

To: Campus Presidents
Campus Administrative Vice Presidents
Auxiliary Organizations
Campus Risk Managers
Contract & Procurement Directors
Executive Facilities Officers

From: Charlene Minnick, Assistant Vice Chancellor, Systemwide Risk Management & Public Safety

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Date: June 01, 2012

Subject: Technical Letter re: California State University Insurance Requirements

Code: RM 2012-01

Overview: Technical Letter RM 2012-01 replaces RM 2011-06 issued on March 1, 2012 in its entirety, and is effective immediately. Executive Order No. 1069 provides the Assistant Vice Chancellor, Risk Management and Public Safety the authority for the development and implementation of systemwide risk identification, policies, hold harmless provisions and insurance requirement guidelines.

Audience: Campus Presidents, Administrative Vice Presidents, Auxiliary Organizations, Risk Managers, Contract & Procurement Directors, and Executive Facilities Officers

Action Item: Pursuant to Executive Order No. 849, this letter addresses updated insurance requirement guidelines.

Summary: This letter defines policy and insurance requirements required by the California State University. The insurance limits and hold harmless provisions as specified in this letter are required unless the campus, after following the “risk identification and evaluation” procedure as described herein, determines that the limits should be altered.

For construction projects, The California State University established a Builders Risk Insurance Program (BRIP; aka: Course of Construction (COC) insurance) through which campuses enroll their major projects for course of construction insurance coverage and an Owner Controlled Insurance Program (OCIP) through which campuses enroll their major projects for general liability and workers compensation insurance coverage. Also

CSU Campuses
Bakersfield
Channel Islands
Chico
Dominguez Hills
East Bay

Fresno
Fullerton
Humboldt
Long Beach
Los Angeles
Maritime Academy

Monterey Bay
Northridge
Pomona
Sacramento
San Bernardino
San Diego

San Francisco
San José
San Luis Obispo
San Marcos
Sonoma
Stanislaus

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available are Owners Protective Professional Indemnity and Contractor's Pollution Liability coverages. For more information see pages 4-7.

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Risk Identification and Evaluation Procedure

The campus must determine if the activity or risk is one that warrants departure from the regular insurance requirements. Questions that should be considered in determining what risks and subsequent losses could arise from the activities contemplated under the contract should include, among others, the following:

1. What activities will take place?
2. Who could be harmed?
3. What property could be damaged and how severely?
4. What is the maximum likely loss for each activity?
5. Is there a possible pollution exposure?
6. Are crowds or bystanders/passersby likely to be involved?
7. Will inherently dangerous activities be involved?
8. Is there a reputational risk to the University?
9. How likely is it that the University will be a defendant in the event of a loss?
10. What is the duration of the contract?
11. What is the amount of the contract?

In dealing with Special Events, Facility Rental Use Agreements or other large scale activities with special circumstance, the campus should amend the standard limits. The Risk Identification and Evaluation Procedure shall be documented. Such documentation will include the date of review and the name and signature of the person responsible for the Evaluation. This Evaluation should also include the following questions and answers:

1. How many attendees?
2. Will alcohol be served?
3. What activities will take place?
4. Who could be harmed?
5. What property could be damaged and how severely?
6. What is the maximum likely loss for each activity?
7. Is there a possible pollution exposure?
8. Are crowds or bystanders/passersby likely to be involved?
9. Will inherently dangerous activities be involved?
10. How likely is it that the University will be a defendant in the event of a loss?
11. What is the duration of the contract?
12. What is the amount of the contract?
13. Is this a recurring (annual) special event? If "yes" what is the safety/loss history of the event?

Hold Harmless Provisions

Many alternative hold harmless provisions are possible, with each alternative having a different purpose and potential risk transfer variant. In addition to minimum standards for insurance requirements, this policy establishes the approved hold harmless provisions based on the risk assessment of the contract category. Modification to hold harmless language in contract negotiation is a crucial part of the risk transfer process and should only be undertaken with appropriate review and counsel.

Following are model terms and conditions containing approved hold harmless provisions for each contract category, along with links where they can be found:

- Contract General Conditions for construction projects -
<http://www.calstate.edu/cpdc/CM/CGC.shtml>.

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- Service Agreements related to construction projects-
http://www.calstate.edu/cpdc/cm/contract_docs.shtml
- Architect and Engineering Professional Services Agreements-
<http://www.calstate.edu/CPDC/ae/pro-serv-agree/>.

In some instances, a no “hold harmless” clause approach may be appropriate for low liability activity and for activities critical to CSU.

Additional Insured Endorsements

Under the terms and conditions of a contract or agreement for services, the contractor, consultant, or vendor must be required to show evidence of adequate insurance coverage by furnishing to the California State University a certificate of insurance that include additional insured endorsements. The University should always maintain its right to request and obtain a certified copy of the insurance policy and any and all additional insured or others endorsements to the contractor’s policy.

