose of establishing an agreement on coverage of property under the State Self-funded Property Program. The manual is not intended to be an insurance policy; rather, it is meant as an illustrative overview or guideline of the coverage offered under the State's self-funded program.

Agencies are expected to investigate and prepare claims for submission to BSRM as they arise. For those claims that have a deductible (see Auto, Property), only losses over the deductible amount must be reported to BSRM. It is highly recommended that agencies utilize the Risk Management Information System (RMIS) to document all incidents as this provides a comprehensive tool for analysis.

II.2 Program Philosophy Statement

Wis. Stats., s. 20.505(2)(k) provides funds to pay for costs incurred by the State's Self-funded Property Program. The intent of the program is to provide industry standard broad all-risk property coverage, except where otherwise excluded (or where unique coverage exposures would be better served in a stand alone policy or use of an alternative risk transfer technique), for sudden and accidental losses involving property owned by the State, as well as property for which the State has care, custody and control. Property is covered on a Replacement Cost basis, subject to a deductible. Property not replaced will be covered at Actual Cash Value. Property that is irreplaceable will be covered at Market Value at the time of loss.

The agencies and State Risk Management will work cooperatively in developing program policies. Excess insurance coverage is purchased as necessary for catastrophic or cumulative events that exhaust the self-funded retention. Although the excess policy will not be the sole basis for coverage decisions provided under the self-funded program, it may be used as a guideline to resolve problematic coverage issues.

Agency responsibilities:

- Annually report as accurately as possible their property values to State Risk Management.
- Identify risk exposures and implement loss control procedures, to the extent financially capable, to reduce the State's exposures and potential losses. As necessary, consult with State Risk Management on issues and exposures.
- Document the nature of a loss, and timely prepare and submit those claims that exceed the deductible.
- Conduct/assist in subrogation efforts when applicable.
- Consult with and receive approval from State Risk Management on the purchase or need for additional insurance.

State Risk Management responsibilities:

- Collect the property values from the agencies annually and, on behalf of the agencies and the Risk Management Executive Council, recommend to

DOA Agency Secretary appropriate premium rates to ensure sufficient revenue is generated for the losses being paid under the program. This includes setting loss reserves on upcoming claims in consultation with the agencies and third party adjusters.

- Assist in the purchase of insurance contracts where appropriate and provide approval as necessary to meet the business needs of the agencies.
- Initiate and consult with agencies on the purchase of annual excess coverage.
- Process claims on a timely basis and ensure that losses are documented.
- Provide education and training as appropriate.
- Recommend loss control initiatives and the dollars available for allocation purposes.

II.3 Property Damage

Property damage refers to damage or loss of use to state-owned buildings, contents, and property in the open. Business interruption coverage is also available to those agencies that request this coverage prior to the beginning of each fiscal year.

II.4 Values and Coverage

In general, coverage is provided for property that is reported by the agency in its annual Statement of Values and that is damaged by a covered peril. Agencies may be requested to provide documentation that property was included on the Statement of Values at the time a loss occurs.

II.4.1 Values

Prior to the beginning of each fiscal year, all property values should be reported by the agencies to BSRM. During the year, certain newly acquired property must be reported as follows:

II.4.1.1 Foreign Property Values

Buildings acquired during the year are automatically covered under the property program. However, newly acquired buildings valued greater than $1 million must be reported within 90 days to BSRM. Real and/or personal property values (building/contents/PIO) greater than $1 million at any given location outside the United States and Canada should be reported separately. These scheduled values should include location address, building value (if owned), contents value, and PIO value (if any). Scheduled contents values must include both capital and non-capital values. A loss at a location that was inadvertently not scheduled may be covered under the self-funded property program if the annual SIR has not been exhausted. Property not scheduled may not be covered by the excess insurance.
IMPORTANT: If unscheduled property would have been covered under the excess insurance had it been scheduled, the maximum that BSRM will pay will be up to the maintenance deductible in effect at the time of the loss. The excess insurance program coverage for foreign property requires specific scheduling of properties, so it is important to notify BSRM of

any/all foreign property for which an agency/campus wishes to have coverage.

II.4.1.2 Domestic Property Values

Buildings acquired during the year are automatically covered under the property program. However, newly acquired buildings greater than $1 million must be reported to BSRM within 90 days. Real and/or personal property values (building/contents/PIO) greater than $1 million at any given location outside the State of Wisconsin but within the United States and Canada should be reported separately. These scheduled values should include location address, building value (if owned), contents value, and PIO value (if any). Scheduled contents values must include both capital and non-capital values. A loss at a location that was inadvertently not scheduled may be covered under the self-funded property program if the annual SIR has not been exhausted. Property not scheduled may not be covered by the excess insurance.

IMPORTANT: If unscheduled property would have been covered under the excess insurance had it been scheduled, the maximum that BSRM will pay will be up to the maintenance deductible in effect at the time of the loss.

II.4.1.3 Building Values

In the event of a loss, a building may be replaced for its Replacement Cost Value, or, if an agency has chosen to replace a destroyed building with something other than like kind or quality, the claim will be paid at the building's Actual Cash Value. If the property is of no value and will be demolished instead of rebuilt, a claim can be made for demolition value if the agency has reported this value in its annual values.

New construction, newly acquired property, or major reconstructed property that is in the 100-year flood zone is subject to a $500,000 deductible, unless appropriate controls have been undertaken and have been accepted by BSRM.

Building replacement values are generally based on the Division of Facilities Development (DFD) data. Acquired buildings that did not go through the Building Commission need to be valued and reported by the agency receiving the property. Also, since items added to a building by an agency outside of a DFD project are not included in the building value that DFD reports, each agency must report such values.

Buildings acquired during the year are automatically covered under the property program. However, newly acquired buildings greater than $1 million must be reported within 90 days; BSRM must report these newly acquired building values to the State's excess insurance carrier on a quarterly basis. Failure to do so could result in no coverage.

IMPORTANT: If unscheduled property would have been covered under the excess insurance had it been scheduled, the maximum that BSRM will pay will be up to the maintenance deductible in effect at the time of the loss.

Definition of Values:

- *Replacement value* – This is the value of the damaged or destroyed building without a deduction for depreciation. In other words, it is 'what it costs to replace the building using comparable materials (like, kind, and quality) in today's market'.
- *Actual Cash Value* (ACV) – This is 'replacement value minus depreciation.' If an agency chooses to replace a destroyed building with something other than like, kind, and quality, for example, the claim is paid at actual cash value.
- *Demolition value* – If an agency does not replace a destroyed building, the claim is paid at demolition cost, which is the cost to demolish the rest of the building to below grade. If an agency wishes to have a building insured for demolition value only, please contact the Property & Liability Program manager for assistance.
- *Stated value* – This is a set amount that an agency claims for a building, not to exceed replacement value at the time of loss. If an agency wishes to have a building insured for a stated value, please contact the Property & Liability Program Manager for assistance.

If an agency does not complete replacement of a destroyed building within two (2) years from the date of loss, the claim will be paid at ACV. Exceptions may be considered under extenuating circumstances, and require advance written approval from BSRM.

II.4.1.4 Buildings

Buildings include attached additions, extensions, permanent fixtures and floor coverings, permanent machinery and equipment, including built-in appliances constituting a permanent part of and pertaining to the service of the building. In addition, towers and antennas that were included as part of the original building are to be included as part of the building's value.

Piping and wiring in an enclosed man-type tunnel is currently covered by the SIR program and by the excess insurance program up to the available coverage limits at the time of loss. The tunnels are not covered property.

Underground piping or wiring that is not in a raceway and piping or wiring in a coffin-type tunnel is not covered under the property program.

Landscaping is not covered under the property program.

Buildings are categorized by class code according to construction:

Class 1	Frame/Wood
Class 2	Joisted Masonry
Class 3	Non-combustible
Class 4	Masonry Non-combustible
Class 5	Modified Fire Resistive
Class 6	Fire Resistive

II.4.1.5 Debris Removal

Debris removal does not include the removal of any foundations other than damaged portions which must be removed for repair or rebuilding. Debris removal also does not include discharges, releases or escapes into any body of water or onto property beyond the agency's property.

Coverage does not apply to costs to:
(1) Extract contaminants" or "pollutants" from the debris; or
(2) Extract "contaminants" or 'pollutants" from land or water; or
(3) Remove, restore or replace contaminated or polluted land or water; or
(4) Remove or transport any property or debris to a site for storage or decontamination required because the property or debris is affected by pollutants or contaminants, whether or not such removal, transport, or decontamination is required by law or regulation.

Debris removal applies when there is a covered direct physical loss or damage to the property.

II.4.1.6 Towers

Freestanding towers and antennas that are not attached to a building should be reported as property in the open. Towers and antennas that were attached to a building after it was acquired by an agency should be reported as contents. Towers and antennas that were included as part of the original building should be reported as buildings. The DFD building report includes many towers and antennas; an agency, however, will have to identify the freestanding towers and antennas that are listed and report them to BSRM as PIO.

II.4.1.7 Contents and PIO Values

Values for contents and PIO are reported separately. Inventory values should generally be reported at replacement value. Values can be:

- *Replacement value* – This is the value of the damaged or destroyed contents without a deduction for depreciation. In other words, it is 'what it costs to replace the contents item with a comparable (like, kind and quality) replacement in today's market'.
- *Actual Cash Value* (ACV) – This is 'replacement value minus depreciation.' If an agency chooses not to replace a damaged or destroyed item, the claim is paid at actual cash value. Refer to the definition on depreciation for further details.
- *Market value* – This is usually associated with irreplaceable items. It is the value of what the damaged or destroyed item would sell for in today's market.
- *Stated value* – This is a set amount that an agency claims for an item, not to exceed replacement value or market value at the time of loss. If an agency wishes to insure an item at a stated value, please contact the BSRM Property & Liability Program Manager for assistance.

There are two categories of contents**:** non-capital and capital. Non-capital contents are those items with values less than an agency's capital threshold. These items include supplies such as paper, pens and pencils, and small equipment such as telephones, calculators, etc. The threshold used by agencies to determine capital versus non-capital contents can vary.

New purchases during the year are automatically covered. These, as well as any items leased/rented/loaned for 30 or more days, should be reported by the agency in its annual property values report to BSRM if the items are to be covered under the property program. Values greater than $1 million should be scheduled with BSRM. Agencies may use a blanket schedule, rather than scheduling each item, if they have leased/rented/loaned items that do not exceed $1 million at any given time during the year. Large purchases greater than $100,000 should be provided to BSRM throughout the year.

II.4.1.8 Contents

Contents include those items that generally stay in a building, including such items as furniture and fixtures, nonpermanent machinery and equipment, stored crops, stock and media. (The average value of the stored crops is the amount that should be reported.) Contents also include portable electronic items, such as laptop computers, audiovisual and communication equipment. Towers and antennas attached to a building after it was acquired by an agency should be reported as contents.

For purposes of claims reporting in the Property Program's database, contents claims will be coded as falling under one of the following three categories:

Fine Arts/Collectibles/Rare Items include but are not limited to products of creative work, including original paintings, sculpture, and drawings, old maps, books, and manuscripts as well as other bona fide works of art, rarity, or pieces with historical value or artistic merit. These should be valued at current market value.

Computers/Electronics include portable laptop computers, mainframe and desktop computer equipment, as well as audiovisual equipment.

All Other includes furniture and fixtures and other miscellaneous items, such as laboratory equipment.

Contents are categorized by class code according to the construction type of the building in which they are located:

Class 1	Frame/Wood
Class 2	Joisted Masonry
Class 3	Non-combustible
Class 4	Masonry Non-combustible
Class 5	Modified Fire Resistive
Class 6	Fire Resistive

Agencies leasing space in privately owned buildings should report their content values as Class 1-2 because the State typically has little or no control over conditions at these types of facilities. Agencies occupying space in a Department of Administration owned building should generally report content values as Class 5-6. However, not all DOA buildings are classified as fire resistive, so an agency should contact BSRM if it is unsure of the appropriate classification.

Agencies must report all contents (capital and non-capital) and determine the GPR and Non-GPR split at their own discretion.

II.4.1.9 Stock

Unfinished Stock is material in the process of manufacture and waiting to be assembled into a finished product. Raw stock and supplies are reported by the agencies as contents and are covered at replacement cost.

Finished Stock includes merchandise for sale and is reported by the agencies as contents. It is reported and covered at the regular cash selling price, less all discounts and charges normally given had no loss occurred. Finished stock may also include items fabricated for agency use, with the value based on the cost of the stock, plus the labor to create the item(s).

Animals Held for Research are covered only for replacement of the same like, kind and quality that were acquired at the beginning of the research process. Research in itself, including loss of funding, is not covered by the BSRM program.

II.4.1.10 **Research**

It is the responsibility of any agency/campus conducting research that appropriate risk control activities are in place to protect research projects. Examples of risk control may include duplication, separation, alternative funding, among other techniques for reducing the frequency and/or severity of a potential loss. BSRM is available to provide assistance to agencies/campuses to assist in the identification of appropriate risk control techniques.

It is not the intent of the BSRM self-funded program to cover losses related to research.

II.4.1.11 Media

Media includes but is not limited to valuable papers and records, electronic data, exposed films, drawings, and data storage. Some items cannot be reproduced so the coverage is for the actual cash value of the blank media only (i.e., the paper, folders, disks and tapes) or the value of the agency’s liability to others, not to exceed the actual reproduction cost. If reproduced, media will be valued at the actual reproduction cost of the property with like kind and quality, including the cost of the blank media to which reproduction will be placed. There is no coverage for data and programs that cannot be reproduced due to lack of backup, support documents or records.

II.4.1.12 Property in the Open (PIO)

PIO includes recreational equipment and mobile equipment—usually designed for use principally off public roads—including equipment attached to them. PIO may also include structures such as signs, lighting units, fences, etc. that may not have a corresponding building.

- Examples include but are not limited to construction and farming machinery, mobile hoists, small maintenance equipment, snowmobiles, and boats and outboard motors.
- Watercraft valued at $25,000 or greater must be reported and **scheduled** separately with BSRM; these scheduled values should include the following information: value, usage, location, make/model/description/length.
- Freestanding towers and antennas that are not attached to a building should be reported as property in the open.

Large PIO purchases greater than $100,000 should be provided to BSRM throughout the year.

II.4.1.13 Business Interruption

Business interruption (BI) is **optional coverage** under the property program and provides coverage for business income not realized because a covered cause of loss has interrupted the normal flow of business. It compensates agencies for the loss of business income from the time of property loss to the time the damaged property is restored. Expenses that are not necessary to continue operations are deducted from the BI costs.

A BI loss shall be adjusted on the basis of the actual loss sustained during the period of restoration, consisting of the net profit (or loss) which is thereby prevented from being earned and of all charges and expenses, but only to the extent that they must necessarily continue during the interruption of business, and only to the extent to which they would have been incurred had no loss occurred. Please note: when an agency or campus business is permanently transferred to another agency or campus, the excess policy does not respond.

Therefore, when an agency or campus sustains a BI loss that results in the business being permanently transferred to another agency or campus, the SIR will respond with a one time payment of 100%, up to a maximum of $500,000, of the net profit (or loss) that would have been made had no such transfer occurred.

A Business Interruption Worksheet (DOA-6007) must be completed and submitted to BSRM for each entity (campus/institution/division) requesting coverage. All potential BI exposures should be provided on the DOA-6007. A deductible of $2,500 or 24 hours of continuous non-operation, whichever is less, is used for BI claims.

II.4.1.14 Extra Expense

Extra expense is coverage for expenses that reduce the length of a Business Interruption and enables the State to continue some operations after property has been damaged by a covered peril. It covers the necessary additional expenses incurred by the agency in order to continue as nearly as practical the normal operation of the agency's business following a loss. Extra expense coverage is provided for all agencies regardless of whether they have business interruption coverage.

II.4.1.15 Marine Cargo/Transit

The State self-insures its owned and non-owned transit exposures. It also purchases a separate transit policy for shipments of high valued equipment greater than $100,000 when the State is responsible for its value during shipment of such property either over land (Inland Marine) or primarily water-based transit exposures (Ocean Marine). Excess transit coverage is also provided under the State's excess insurance program.

The limit of liability is $2.5 Million. Items may need to be shipped separately in order not to exceed the $2.5 Million threshold. If any one shipment is valued greater than $2.5

Million, immediately contact your agency risk manager for direction so that proper coverage can be arranged.

The value of items being shipped must be reported to BSRM on a **per shipment basis**. Property shipped to a given location and subsequently returned would be considered two shipments and should be reported both ways.

State Agencies: are expected to report all overseas shipments and all domestic shipments greater than $10,000 via the online form.

UW Campuses: are expected to report all shipments, foreign and domestic, that are valued at $50,000 and greater via the online form.

All "carry-on" equipment/instruments with values greater than $50,000 should also be reported. Carry-on is defined as equipment/instruments or other valuable state or University owned property being transported directly by a state employee as opposed to being conveyed by commercial transportation services. A $1 Million sublimit will apply for all carry-on equipment.

When shipping cargo, agency staff should immediately notify their appropriate risk management contact who will request that they complete the form, "Report of Shipment and Request for Marine Cargo Coverage." This should be done at least 72 hours prior to time of shipping.

The information that is requested on the web-based form will be applicable to most situations but there may be specialized circumstances that require additional information, usually requiring additional time for purposes of obtaining greater levels of insurance coverage.

The "Shipping Request form" can be found at http://doawi.wi.gov/shipment_report.asp

A shipment that is inadvertently not reported may be covered under the State's self-funded property program. if the annual SIR has not been exhausted. Property not scheduled may not be covered by the marine cargo excess insurance policy. **IMPORTANT:** If unscheduled property would have been covered under the marine cargo excess insurance had it been scheduled, the maximum that BSRM will pay will be up to the marine cargo deductible in effect at the time of the loss. Currently, that deductible is $100,000 (1/2012)

Even though an agency reports shipment values to BSRM during the year, these values are only for transit coverage. **The agency must also include these values in its annual submission of**

property values if they own the property or if the property is in their care, custody or control. For coverage to exist under the Marine Cargo policy, it is important that these values are accounted for separately at the time of shipment and subsequently included as part of the agency-reported annual property values.

Covered property while in transit is insured against all risks of loss from any external causes. Some exceptions may apply, including **improper packaging**.

II.4.1.16 Money & Securities

Money and securities include currency, coins, bank notes, and written instruments representing either money or other property. Loss of money and securities is only covered if it can be verified that theft by a non-state employee was involved. In the event of a loss, the agency must be able to provide justification on the amount of the loss. For instance, average receipts at a particular location could be used as a basis to determine a loss. Coverage is provided up to $10,000 per occurrence, subject to the property program deductibles. Generally, money and securities are valued using the average daily receipts for a month. These values are reported as part of the agency's contents values. Petty cash funds are not covered.

II.4.1.17 Automobiles

Prior to the beginning of each fiscal year, State agencies should report all vehicles and pay premium based upon the original purchase price.

Comprehensive coverage is provided for all vehicles. Examples of comprehensive coverage would be hail damage, water damage, contact with a bird or animal, breakage of glass, fire, theft.

Collision coverage is not automatically provided. An agency pays additional premium for collision coverage; therefore, any added vehicle for which collision coverage is desired should be reported to BSRM at the time of acquisition. Other updates to the agency's vehicle list during the year should be recorded by the agency risk manager, subject to audit by BSRM.

Exclusions – some examples (not an all inclusive listing) of causes of loss that would be excluded from coverage:

a. Wear and tear;
b. Freezing;
c. Mechanical or electrical breakdown or failure; or
d. Road damage to tires
e. Loss to any electronic equipment that reproduces, receives or transmits audio, visual or data signals.

(There may be coverage for some of these items under other categories.)

Hail Damage: - Hail damaged vehicles will be adjusted as follows:

<u>Option 1</u>: Vehicles that are repaired or replaced would be reimbursed the cost to repair or replace, not to exceed the actual cash value at the time of loss. If vehicles are not repaired or replaced, the agency/campus would be reimbursed the lesser of 50% of the lowest estimate to repair or replace or the actual cash value at the time of the loss.

<u>Option 2</u>: BSRM and State Procurement will consider a request from an agency that sustains hail damage to multiple vehicles to sell the vehicles and replace with new vehicles. Consideration of the request will be dependent on the flexibility State Procurement has to replace vehicles at the time of the request or the ability of State Procurement to obtain necessary approval to purchase more replacement vehicles.

II.4.1.18 Builder's Risk

Builder’s risk provides coverage for property while in the course of new construction or during renovation to an existing building or structure. Once the building reaches substantial completion, and is turned over to the agency, builders risk coverage ceases. This coverage applies to new, freestanding structures, as well as existing buildings undergoing additions, improvements, remodeling, etc. Typically, if the project is assigned a DOA Division of Facilities Development program manager, builder’s risk applies. The State provides additional Builder’s Risk coverage in its excess insurance program. Builder’s Risk claims may be covered under the property program, and others may be covered by the Contractor’s insurance program, dependent upon contractual agreements. The excess program covers Builder’s Risk claims on new construction or renovation projects that undertake major structural changes to existing buildings or structures.