All certificates of insurance issued to the University require the following:

- Provide written notice that “*should any of the above described policies be cancelled before the expiration thereof, notice will be delivered in accordance with the policy provisions.*” It is acceptable to require the service provider or the contractor to supply this information to the Trustees.
- Provide for Acceptability of Insurers rating, A.M. Best: A VII or equivalent unless otherwise agreed to by the University.
- Name the State of California, the Trustees of the California State University, the campus and the officers, employees, volunteers and agents of each of them as additional insureds, except for professional liability and workers’ compensation insurance. If agreement is with an Auxiliary, then the Auxiliary shall also be named.

In the event a contracting entity is self-insured, the following statement signed by an authorized corporate officer of the contracting entity will be acceptable if the company has the necessary financial resources to guarantee payment when the law imposes such liability and subject to approval by the campus risk manager or other authorized campus representative:

“As an alternative to providing the general liability insurance required by this subsection [subsection #], the Contractor may cause to be provided other kinds of insurance or methods or plans of protection such as, but not limited to, self insurance pools, primary or excess risk retention groups if and to the extent such other kinds of insurance or methods or plans of protection shall afford reasonable protection to the Board of Trustees and their officers, agents and employees.”

Public Works Construction Contracts

The insurance requirements for public works construction contracts (inclusive of student housing, parking, continuing education, health center type projects funded from Enterprise Funds, and student unions, bookstores, donor funded projects, etc. by Auxiliary Organizations) shall be as specified in the Contract General Conditions for construction projects and are summarized as follows:

- Minor Projects (including Design-Bid-Build and Job Order Contracts up to \$610,000 project value)
 - Comprehensive or Commercial Form General Liability(combined single limit for bodily injury and property damage): Each Occurrence \$1,000,000, General Aggregate \$2,000,000.

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- Business Automobile Liability: Limits of Liability (combined single limit of bodily injury and property damage to include uninsured and underinsured motorist coverage) Each Accident \$1,000,000.
- Workers' Compensation: limits as required under California State Law with Employer's Liability limits of \$1,000,000.
- Hold Harmless Provisions: as specified in the Contract General Conditions for the above-referenced contracts, maintained by Capital Planning, Design and Construction.
- For projects involving hazardous materials, the following additional coverages are required, and are as specified in the Contract General Conditions for the above-referenced contracts, maintained by Capital Planning Design and Construction:
 - Environmental Impairment (pollution) Liability Insurance:
 - In addition to Business Automobile Liability coverage:
 - MCS-90 endorsement
 - Sudden and Accidental Pollution endorsement
- Major Projects up to \$2,000,000 in contract value (including Design-Bid-Build, Design-Build, CM at Risk, and Auxiliary contracts)
 - Comprehensive or Commercial Form General Liability (combined single limit for bodily injury and property damage): Each Occurrence \$1,000,000, General Aggregate \$2,000,000.
 - Business Automobile Liability: Limits of Liability (combined single limit of bodily injury and property damage to include uninsured and underinsured motorist coverage) Each Accident \$1,000,000.
 - Workers' Compensation: limits as required under California State Law with Employer's Liability limits of \$1,000,000.
 - Course of Construction insurance: supplied through the CSU Builders Risk Insurance Program as specified in the Contract General Conditions for the above-referenced contracts, maintained by Capital Planning, Design and Construction.
 - Hold Harmless Provisions: as specified in the Contract General Conditions for the above-referenced contracts, maintained by Capital Planning, Design and Construction.
 - For projects involving hazardous materials, the following additional coverages are required, and are as specified in the Contract General Conditions for the above-referenced contracts, maintained by Capital Planning Design and Construction:
 - Environmental Impairment (pollution) Liability Insurance:
 - In addition to Business Automobile Liability coverage:
 - MCS-90 endorsement
 - Sudden and Accidental Pollution endorsement
- Major Projects from \$2,000,000 to \$5,000,000 in contract value (including Design-Bid-Build, Design-Build, CM at Risk, and Auxiliary contracts)
 - Comprehensive or Commercial Form General Liability (combined single limit for bodily injury and property damage): Each Occurrence \$5,000,000, General Aggregate \$5,000,000.
 - Business Automobile Liability: Limits of Liability (combined single limit of bodily injury and property damage to include uninsured and underinsured motorist coverage) Each Accident \$5,000,000.
 - Workers' Compensation: limits as required under California State Law with Employer's Liability limits of \$1,000,000.