II.4.1.19 Role of Division of Facilities Development (DFD) inventory in the Property Program

DFD is part of the Department of Administration and is responsible for all state real estate leasing, planning of office space, and engineering services. It maintains a database of all State-owned buildings. This data is provided to the agencies by BSRM every spring in preparation for the annual premium process. Agencies are required to review the data and make corrections as needed so as to closely reflect the replacement cost property values as best possible.

II.4.2 Off Premises Service Interruptions

Damage to state property resulting from physical loss and/or damage to the utility supplying the power is covered, as long as the loss causing the service interruption was a result of a covered peril.

II.4.3 Labor Expenses

The property fund covers the expense of state employee overtime due to a covered loss. Labor hours and fringes of Limited Term Employees (LTE) are also covered unless the work is part of the LTEs' normal work duties. Further, the normal work hours of skilled laborers such as electricians, plumbers, etc., may be considered on a case-by-case basis.

II.4.4 Fine Arts and Special Collectibles Exhibit Protection

Fine Art coverage is provided under the self-funded program and supplemented with an additional excess Fine Arts Insurance Policy. As part of this policy, Museum Collection and Temporary Loans Coverage is provided. Coverage is extended to property of the State or property of others loaned to the State and which the State has been instructed to insure, covering the property on a "wall to wall" basis from the time the property is removed from its normal repository, incidental to shipment, until returned at or other points designated by the State. Coverage is provided to include while in transit and while on exhibition. For further information on coverage and limitations, please contact BSRM.

Appropriate care should be undertaken to protect fine arts and special collectibles from damage. Where inappropriate care to protect fine arts and special collectibles has been determined, reimbursement for those claims will be reduced by 25% of the unprotected damaged loss up to a maximum of $50,000. An example of failure to protect would be storing materials that are below grade on the floor or in an area that is likely to cause harm.

Agencies that choose to exhibit third party artwork or special collectibles should ensure that coverage and proper security measures are put in place for the exhibits. The actual amount the property fund will pay for a claim concerning an art/special collectible exhibit loss depends upon the value at the time of loss, as determined by opinions of experts, general availability, inherent value, market value and any other relevant information. Professional appraisals should be used for rare or irreplaceable items before they are exhibited.

An "Art Exhibit Protection Memorandum" Form, DOA 6414 or approved agency form should be completed and filed with the agency risk management office for any artwork/special collectible with a combined value of $50,000 or more that will be displayed in the agency. The maximum dollar value is shown after each item on the list, but does not mean that the maximum will be paid out automatically.

Coverage is further defined by the following provisions, categorized by ownership of the art.

1. **Art/Special Collectible Exhibits Owned by an Art Gallery**

Works of art/special collectibles belonging to an art gallery will have the commission paid to the gallery deducted from any loss. Galleries are expected to have documentation as to price paid for the piece or the selling price of similar works by the same artist.

2. **Art/Special Collectible Exhibits Owned by the Professional Artist(s)**
   Generally, one-artist shows or group shows will fall under this category. In case of loss, the artist(s) will be required to furnish proof of previous sales of similar works to document the value placed on the exhibit. Commissions, if any, paid to the exhibitor will be deducted from the value of the lost item.

3. **Exhibits by Art Collectors**
   This category refers to art/special collectibles owned by an individual collector or art/special collectibles from a private collection. To verify values, the collector(s) will be expected to show sales receipts or professional appraisals of rare and expensive items.

4. **Art/Special Collectible Exhibits by Non-Professionals**
   Unless the artist has had previous sales of similar works, the value will have to be negotiated between BSRM and the artist, using such information as appraisals of remaining works, previous awards and cost of materials.

5. **Art/Special Collectible – Shipping/Transporting**
   If shipping values greater than $50,000,000, attempt to separate into Two separate shipments. If unable to do so, contact your agency risk manager so that appropriate coverage can be arranged/confirmed.

II.5 Telecommuting

Telecommuting employees usually will have state equipment that they use at home on a regular basis. The value of this equipment should be reported by the agency as PIO. The employees may also have personal property at home that they use for business purposes for the benefit of the state. Refer to the Telecommuting Guidelines published by BSRM for information on addressing these issues.

II.6 Causes of Loss (Perils)

II.6.1 Peril

A peril is the cause of a loss. The property program provides coverage for all risks of direct physical loss or damage to property, except where otherwise excluded, (or where unique coverage exposures would be better served in a stand-alone policy or use of an alternative risk transfer technique), for sudden and accidental losses involving property owned by the State, as well as property for which the State has care, custody and control. If more than one peril occurs within a 72-hour period, it shall be deemed to be a single occurrence subject to only one deductible per agency. Examples of covered perils include, but may not be limited to:

- Vandalism and malicious mischief
- Fire (including smoke and water damage from the fire)

- Wind
- Hail
- Flood (See Section II.4.1.3 for additional information)
- Rainstorm
- Snow
- Water Damage
- Burglary (forced entry or exit) – visible pry marks or broken glass, for example
- Theft (no forced entry or exit)
- Sprinkler leakage
- Explosion
- Lightning
- Employee error
- Earthquake and Tier Named Windstorms: Earthquake coverage for California, Alaska, and Hawaii is not covered under the excess policy. Coverage for these states will be provided under the SIR up to a maximum of $500,000, unless arrangements have been made for higher limits. Agencies and campuses will be required to provide BSRM with adequate notice in order to negotiate coverage and/or obtain separate policies for specific coverage if there is a need for higher limits.

  Windstorms of any kind in Florida and Tier Named windstorms in certain counties of Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina and Texas are not covered under the excess policy. Coverage for these areas will be provided under the SIR up to a maximum of $500,000, unless arrangements have been made for higher limits. Agencies and campuses will be required to provide BSRM with adequate notice in order to negotiate coverage and/or obtain separate policies for specific coverage if there is a need for higher limits.

- Contaminants and Pollutants. The self-funded property program provides a <u>$1,000,000 sublimit</u> for loss or damage caused by, resulting from, contributed to or made worse by actual alleged or threatened release, discharge, escape or dispersal of Contaminants and Pollutants caused by fire, lightning, aircraft impact, explosion, riot, civil commotion, smoke, vehicle impact, windstorm, hail, vandalism, malicious mischief.

Examples of Exclusions as well as examples of Perils not covered under the self-funded property program:

- Research, except as provided for in II.4.1.9
- Embezzlement
- Employee theft
- Ordinary wear and tear or gradual deterioration
- Smog, vapor, liquid and dust, unless caused by or results from a covered peril

- Settling, cracking, shrinkage, bulging or expansion of pavements, foundations and walls, unless caused by or results from a covered peril
- Mysterious disappearance or unexplained loss, i.e. inventory shortage
- Loss caused by vermin or insects unless a covered peril results
- Employee personal property, except as needed for legitimate State business purposes as determined and agreed to in writing in advance by the agency risk manager (or DOA Bureau of State Risk Management if the agency does not have a designated risk manager).
- Nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, and whether such loss be direct or indirect, approximate or remote, or aggravated by covered perils, provided however, that direct loss by fire resulting from nuclear radiation or radioactive contamination is covered
- Hostile or warlike action in time of peace or war. However, loss or damage directly caused by acts committed by agent(s) of government, party, or faction engaged in domestic or foreign terrorism, war, hostilities, or warlike operations are covered, provided such agent(s) are not in connection with any operation of armed forces in the country where the property is situated.
- Loss caused by fault, defect, error or omission in design, plan or specification, unless loss and/or damage ensues as the result of a covered peril, and then only for such ensuing loss and/or damage
- Cost of making good, faulty or defective workmanship or materials, but not loss resulting there from
- Environmental cleanup and removal of pollutants from land or water at insured locations, except where otherwise provided
- Loss caused by programming errors or incorrect instruction about electronic or computer equipment, except coverage will apply to resulting loss and/or damage from an insured peril
- Except as otherwise provided, any loss or damage caused by, resulting from, contributed to or made worse by actual alleged or threatened release, discharge escape or dispersal of ‘CONTAMINANTS” or “POLLUTANTS, all whether direct, indirect, proximate or remote or in whole or in part caused by contributed to or aggravated by any physical damage insured by this program. This exclusion shall not apply when loss or damage is directly caused by fire, lightning, aircraft impact, explosion, riot, civil commotion, smoke, vehicle impact, windstorm, hail, vandalism, malicious mischief. This exclusion shall also not apply when loss or damage is directly caused by leakage or accidental discharge from automatic fire protection systems.
- The removal of asbestos, dioxin or polychlorinated biphenyl’s due to the peril of flood.

II.6.2 Managing Water Intrusion in a State Facility

Refer to flow chart an Table 1, distributed November 2004 and incorporated as an attachment to this manual.

II.6.3 Mysterious disappearance

Property is missing, but no police report was written, and/or there remains no explanation as to what happened to the property and when. As noted above, mysterious disappearance is not covered.

II.6.4 Employee theft

An identified individual stole the property while they were a state employee. Employee theft is not covered.

II.6.5 Blanket employee dishonesty bonds (crime bonds)

Crime bonds May be purchased by agencies to cover employee thefts. Please contact BSRM for details.

II.7 Limits of Coverage and Sublimits

The Property Program has a Self-Insured Retention (SIR) of $3.0 million per occurrence and a $5.0 million annual aggregate. Excess insurance is purchased to provide coverage up to $300 million.

Notable Property Program Sublimits:
The following sub limits are included in the total Self-Insured Retention (SIR) and do not increase the limits of coverage for the self-funded program.

Money & Securities – $10,000 Maximum (see Section II.4.1.5)

Towing Charges – Maximum miles to be reimbursed for covered towing (related to a covered loss) shall be no greater than 100 miles. If towing requires greater than 100 miles, immediate contact should be made with your agency risk manager, or BSRM if there is no agency risk manager. Exceptions to the 100 mile limit may be considered under extenuating circumstances. You should contact your agency risk manager prior to incurring additional mileage charges.

Storage Charges for State Autos – Maximum days to be reimbursed for covered storage (subsequent to a covered loss) for State Autos is five (5) days. If storage requires greater than five (5) days, immediate contact should be made with agency risk manager, or BSRM if there is no agency risk manager. Exceptions to the 5-day limit may be considered under extenuating circumstances. You should contact your agency risk manager prior to incurring additional storage fees.

Contaminants and Pollutants - The SIR provides a $1,000,000 sublimit for contaminants and pollutants (See Section II.6.1.)

SUBLIMITS: The following sublimits are in addition to the self-Insured Retention (SIR):

Transit/Marine Cargo - $2.5 Million . Greater limits may be arranged by contacting your agency risk manager in advance of any shipments. (See Section II.4.1.14)

Fine Arts and Special Collectibles – The Fine Arts policy provides coverage up to $80,000,000 for most locations and coverage up to $300,000,000 for specific scheduled locations.

II.8 Deductibles

An agency sustaining a loss is responsible for a deductible per occurrence.

Most claims covered under the self-funded property program will be assessed a deductible per occurrence. On occasion the deductible may be greater based on the information provided in the chart below. Claims involving theft with no evidence of forced entry or removal will be assessed a greater deductible per occurrence, subject to the chart below. Examples of forced entry or removal include visible pry marks or broken glass. If an occurrence includes the theft of items by both forcible and non-forcible means, the specific facts will ultimately determine the deductible amount.

Deductible Non-C-L Claims Based Upon Claim Closure	
Claims Closed: within 120 days from date of loss.	$500 for losses prior to 7/1/2013 $1000 for losses on/after 7/1/2013 ($2,500 for theft with no forced entry)
Claims Closed: between 121 days – 180 days from date of loss	$2,500 ($5,000 for theft with no forced entry) If no extension of time has been granted.
Claims Closed: 181+ days from date of loss	$5,000 ($10,000 for theft with no forced entry) If no extension of time has been granted.
<u>**Exception:**</u> If an extension of time is granted, the deductible will remain at $500 ($2500 for theft with no forced entry) level until such time as the extension expires. If an additional extension is needed, allow at least 5 business days for consideration. The file must clearly exhibit ongoing activity and compelling reason for an extension. BSRM will make final determination on extensions. **How to Request an Extension:** Provide a detailed written request by e-mail to **Andrew.Eisler@wisconsin.gov**.	
Deductible C-L Claims Based Upon Requests for Information Agencies are expected to respond to requests for information as quickly as possible in order to take advantage of all opportunities to mitigate loss activities and to minimize loss adjusting expenses. Delay in providing information results in greater claim costs, and agencies and campuses may be subject to greater deductibles if untimely responses to requests for information are identified. The guidelines below should assist in prioritizing your claims management activities.	
Request for Information: Agency/Campus provides information to C-L/BSRM within 30 days of request.	$500 for losses prior to 7/1/2013 $1000 for losses on/after 7/1/2013 ($2,500 for theft with no forced entry)
Request for Information: Agency/Campus provides information to C-	$2,500 ($5,000 for theft with no forced entry)

L/BSRM after 30 days of request.	
Request for Information: Agency/Campus provides information to C-L/BSRM greater than 60 days of request.	$5,000 ($10,000 for theft with no forced entry)

II.9 Occurrence

An occurrence is a loss, including continuous or repeated exposure to substantially the same conditions, which results in property damage. If loss from one peril occurs more than once within a 72-hour period, the loss shall be deemed to be a single occurrence subject to one deductible per agency.

II.10 Agency vs. Agency Claim

If one state agency damages the property of another state agency, the negligent agency should reimburse the applicable deductible. The owner agency then files the property claim with BSRM. DOJ position, by statute, is that the liability fund is to be used only for liability claims against the state. One state agency cannot be negligent against another state agency.

II.11 Subrogation

Subrogation is the right to recover the amount of loss from the party legally liable for the damage. When an agency incurs a loss caused by a person other than a state employee, the agency should pursue subrogation and apply any recovered amounts toward its deductible for the claim. Any amounts over the deductible are used to reduce the amount of the claim submitted to BSRM. Salvage payments may not be used to reduce the deductible

II.12 Salvage

When possible and feasible, damaged state property with an estimated repair cost that is greater than its actual cash value should be sold for salvage. Any salvage payment is then subtracted from the amount of the claim. Salvage payments may not be used to reduce the agency's deductible.

II.13 Depreciation

Depreciation is the decrease in the value of property over a period of time, usually as a result of age, wear and tear from use, or economic obsolescence. Actual physical depreciation (wear and tear from use) is subtracted from the replacement cost of the covered property in determining its actual cash value.

II.14 Claim Handling Procedures

II.14.1 Property Claims Reporting

Property claims are to be reported to your agency risk manager within 24 hour of loss, or as soon as possible. C-L potential claims should be reported to your agency risk manager, who will advise BSRM. The overall goal is to have claims reported within 24 hours of the date of loss whenever possible. Early reporting provides the most opportunity for mitigation and costs savings. A claim is deemed reported once the agency Risk Management and/or BSRM has verbal or written notice. It is highly advised that verbal notification be followed by written notification within 48 hours of a loss.

All property claims are expected to be concluded within **120 days** from the date of loss. Claims submitted for payment beyond 120 days may not be honored. For claims that will not be finalized within this timeframe and which are not assigned to a third party adjuster, an agency should instead submit to BSRM prior to the 120 day deadline, a written statement providing BSRM notice with an explanation as to why the claim cannot be finalized within the 120 days

To Request an extension: e-mail **Andrew.Eisler@wisconsin.gov** explaining why a claim cannot be closed, what has been done to date to mitigate the loss, and a proposed target date for closure.

A finalized claim must include a signed Proof of Loss Form, DOA-6413, and all supporting documentation, including calculation of applicable deductibles. Without proper documentation, claims will be returned to the agency.

State property coverage pays the lower of either the cost to repair or to replace with a like unit or model less the applicable deductible. Both repairs and purchases should be supported with two (2) estimates if the damages are $2,500 and over (one estimate if the damages are under $2,500), and any sales tax must be deducted. **Betterments or upgrades are not covered, and these costs should be deducted from the claim.** If an agency elects not to repair/replace, BSRM is liable for no more than actual cash value (ACV). ACV is the replacement cost as of the date of loss minus depreciation.

Appropriate property claim documentation to ensure adequate and timely compensation for a loss should include:

- Photographs of damage (if photos were taken)
- If damage is $2,500 and above, two (2) written estimates for repair or replacement with sales tax deducted
- If damage is below $2,500, one (1) written estimate for repair or replacement with sales tax deducted
- Copies of purchase orders or invoices documenting the actual repair or replacement
- Signed Lightning Loss Affidavit (required on all claims with lightning as the cause of loss)
- Narrative, such as the General Accident Report, and any correspondence describing what happened to cause the loss
- If numerous bills and charges are associated with the claim, provide a summary sheet describing and detailing the individual charges
- Police report (required for theft, robbery, or burglary claims to document forcible removal/entry and to substantiate vandalism claims)
- A signed Proof of Loss Form, DOA-6413

II.14.2 Incidents vs Claims

Not all of the State's property damage must be reported to BSRM. Incidents are cases that are not reportable to BSRM because they are less than the applicable deductible, or for which full reimbursement was received via subrogation.

II.14.3 Property Claims Under $10,000

A third party adjuster may be assigned to claims under $10,000 with BSRM's approval.

II.14.4 Property Claims $10,000 and Above

An agency should **immediately** report to the agency risk manager and/or BSRM all Builders' Risk claims and water damage property claim losses estimated to be $10,000 or more. If agency representative is aware of a potential claim outside of normal business hours, leave a voice mail or send an e-mail to BSRM with the following details: name, phone number, and a brief description of the loss.

All Builders' Risk claims and water damage claims over $10,000 will be assigned and adjusted by C-L, a third party adjuster, for investigation. C-L Cunningham Lindsey (C-L) (C-L) handles these claims, including completion of the Proof of Loss and submission to BSRM for payment of the claim. For all other claims between $10,000 and $20,000, delegated agencies should contact BSRM on those claims where they feel outside adjustment would be needed. Determination of whether the claim will be assigned to C-L will be on a per claim basis.

Examples of circumstances where claims **between $10,000 and $20,000** would continue to be assigned to C-L include:

- Water damage losses;
- Construction related losses;
- Potential for subrogation exists which may require a consultant hired through C-L or legal representation
- There is potential for negotiation of costs for services/materials
- Agency may be unsuccessful in getting estimates/contractors for repair work
- Unusual type of claim for which C-L expertise is necessary
- Repair/replacement issues

Delegated agencies (DOC, DNR, and UW) will contact BSRM immediately if a claim is expected to be **over $20,000**. Other agencies will continue to use the $10,000 threshold. Agencies will cooperate and assist C-L as necessary to ensure that their claims are concluded in a timely manner, with the goal of concluding claims within three to six months of the date of loss unless a claim involves extensive repair and/or replacement. Greater deductibles may be assessed to the agency if there are unreasonable delays in providing information. (See Section II.8.)

a. If at the time of loss, a claim is expected to be over $25,000, it will be set up by BSRM and referred to C-L for handling.

b. If at the time of loss, a claim is expected to be between $20,000 and $25,000, the delegated agency and BSRM will discuss whether the claim should be referred to C-L. If the claim is not referred to C-L, the agency shall:
   - Set up the claim in STARS when the claim is reported

- Set an initial reserve amount when the claim is set up in STARS, and update as information becomes available. Initial reserves may be set based on experience and or estimates.
- Complete the subrogation tab information indicating yes, no, or pending. Update the subrogation tab if the status changes.
- Complete the litigation tab information, indicating “Yes” if there is any attorney involvement. Include all information that is available, update as new information becomes available..
- Adjust the claim, including subrogation where applicable
- Update the STARS claim information as information becomes available.
- Consult with C-L as needed and clearly document all communications, i.e., e-mails, written correspondence, and telephone calls in the STARS claim file.
- If claim cannot be closed within 120 days after date of loss, provide BSRM with a status report as provided for in Section II.8.
- Send to BSRM the entire claim packet with either signed Proof of Loss or Proof attached to STARS claim file. (BSRM does the check transactions for payment of the claim.)

II.14.5 Recovery of Losses

II.14.5.1 Recoveries by Agencies Prior to Filing a Claim

Each agency will be expected to attempt to collect, in accordance with accepted insurance industry practices, from those individuals or firms that cause damage to state property. The first dollars recovered by the agency shall be used to satisfy the deductible. Any recovered amount that exceeds the deductible shall be used by the agency to reduce the claim to BSRM. The remaining balance should then be submitted to BSRM for processing.

In an effort to reduce or eliminate late reporting of property losses to BSRM, agencies should submit covered property losses to BSRM before undergoing a long subrogation process.

II.14.5.2 Recoveries by BSRM

BSRM or its representative may assume the agency's right of recovery when an agency files a claim. In those situations, all losses will be subject to the applicable deductible.

II.14.5.3 Recoveries by Agencies After Filing a Claim

If a loss has been paid by BSRM for stolen property that is recovered at a later date, the following guidelines apply:

1. The property is recovered **undamaged**: The claim payment should be returned in full to BSRM.

2. The property is recovered **damaged**: The claim payment should be returned in full, less the cost of repairs needed to return the property to its condition at the time of the loss.

If the agency successfully subrogates a claim for which it received payment from BSRM, it shall return to BSRM the amount in excess of the claim deductible. Also, if the agency later discovers that it was overpaid for a claim, it shall return to BSRM the amount of the overpayment. BSRM will adjust the agency's experience accordingly.

II.15 Commercial Insurance

II.15.1 Vehicle Glass Contract

Vehicle glass breakage from any cause is covered with no deductible. Refer to current vehicle glass contract.

II.15.2 Boiler and Machinery

Boiler and Machinery/Equipment Breakdown Insurance includes inspection services in addition to covered losses.

III LIABILITY

III.1 Introduction

The State Self-funded Liability Program provides funding for payment of liability claims brought against state officers, employees and agents, whose negligent acts while acting within the scope of their employment result in bodily injury or property damage to a third party.

III.2 Program Philosophy Statement:

Wis. Stats., s. 20.505(2)(k) provides funds to pay for costs incurred by the State's Self-funded Liability Program as a result of liability claims brought against State officers, employees and agents whose negligent acts while acting within the scope of their employment result in bodily injury or property damage to a third party. Wis. Stats., s. 895.46 provides for the payment of judgments taken against these State officers, employees and agents. Wis. Stats., s. 893.82 establishes claim procedures and sets time requirements for filing a notice of claim against a State officer, employee or agent.

The agencies, State Risk Management, Risk Management Executive Council and the Department of Justice Attorney General's Office work cooperatively in developing program policies to the extent they are not addressed by statute. Their goals include 1) ensuring that State officers, employees and agents are indemnified and defended and 2) identifying exposures and ensuring officers, employees and agents are aware of the exposures. Excess insurance coverage may be purchased in an effort to reduce the State's exposure to catastrophic loss.

Agency responsibilities:

- Document the nature of a loss, and timely prepare and submit those claims.
- Cooperate with third party adjusters assigned to a case to facilitate early investigation and rapid claim resolution.
- Identify risk exposures and implement loss control procedures, to the extent financially capable, to reduce the State's exposures and potential losses. As necessary, consult with State Risk Management on issues and exposures.
- Consult with and receive approval from State Risk Management on the purchase or need for additional insurance.
- Provide education and training as appropriate.

State Risk Management responsibilities:

- On behalf of the agencies and the Risk Management Executive Council, annually recommend appropriate premiums to ensure sufficient revenue is generated for the losses being paid under the program. This includes setting loss reserves on upcoming claims. The Department of Administration shall issue the premiums upon approval from the DOA Secretary.
- Initiate and consult with agencies on the purchase of annual excess coverage.
- Assist in the purchase of insurance contracts where appropriate and provide approval as necessary to meet the business needs of the agencies.
- Timely process claims and ensure that a loss is documented.

- Assign third party adjusters and work with them to facilitate early investigation and rapid claim resolution. This includes reporting to DOJ those claims with proposed settlements in excess of $10,000 to obtain settlement authority.
- Provide education and training as appropriate.
- Recommend and support loss control initiatives, including assisting and consulting with agencies on risk control issues.

III.3 Negligence

A tort is failure to do something that a "reasonable person" would do under the circumstances, or doing something a "reasonable person" would not do. The elements of tort include: (1) a legal duty to use reasonable care under the circumstances, (2) a breach of this duty, (3) resultant harm to the plaintiff, and (4) a direct causal link between the breach and the plaintiff's harm.

There are four basic elements to negligence:

1. A duty is owed (keeping floors dry).
2. A breach of that duty occurs (a floor is knowingly left wet with no signage).
3. Injury results (a person slips and falls, breaking an arm).
4. The breach was the proximate cause of the injury (the slippery floor directly contributed to the fall).

If these elements can be shown, negligence may be asserted and liability may result.

III.4 Liability Defenses

III.4.1 Comparative Negligence

Wisconsin is a comparative negligence state. Comparative negligence means that the negligence of the parties is compared, commonly on a percentage basis. There is no right of recovery due a person who is **more than 50%** responsible for the incident. One who is 50% responsible may collect up to 50%.

Wisconsin does **not** have:

- Contributory comparative negligence, which means that if a person contributes to the accident in any way, they have no right to recovery.
- True comparative negligence, which means that the person collects to the extent they were not negligent, e.g. if they were 90% responsible, they may collect up to 10% of their damages.

III.4.2 Assumption of Risk

This may be used when a person has knowledge or awareness of a risk and was voluntarily exposed to the danger. For example, a spectator at a hockey game assumes some risk of injury from a puck being hit into the seating area.

III.4.3 Strict Liability

Strict liability (or absolute liability) is when an agency is automatically deemed negligent regardless of whether the agency acted negligently or with intent to cause harm. Claims resulting from abnormally dangerous substances, such as dynamite, gasoline, noxious chemicals, and explosives all fall under strict liability. Ultra-hazardous activities such as blasting, mining, manufacturing dangerous chemicals, and handling propane gas are also included under strict liability.

III.5 Coverage Types

All of the following coverages apply wherever the State officer, employee or agent is located at the time of the loss, whether it is in-state, out of state, or out of the country.

III.5.1 Auto Liability

Wis. Stats., s. 895.46, provides for the payment of judgments taken against State officers, employees and agents while performing duties within the scope of their employment while using a vehicle licensed for use on public roadways and owned or leased by the State.

III.5.2 Civil Rights

Wis. Stats, s. 895.46, provides for the payment of judgments taken against State officers, employees and agents while performing duties within the scope of their employment for claims pertaining to constitutional rights. These claims are generally initiated by third parties such as the general public and/or offenders/residents and include but are not limited to legislative action, treaties and police/security.

III.5.3 Employment Practices

Wis. Stats., s. 895.46, provides for the payment of judgments taken against State officers, employees and agents while performing duties within the scope of their employment for claims related to employment with the State, including but not limited to harassment, discrimination, drug testing, and civil services, including termination, actions other than termination, and tenure. The agency employing the negligent State officer, employee and/or agent must pay the back pay agreed to in any Employment Practices settlement.

III.5.4 Environmental

Wis. Stats., s. 895.46(6), provides for the payment of judgments taken against State officers, employees and agents while performing duties within the scope of their employment for claims pertaining to the environment.

III.5.5 General Liability

Wis. Stats., s. 895.46, provides for the payment of judgments taken against State officers, employees and agents while performing duties within the scope of their employment for accidents involving State premises, products, operations/completed operations, and non-certified first response.

III.5.6 Medical Malpractice

Wis. Stats., s. 895.46, provides for the payment of judgments taken against State officers, employees and agents while performing duties within the scope of their employment for claims such as dental, medical, and volunteer health professionals.

III.5.7 Professional

Wis. Stats., s. 895.46, provides for the payment of judgments taken against State officers, employees and agents while performing duties within the scope of their employment for errors and omissions type claims, including but not limited to those involving administration, human resources, vehicle/driver registration, architects/engineers, boards/commissions, educators, investigators, lawyers, certified first response, psychologists, social workers, and veterinarians.

III.6 Limits of Coverage

S. 893.82(6), limits the amount recoverable to $250,000 per claimant per negligent State officer, employee and/or agent involved. Civil Rights, Employment Practices, and Environmental Liability claims, however, are not subject to this limit because they fall under federal regulations. Claims that result from a State officer, employee and/or agent's actions outside of the state of Wisconsin are also not subject to this statutory limit.

All monetary portions of claims settlements are paid by the Liability Program with the exception of back pay in Employment Practices settlements or unless otherwise negotiated by the agency with the Department of Justice and State Risk Management. The agency employing the negligent State officer, employee and/or agent must pay the back pay agreed to in any Employment Practices settlement.

In an effort to reduce the State's exposure to catastrophic loss, State Risk Management purchases commercial liability insurance for Auto Liability, General Liability and Professional Liability claims. The policy limits of this excess insurance are $49 million per occurrence, which is in excess of the $4 million per occurrence Self-Insured Retention. The excess policy excludes liability arising out of the rendering of or failure to render professional medical, nursing, dental, paramedical services and pharmacy services.

Claims payments for Employment Practices, Civil Rights, Environmental and Medical Malpractice cases come solely from the self-funded liability program. No excess insurance is purchased to fund these claims payments.

III.7 Telecommuting

Telecommuting is not recommended if an employee's position description requires frequent client contacts, as there are increased liability exposures if business clients are to go to the employee's home. If an agency determines that it is appropriate for such an employee to telecommute, it should require that the employee have a minimum of $500,000 homeowner's insurance general liability coverage and enforce monitoring criteria. Refer to the Telecommuting Guidelines published by BSRM for information on addressing these issues.

III.8 Volunteers

It is important that state agencies take appropriate steps to protect the interests of the state as well as the interests of the volunteers working in the capacity as agents for the state. Principles to remember when considering a volunteer as an agent of the state are as follows:

- An agency relationship exists when there is benefit to the State and direction/control of the volunteer. Depending on the situation, formal written agreements may not be necessary.
- When the State wants to establish a formal agency relationship with a volunteer, the volunteer should be provided with a written agreement or appointment document which includes a statement that the state agency retains the right to control and direct the work of the volunteer. This document should also include the statement, "We regard you as an agent of the State as provided in s. 895.46, Stats." Refer to Volunteer Agreement, Form DOA-3009.

After the written agreement/appointment document is issued and signed by both the volunteer/agent and the state agency, it is imperative that follow-up occurs with some kind of training program or checklist/review mechanism that sets forth the expectations of the work that the volunteer will be doing. This review mechanism should be similar to what an agency would do if the volunteer were a state employee."

III.9 Claim Handling Procedures

III.9.1 Liability Claims Reporting

Any activity resulting in bodily injury to a third party (a non-State employee) or their property should be reported to the agency risk manager or BSRM. It is the responsibility of the agency risk manager to inform agency personnel of proper reporting procedures for the agency. Generally, whenever there is an occurrence which could result in a claim being brought against the employee or agency, the state employee involved in the occurrence should fill out a General Accident Report, Form DOA 6441, and submit it to the agency risk manager.

It is in the best interest of the agency risk manager to be aware of incidents that occur. Also, the agency risk manager should retain a complete file of all claim and incident documentation.

Wis. Stats., s. 893.82, establishes claim procedures and sets time requirements for filing a Notice of Claim (NOC) against a State officer, employee, or agent. If a claim is not settled within 90 days of the date of loss, the agency should consult with State Risk Management and notify the unrepresented claimant of the NOC requirement. If the claim will not be settled until after 120 days from the date of loss, the claimant or his/her representative must file a Notice of Claim with the Attorney General's Office. In the case of a medical malpractice claim, the Notice of Claim must be filed within 180 days after discovery of the injury or the date on which the injury should have been discovered, pursuant to s. 893.82(5m), Wis. Stats. The Notice must include the following information:

- Time, date, location and circumstances of the event giving rise to the claim for the injury or loss, and
- Names of state officers, employees or agents involved

The Notice of Claim must also be sworn to by the claimant and served upon the Attorney General by certified mail.

Prompt settlement will result in less cost and greater satisfaction for the claimant. The supporting documentation for a claims payment request from an agency typically includes the following (for other than an auto liability claim):

1. Police report, if available
2. Witness statement(s), if available
3. Claimant statement(s)
4. Statements from agency employee(s) to substantiate the situation
5. Photographs
6. Two (2) property estimates
7. Scope of employment statement
8. Recommendations by the agency risk manager (pay lowest estimate, pay percentage, deny the claim, etc). A final decision will be made by BSRM.

III.9.2 Incidents vs Claims

Incidents are cases that are not reportable to BSRM because they are not expected to turn into claims. An example of an incident is a situation in which no claim has been received from a party who the risk manager believes may have suffered a loss, so a file for informational purposes is set up at the agency. Depending on the situation, the agency risk manager may also want to put BSRM on notice of the incident.

III.9.3 Bodily Injury Claims

Bodily injury claims should be reported **immediately** to the agency risk manager and BSRM. If outside of normal business hours, leave a voice mail or send an e-mail to BSRM with the following details: name, phone number, and a brief description of the loss.

BSRM may assign a third party adjuster to liability cases that involve a non-state employee's bodily injury claim and/or property damage claim estimated at more than $10,000 that may have been caused by the acts of the state employee. Sometimes BSRM may assign a third party adjuster to a claim even though it appears that the State is not liable for the injury and/or property damage.

The third party adjuster (Sentry Claims Service) is responsible for performing the investigation and handling of all contacts with the claimant, attorney and/or insurance company. The third party adjuster will make a recommendation to BSRM and request authorization for a proposed settlement range. Proposed liability settlements in excess of $10,000 are forwarded by BSRM to DOJ for approval.

III.9.4 Summons and Complaint

A claimant commencing a liability lawsuit will normally have a Summons and Complaint filed against the state employee named in the lawsuit. A state employee receiving a Summons and Complaint should immediately contact his or her agency risk manager or BSRM, who will forward the Summons and Complaint to the Department of Justice (DOJ) to handle. Because there are normally only 20 days to respond to a Summons, it is very important to immediately forward the Summons and Complaint to DOJ. Also, the agency will need to submit to DOJ a written request for representation by the Attorney General's Office.

III.9.5 Claims Investigation, Recommendation, And Denial

The procedures outlined in this section apply to all agencies unless the risk manager notifies BSRM that they are unable to take on this responsibility. Any time an agency chooses to handle investigation of a claim, they should freely use BSRM for consultation and guidance in the investigation process.

Claim investigation should ensue as follows:

1. The agency should compile as much pertinent information as possible to determine the circumstances of the loss and the persons involved.
2. The agency should determine the extent to which agency staff is negligent. Responsibility for claims payment may be allocated based on a percentage of negligence (See Comparative Negligence).
3. The claimant should submit at least two (2) written damage estimates. Upon receipt of the estimates, the claim information and a payment recommendation should be forwarded by the agency to BSRM. This recommendation should be based on the estimates and the comparative negligence.
4. If the other party is primarily at fault, the agency should deny the claim. Denial of claims may be sent from the agency to the third party using a form denial letter. Assistance with denials may be obtained from BSRM.
5. BSRM will make a decision based on the agency's request and supporting documentation.
6. BRSM will send a copy of the payment cover letter to the agency.

III.9.6 Reserves

Loss reserves will be set up by BSRM and/or the Attorney General's office as realistically as possible so as not to penalize the agency for good claim reporting. Loss reserves allow BSRM to better estimate premium needs for the upcoming years. Loss reserves will be reviewed with the involved agency and the Risk Management Executive Committee prior to any premium workup.

III.10 State Claims Board

The Claims Board is governed by Section 16.007, Wis. Stats., and considers money claims of $10 or more against the state. When a claim is denied for reimbursement through the State Self-Funded Liability

Program, the claimant may be advised of the option to present the claim before the State Claims Board using the required form. The Claims Board is not limited to payments based solely on a negligence basis and may pay on an equitable basis. Funds for these settlements come directly from the agencies rather than from the State Self-Funded Liability Program.

IV AUTO

IV.1 State Vehicle Usage

Refer to the Wisconsin Fleet Driver and Management Policies and Procedures for specific details. An agency may operate under more stringent standards if it wishes.

IV.1.1 Minimum Standards for Driving a State Vehicle

State employees, authorized University of Wisconsin System students and other authorized agents of the state may be allowed to drive a state vehicle if the following minimum standards are met and approved by their employing agency:

- Must have a valid driver license
- Must have a minimum of two (2) years licensed driving experience, AND
- Must be eighteen (18) years of age

IV.1.2 Driver Disqualification

State employees, authorized University of Wisconsin System students and other authorized agents of the state may not drive a state vehicle if their driving record reflects any of the following conditions:

- Three or more moving violations and/or at-fault accidents in the past two (2) years
- An Operating While Intoxicated (OWI)/Driving Under the Influence (DUI) citation within 12 months
- Suspension or revocation of driver's license

IV.1.3 Minimum Standards for Driving a State-Owned/Leased/Rented 12/15 Passenger Van

The following minimum standards are to be used by state agencies when employees/agents are driving state-owned/leased/rented 12/15 passenger vans on state business. An agency may operate under more stringent standards if it wishes.

The van driver:

1. Must have a valid driver license
2. Must have a minimum of five (5) years licensed driving experience. (Alternatively, a driver who is at least 21 years of age with a Class B or C CDL [Commercial Driver License] endorsed for passengers may drive 12/15 passenger vans only within the State of Wisconsin.)
3. Must have taken approved van driver training as required by the driver's category (Categories are defined in the van guidelines), and
4. To remain a qualified driver, must be certified by the driver's agency as having met the active driver requirement.

A state employee/agent may not drive a state-owned/leased/rented 12/15 passenger van if their driving record reflects any of the following conditions:

- Three or more moving violations and/or at-fault accidents in the past two (2) years
- An OWI or DUI violation within the past year. (OWI/DUI violations are for operating while under the influence of an intoxicant, controlled substance or other drug).

IV.2 Coverage

Autos present many combined exposures to loss, including property, liability, and worker's compensation. Comprehensive coverage is provided on all state vehicles, whereas collision coverage is an option that is available to the state agencies that own state vehicles. The State does not provide liability or medical payments coverage on state-owned vehicles. Coverage is provided on the authorized state driver/employee pursuant to Wis. Stat., s. 895.46, which provides liability protection for the negligent acts of its state officers, employees and agents while acting within the scope of their employment. Glass coverage is provided on all vehicles pursuant to the terms of the State auto glass insurance contract.

Questions about state driver and vehicle protection should be referred to the agency fleet manager, the agency risk manager, or BSRM. For further information, refer to the Wisconsin Fleet Driver and Management Policies and Procedures.

IV.2.1 Auto Property

Auto property coverage is for damage or loss to state-owned vehicles licensed for use on public roadways. Damages to vehicles that are rented or leased for 30 days or more are also covered under the state's property program. Rentals of less than 30 days under the State's rental passenger vehicle contract include collision and liability coverage in the price of the rental and are handled by the contracted rental agency. Refer to the State's contract information for car rental, in-state and out-of-state. Unusual vehicle rentals should be discussed with BSRM or the agency risk manager.

- **Collision** protection pays for damage to state vehicles involved in collisions. This coverage is optional.
- **Comprehensive** protection covers damage from almost all other causes, including fire, water, vandalism, hail, wind, falling objects, civil commotion, theft, flood, and animal damage. This coverage is not optional.

IV.2.2 Auto Liability

Auto liability coverage is for claims in which an authorized person driving a state vehicle in the scope of their state employment causes injury to a third party, or their property. Although a state vehicle may be damaged as well, only the damages to the third party are considered auto liability. For example, if a state vehicle backs into a privately owned car in a parking lot, the damage to the state vehicle would be considered auto property, and the damage to the other vehicle and/or injuries to the other driver and passengers would be considered auto liability.

IV.3 Causes of Loss

- **Driver Condition:** refers to the physical condition of the driver
- **Driver Factors:** refers to acts that the driver was doing or not doing which resulted in the accident
- **Vehicle Factors:** refers to the condition of the vehicle that may have contributed to the accident
- **Highway Factors:** refers to the condition of the roadway and/or environment (ice, rain, wind, etc.) that may have contributed to the accident

IV.4 Worker's Compensation

Worker's Compensation pays for medical expenses, hospital expenses, and loss of wages for state employees injured while in work status.

IV.5 Privately-Owned Vehicles Used in State Business

Damages to the employee's personal vehicle are covered by the employee's own auto insurance, and the employee is responsible for the insurance deductible. Under no circumstances will the State's property program pay for the employee's vehicle repairs. It is the employee's responsibility to carry personal auto liability insurance. Recommended minimum limits of personal auto liability insurance coverage are $100,000 for bodily injury per person, $300,000 for bodily injury per accident when two or more people are injured, and $50,000 for property damage per accident.

The employee's personal auto liability insurance also provides primary coverage for medical expenses incurred by other parties involved in an employee's at-fault accident, and primary coverage fore repairs to other vehicles or property involved in an accident caused by the employee. The State liability program only provides coverage for amounts in excess of the employee's auto liability insurance if the state employee was negligent and within the scope of employment when the accident occurred.

IV.6 Claim Handling Procedures

IV.6.1 Auto Claim Reporting - Property

Auto property claims over the $1,000 deductible are to be filed and completed within **120 days** from the date of loss. Claims submitted beyond 120 days may not be honored. Auto claims of over $10,000 should be immediately reported to the agency risk manager and/or BSRM to determine if assignment to the State's third party adjuster is necessary. If outside of normal business hours, leave a voice mail or send an e-mail to BSRM or the agency risk manager or fleet manager with the following details: name, phone number, and a brief description of the loss.

For claims under $10,000 that will not be finalized within 120 days from date of loss, an agency should submit a written statement putting BSRM on notice of the claim with an explanation as to why the claim will not be finalized within 120 days from date of loss.

State auto property coverage pays the lower of either the cost to repair or the actual cash value of the vehicle as of the date of loss, less the applicable deductible. Both repairs and purchases should be supported with two (2) estimates (one estimate if damage is under $2,500 and loss date is on or after September 1, 2005), and any sales tax must be deducted. *Betterments or upgrades are not covered, and these costs should be deducted from the claim. Actual cash value (ACV) is determined by the trade-in value listed in the NADA Official Car Guide or comparable source, adjusted for mileage minus salvage.

IV.6.2 Auto Claim Reporting – Liability

Auto liability claims should be concluded and submitted by an agency to BSRM within 120 days from the date of loss, as provided by s. 893.82, Wis. Stat. Prompt settlement will also result in less cost and greater satisfaction for the claimant.

Any accident resulting in bodily injury to a third party should be reported **immediately** to the agency risk manager and/or BSRM for assignment to the State's third party adjuster. If outside of normal business hours, leave a voice mail or send an e-mail to BSRM with the following details: name, phone number, and a brief description of the loss.

The third party adjuster (Sentry Claims Service) is responsible for performing the investigation and handling all contacts with the claimant, attorney and/or insurance company. Sentry will make a recommendation to BSRM and request authorization for a proposed settlement range, if appropriate.

State liability coverage pays the lower of **two (2)** estimates. The vehicle is considered totaled if the lower estimate exceeds the retail value listed in the NADA Official Car Guide or comparable source, adjusted for mileage and salvage value. If the vehicle is totaled, the adjusted NADA retail value, with mileage and salvage adjustments, is paid.

If the third party driver requires a rental vehicle during the time that their vehicle is being repaired, the state will pay the daily base rate for an economy (compact) vehicle plus sales tax. The claimant will not be reimbursed for the purchase of any insurance, damage waiver, fuel charges or additional mileage charges that they incur.

IV.6.3 Procedure After an Auto Accident Involving a State Vehicle

Each state vehicle has an accident kit in the glove compartment advising employees of the procedures to be taken in the event of an accident. The information in the accident kit needs to be filled out completely. Refer to the Wisconsin Fleet Driver and Management Policies and Procedures for specific details.

The instructions in the kit include:

1. Report the accident **immediately** to appropriate agency fleet and risk management staff. If an accident involves bodily injury or death, BSRM should be contacted immediately. Call Paula Sohn (Liability) at (608) 267-2731, Andrew Eisler (Property) at (608)

266-0168 or Bradley Templin (Property & Liability Manager) at (608) 267-0643.

2. Fill out the Vehicle Accident Report Form, DOA 6496 completely and return to the agency risk manager within two (2) working days.
3. Submit a copy of the police report to the agency risk manager.
4. If bodily injury is involved, the claim will be assigned to a third party adjuster for further investigation.
5. The agency risk manager is responsible for submitting the following information to BSRM:
   - Police report or DOT Driver Report of Accident form
   - Vehicle Accident Report Form, DOA 6496
   - Photographs of damage (if photos were taken)
   - Two (2) written estimates. For state auto property claims, one estimate if damages are under $2,500 and date of loss is on or after September 1, 2005. If the vehicle is totaled, documentation should also be submitted which supports the ACV of the vehicle.
   - For property claims, one signed Proof of Loss Form, DOA 6413
6. Injured state employees may use their health insurance, worker's compensation, or self-initiated litigation to recover damages against negligent third parties.

Contact Paula Sohn (Liability) at (608) 267-0643 or Andrew Eisler (Property) at (608) 267-2731 if you need advice on how to proceed with a claim.

IV.6.4 Incidents vs Claims – Auto Property

Not all of the State's property damage must be reported to BSRM. Incidents are cases that are not reportable to BSRM because they are less than the applicable deductible, or for which the agency has made successful subrogation.

IV.6.5 Incidents vs Claims – Auto Liability

An incident is a situation in which a risk manager believes the State may have suffered a loss and would like to set up a file in the risk management information system for informational purposes only.

IV.6.6 Recovery of Losses – Auto Property

IV.6.6.1 Recoveries by Agencies Prior to Filing a Claim

Each agency will be expected to attempt to collect, in accordance with accepted insurance industry practices, from those individuals or firms that cause damage to state vehicles. The first dollars recovered by the agency shall be used to satisfy the deductible. Any recovered amount that exceeds the deductible shall be used by the agency to reduce the claim to BSRM. The remaining balance should then be submitted to BSRM for processing.

In an effort to reduce or eliminate late reporting of auto losses to BSRM, agencies are encouraged to submit covered auto losses to BSRM before undergoing a long subrogation process.

IV.6.6.2 Recoveries by BSRM

BSRM or its representative may assume the agency's right of recovery when an agency files a claim. In those situations, all losses will be subject to the applicable deductible.

IV.6.6.3 Recoveries by Agencies After Filing a Claim

If a loss has been paid by BSRM for a stolen vehicle that is recovered at a later date, the following guidelines apply:

1. The auto is recovered **undamaged**: The claim payment should be returned in full to BSRM.
2. The auto is recovered **damaged**: The claim payment should be returned in full, less the cost of repairs needed to return the auto to its condition at the time of the loss.

If the agency successfully subrogates a claim for which it received payment from BSRM, it shall return to BSRM the amount in excess of the claim deductible. Also, if the agency later discovers that it was overpaid for a claim for some reason, it shall return to BSRM the amount of the overpayment. BSRM will adjust the agency's experience accordingly.

V COMMERCIAL INSURANCE

V.1 State VanPool Program Insurance

The VanPool Program is operated outside of normal business hours and passengers include other than State employees. Therefore, the State purchases liability insurance for the VanPool through a commercial insurer. State employees participating in the VanPool Program are considered to be outside the scope of their employment and consequently would not be covered by Workers Compensation if injured. Collision and comprehensive coverage is provided by the State's Self-funded Property Program because the vans are owned by the State.

V.2 Bond Insurance

Wis. Stats., s.16.865 (5) authorizes the Department of Administration to approve all insurance purchases including protection-type bonds. Prior to purchasing any bonds, agencies must obtain approval from BSRM. The agency should also consult with BSRM on any change, deletion or addition of coverage. Examples of bond insurance purchased by agencies are Employee Dishonesty Bonds, Financial Guarantee Bonds and Performance Bonds.

V.3 Aircraft

State employees occasionally fly private aircraft on state business. To be approved to fly an aircraft on state business requires additional pilot qualifications and insurance requirements. The DOA Air Fleet Services has developed an Air Operations Manual which includes pilot qualifications for both state-owned and privately owned aircraft used on state business. The manual should be consulted and all requirements met before using personal aircraft on state business.

The DOA and the Department of Military Affairs (DMA) are the only state agencies that own aircraft. The DOA owns a fleet of aircraft used primarily for in-state business by the Governor and state employees. The DMA administers a program in which Army National Guard helicopters are occasionally used to assist in search and rescue operations, or to provide fly-over damage assessments in natural disaster situations.

Commercial insurance is purchased for state fleet aircraft exposure because of the potential for catastrophic loss and because coverage is not included in the excess liability insurance purchased by the State.

VI CONTRACTUAL AGREEMENTS

VI.1 Hold Harmless Provision

A Hold Harmless provision is a provision in a contract that requires one contracting party to respond to certain legal liabilities of the other party. A hold harmless contract is an arrangement whereby one party agrees to absolve a second party from any blame even when property damage or bodily injury is caused by negligence of the second party.

The State of Wisconsin cannot agree to any provision that would require the State to assume liability for damages caused by another party.

An example of an unacceptable hold harmless provision is:

> "The State of Wisconsin agrees to save the contractor harmless from any and all damages, expenses, costs and attorneys' fees on account of injury to person, life or property or injury resulting in the death of any person or persons in any manner arising out of or in connection with the performance of this contract."

An example of an acceptable hold harmless provision is:

> "The State of Wisconsin agrees to save the contractor harmless to the extent provided under ss.893.82 and 895.46, Wis. Stats., for any and all damages, expenses, and third-party claims where such damage or injury was a result of the negligent acts or omissions of the State of Wisconsin's officers, employees or agents.

VI.2 Procedures and Responsibilities for Contracts

VI.2.1 Delegated State Agencies

Agencies with delegated authority from BSRM are responsible for reviewing all contracts from a risk management perspective; this will usually be the responsibility of the agency risk manager or legal counsel. Contracts must be reviewed in part to ensure that unacceptable hold harmless clauses are not included in any contracts. BSRM is available for assistance in reviewing any contract language.

VI.2.2 Non-delegated State Agencies

Non-delegated state agencies entering into contractual agreements with outside organizations are to send the contracts to BSRM for review. A review by BSRM is not necessary when standard contracts are utilized through the State Procurement Process.

VI.3 Agreements with Contractors and Vendors

VI.3.1 Insurance Certificates

Contractors, vendors and outside users of our facilities are not considered employees of the State. Therefore, any negligence committed by such parties is not covered under the State's self-funded property or liability programs. Because the State does not want to be held liable for the negligence of others, the State requires contractors, vendors and users of our facilities to furnish proof of acceptable insurance with adequate limits and

coverage. Refer to the State Procurement Manual at
http://vendornet.state.wi.us/vendornet/procman/prod3.asp

VI.3.2 Certificate Of Protection

If a contractor or vendor requires proof of insurance coverage by the State, a Certificate of Protection in lieu of an insurance policy is issued.

Please contact Paula Sohn (Liability Specialist) at
(608) 267-2731 for more assistance.

VI.4 Standard Insurance Requirements for State Contracts

The "Standard Terms and Conditions" portion of state contracts reflects the minimum acceptable limits of insurance at this time for state contracts. There may be exceptions to the rule based on the exposure involved in individual contracts.

VII DEFINITIONS

Actual Cash Value (ACV): The replacement value of property less an allowance for depreciation.

Adjuster: One who determines the amount of loss suffered.

Agent: An individual who is performing business of the state under the state's direction and control and for the state's benefit, with or without pay.

BSRM: DOA Bureau of State Risk Management

Builder's Risk: Coverage for property while in the course of new construction or during renovation to an existing building or structure. Defined as any new construction or renovation project that undertakes major structural changes to an existing building or structure.

Building(s): Includes property that constitutes a permanent part of the building, such as attached additions, extensions, permanent fixtures and floor coverings, and permanent machinery/appliances. Also includes towers and antennas included as part of the original building, and underground piping or wiring that is in a raceway or enclosed tunnel.

Business Interruption Coverage: Coverage for business income not realized because a covered cause of loss has interrupted the normal flow of business.

Certificate of Protection: Provided to contractors and vendors who require proof of insurance coverage by the State.

Computers/Electronics: Include portable laptop computers, mainframe and desktop computer equipment, as well as audiovisual equipment.

Contents: Those items that generally stay in the building but are not considered permanent parts of the building. Also includes portable electronic items such as laptop computers, audiovisual and communication equipment. Towers and antennas attached to a building after it was acquired by an agency should be reported as contents.

Contractor: Any individual, business or other organization, which enters into an agreement with the state, any state agency, officer or employee.

Comparative Negligence: The negligence of the parties is compared. In Wisconsin, there is no right of recovery due a person who is more than 50% responsible for the accident.

Crime Bonds: Also known as blanket employee dishonesty bonds, these are purchased by agencies to cover employee thefts.

Deductible: The amount of loss per occurrence that an agency is responsible for paying.

Demolition Value: The cost of demolishing undamaged portions of a structure partially destroyed by a covered peril.

Depreciation: The decrease in the value of property over a period of time, usually as a result of age, wear and tear from use, or economic obsolescence.

DFD: DOA Division of Facilities Development is responsible for all state real estate leasing, planning of office space, and engineering services.

Employee Theft: An identified individual sole the property while they were a state employee.

Exclusions: Something not covered.

Experience Rating: Establishing rates based on what the past history of the insured risk has been.

Exposure: A potential event that could result in a financial loss.

Exposure Rating: Establishing rates based on the extent of exposure (building, contents, etc.)

Extra Expense Coverage: Pays for expenses that reduce the length of a business interruption and enables the State to continue some operations after property has been damaged by a covered peril.

Fine Arts/Collectibles/Rare Items: Include but are not limited to products of creative work, including original paintings, sculpture, and drawings, old maps, books, and manuscripts as well as other bona fide works of art, rarity, or pieces with historical value or artistic merit.

Hazard: A condition or activity that increases the probable frequency or severity of loss.

Hold Harmless Provision: A clause in many contracts that may shift responsibility from one party to another.

Incident: Case that is not reportable to BSRM.

Incurred Loss: Total amount of a loss, including amounts paid and reserved for future payments.

Loss Control: Actions which will prevent and reduce losses.

Marine Cargo/Transit: Coverage for shipments of owned and non-owned items.

Market Value: Usually associated with irreplaceable items, market value is the value of what the damaged or destroyed item would sell for in today's market.

Maximum Possible Loss: The largest loss that could happen.

Maximum Probable Loss: The largest loss likely to happen.

Media: Includes but is not limited to valuable papers and records, electronic data, exposed films, drawings and data storage.

Money & Securities: Currency, coins, bank notes, and written instruments representing either money or other property.

Mysterious Disappearance: Property is missing, but no police report was written, and/or there remains no explanation as to what happened to the property and when.

Negligence: When one does not use the care expected of them; a person may be negligent as the result of doing something or failing to do something in a reasonable or prudent manner.

Non-capital Contents: Items with values than an agency's capital threshold. Includes supplies such as paper, pens and pencils, and small equipment such as telephones, calculators, etc.

Occurrence: A loss, including continuous or repeated exposure to substantially the same conditions, which results in bodily injury or property damage. If loss from one peril occurs more than once within a 72-hour period, the loss shall be deemed to be a single occurrence subject to one deductible per agency.

Peril: The cause of a loss.

Premium: The amount of money charged to provide coverage.

Proof of Loss Form (DOA-6413): Must be signed and filed for every property claim for which payment is requested from the property program.

Property Damage: Physical injury to or destruction of tangible property including loss of use.

Property in the Open (PIO): Includes recreational equipment and mobile equipment -- usually designed for use principally off public roads – including equipment attached to them. Also includes structures such as signs, lighting units, fences, etc. that may not have a corresponding building and freestanding towers and antennas that are not attached to a building.

Real Property: Buildings and land.

Replacement Value: The value of damaged or destroyed property without deduction for depreciation.

Retention: Method of financing an organization's potential losses through its own funds rather than through insurance or other external sources.

Risk Avoidance: Eliminate the exposure or never take it on.

Risk Transfer: Transfer of risk through insurance or contractual language.

Salvage: Disposal of covered property deemed to be a total loss.

Self-Insured Retention (SIR): The value of risk an organization is willing to bear at a calculated and accepted level, often considered a deductible to excess coverage.

State Building Inventory: Provided by the DOA Division of Facilities Development prior to the beginning of each fiscal year. Provides building values.

Stated Value: A set amount claimed for an item, not to exceed replacement value or market value at the time of loss.

Stock: *Unfinished stock* is material in the process of manufacture and waiting to be assembled into a finished product. *Finished stock* includes merchandise for sale or items fabricated for agency use.

Subrogation: The right to recover the amount of loss from the party legally liable for the damage.

Third Party Adjuster: One who determines the amount of loss suffered.

Tort: Failure to do something that a reasonable person would do under the circumstances, or doing something a reasonable person would not do.

Towers: Freestanding towers and antennas that are not attached to a building should be reported as PIO. Towers and antennas attached to a building after it was acquired by an agency should be reported as contents. Towers and antennas included as part of an original building should be reported as buildings.

Vehicle Accident Kit: Packet for reporting vehicle accidents, which includes an accident report form and instructions, found in the glove box of all state vehicles.

Vehicle Glass Contract: Vehicle glass breakage from any cause is covered with no deductible.

Managing Water Intrusion in a State Facility

Distributed November 2004, Revised July 2005

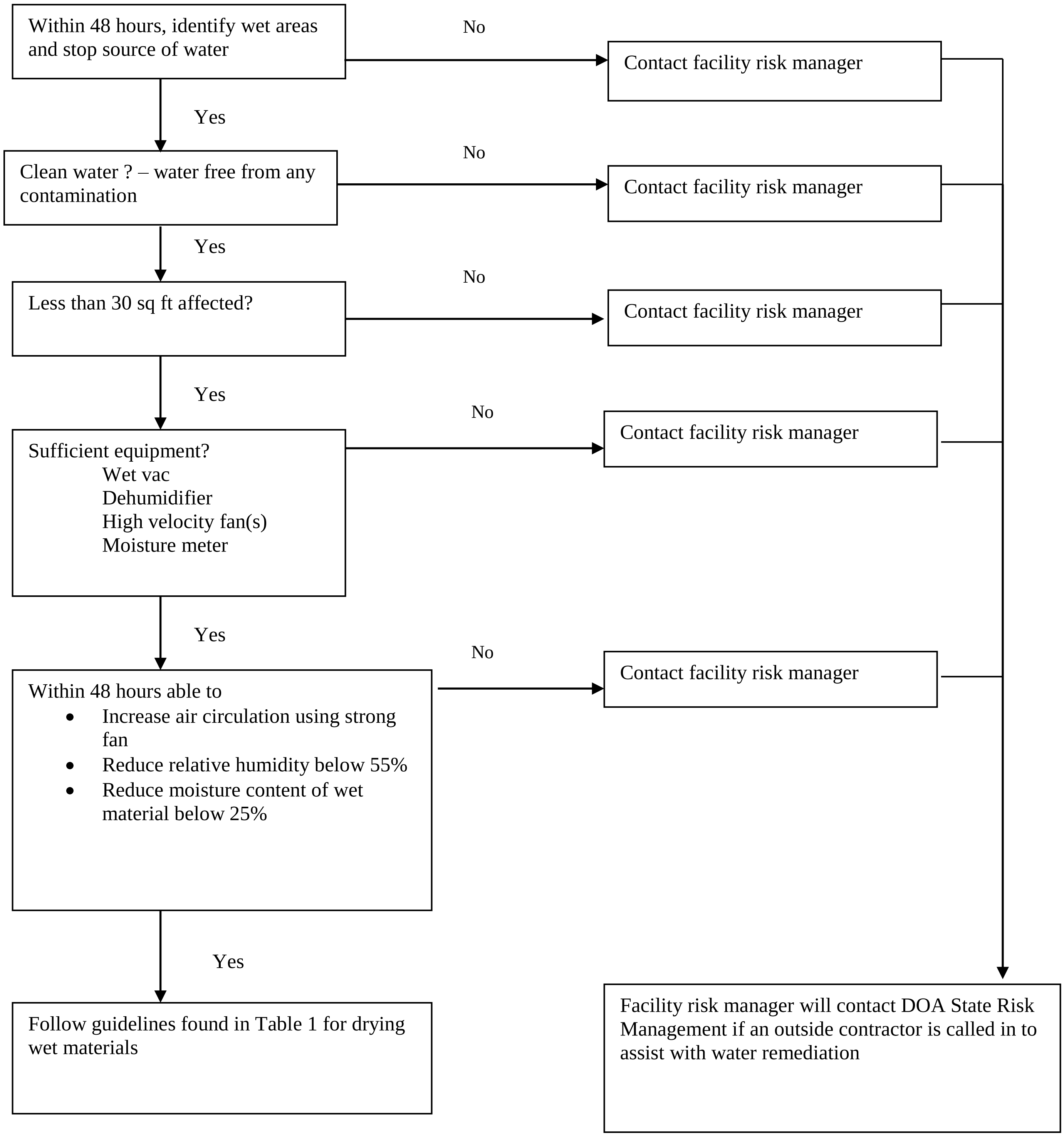

Table 1 – Water damage - Cleanup and Mold prevention

Affected Material	Actions
Books and Paper	• For non-valuable items, discard books and papers • Photocopy valuable/important items, discard originals • Freeze (in frost-free freezer or meat locker) or freeze dry
Carpet and backing – dry within 48 hours	• Remove water with water extraction vacuum • Reduce ambient humidity levels with dehumidifier • Accelerate drying process with fans
Ceiling tiles	• Discard and replace
Cellulose insulation	• Discard and replace
Concrete or cinder block surfaces	• Remove water with water extraction vacuum • Accelerate drying process with dehumidifiers, fans, and/or heaters
Fiberglass insulation	• Discard and replace
Hard surface, porous flooring (Linoleum, ceramic tile, vinyl)	• Vacuum or damp wipe with water and mild detergent and allow to dry; scrub if necessary • Check to make sure under flooring is dry; dry under flooring if necessary
Non-porous, hard surfaces (Plastics, metals)	• Vacuum or damp wipe with water and mild detergent and allow to dry; scrub if necessary
Upholstered furniture	• Remove water with water extraction vacuum • Accelerate drying process with dehumidifiers, fans, and/or heaters • May be difficult to completely dry within 48 hours. If the piece is valuable, you may wish to consult a restoration/water damage professional who specializes in furniture.
Wallboard (Drywall and gypsum board)	• May be dried in place if there is no obvious swelling and the seams are intact. If not, remove, discard, and replace. • Ventilate the wall cavity.
Window drapes	• Follow laundering or cleaning instructions recommended by the manufacturer.
Wood Surfaces	• Remove moisture immediately and use dehumidifiers, gentle heat, and fans for drying. • Treated or finished wood surfaces may be cleaned with mild detergent and clean water and allowed to dry. • Wet paneling should be pried away from wall for drying.

Table 1 was adopted from U.S. Environmental Protection Agency"s "Mold Remediation in Schools and Commercial Buildings." EPA Document # 402-K-01, http://www.epa.gov/iaq/molds/index