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- For projects involving hazardous materials, the following additional coverages are required, and are as specified in the Contract General Conditions for the above-referenced contracts, maintained by Capital Planning Design and Construction:
 - Environmental Impairment (pollution) Liability Insurance:
 - In addition to Business Automobile Liability coverage:
 - MCS-90 endorsement
 - Sudden and Accidental Pollution endorsement
- Major Projects from \$5,000,000 to \$10,000,000 in contract value (including Design-Bid-Build, Design-Build, CM at Risk, and Auxiliary contracts)
 - Comprehensive or Commercial Form General Liability (combined single limit for bodily injury and property damage): Each Occurrence \$10,000,000, General Aggregate \$10,000,000.
 - Business Automobile Liability: Limits of Liability (combined single limit of bodily injury and property damage to include uninsured and underinsured motorist coverage) Each Accident \$10,000,000.
 - Workers' Compensation: limits as required under California State Law with Employer's Liability limits of \$1,000,000.
 - Course of Construction insurance: supplied through the CSU Builders Risk Insurance Program as specified in the Contract General Conditions for the above-referenced contracts, maintained by Capital Planning, Design and Construction.
 - Hold Harmless Provisions: as specified in the Contract General Conditions for the above-referenced contracts, maintained by Capital Planning, Design and Construction.
 - For projects involving hazardous materials, the following additional coverages are required, and are as specified in the Contract General Conditions for the above-referenced contracts, maintained by Capital Planning Design and Construction:
 - Environmental Impairment (pollution) Liability Insurance:
 - In addition to Business Automobile Liability coverage:
 - MCS-90 endorsement
 - Sudden and Accidental Pollution endorsement
- Major Projects over \$10,000,000 in contract value (including Design-Bid-Build, Design-Build, CM at Risk, and Auxiliary contracts)
 - Comprehensive or Commercial Form General Liability and Workers' Compensation coverages: supplied through the CSU Owner Controlled Insurance Program as specified in the Contract General Conditions for the above-referenced contracts, maintained by Capital Planning, Design and Construction.
 - Owners Protective Professional Indemnity coverage is available.
 - Contractor's Pollution Liability coverage is available.
 - Business Automobile Liability: Limits of Liability (combined single limit of bodily injury and property damage to include uninsured and underinsured motorist coverage) Each Accident \$10,000,000.

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- Hold Harmless Provisions: as specified in the Contract General Conditions for the above-referenced contracts, maintained by Capital Planning, Design and Construction.
- For projects involving hazardous materials, the following additional coverages are required, and are as specified in the Contract General Conditions for the above-referenced contracts, maintained by Capital Planning Design and Construction:
 - Environmental Impairment (pollution) Liability Insurance:
 - In addition to Business Automobile Liability coverage:
 - MCS-90 endorsement
 - Sudden and Accidental Pollution endorsement

Exceptions: deviations from the amounts listed above shall be identified in a supplementary general conditions document prepared by the campus, approved by Capital Planning, Design and Construction, and included in the bid documents.

Public Works Service Agreements

- Architect and Engineering Professional Services Agreements
All coverages are as specified in the Architect and Engineering Professional Services Agreement, maintained by Capital Planning, Design and Construction and found online at <http://www.calstate.edu/CPDC/ae/pro-serv-agree/>. The insurance requirements for the design agreements listed on that site are the same; the agreements listed there include:
 - Architect and Engineering Professional Services Agreement (Design-Bid-Award)
 - Architect and Engineering Professional Services Agreement (CM at Risk)
 - Service Agreement for Professional Services (minors and job order contract work)
 - Task Order Agreement for Professional Services
 - Systemwide Master Enabling Agreements
 - Energy Service Agreements
- Comprehensive or Commercial Form General Liability: combined single limit for bodily injury and property damage: each claim \$1,000,000, General Aggregate \$2,000,000.
- Business Automobile Liability: \$1,000,000 Each Accident - combined single limit for bodily injury and property damage.
- Workers' Compensation: limits as required under California State Law with Employer's Liability limits of \$1,000,000.
- Professional Liability (errors and omissions): on a claims-made basis for no less than \$1,000,000 each claim and \$2,000,000 annual aggregate.
- Hold Harmless Provisions as specified in the Architect and Engineering Professional Services Agreement.
- Service Agreements (in Support of Construction Projects)
All coverages are as specified in the Service Agreement, maintained by Capital Planning, Design and Construction and found online at http://www.calstate.edu/cpdc/cm/contract_docs.shtml.
 - General Liability (comprehensive or commercial form): Minimum Limits Each Occurrence \$1,000,000; General Aggregate \$2,000,000.
 - Business Automobile Liability combined single limit of not less than \$1,000,000 per occurrence.

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- Workers' Compensation: as required under California State Law with Employer's Liability \$1,000,000.
- Errors and Omission insurance is required for professional service consultants and professional service design architects/engineers.
- Hold Harmless Provision: as specified in the Services Agreement.

Exceptions: The limits shown above will generally be required for service providers involved in low-risk activities. Higher limits will be required for service providers performing potentially high-risk activities. Campus risk managers should be consulted for the minimum requirements.

Hazardous Substances and Waste Removal Services

Hazardous Substances and Waste Removal Services are different from the Public Works Construction Contracts and Public Works Service Agreements listed above. These requirements are applicable to non-public works hazardous substances and waste removal services.

These services include all labor, packaging, materials, tools, vehicles, placards, labels/markings, equipment, including personnel protective equipment and safety equipment, expertise, and other means necessary and required to provide services for the pickup, transportation, and disposal of hazardous wastes.

Haz Mat Projects up to \$5,000,000 contract value

- General Liability: comprehensive or commercial form in the minimum amount of \$5,000,000 combined single limit bodily injury and property damage each occurrence, \$10,000,000 General Aggregate, \$5,000,000 Products/Completed Operations Aggregate, and \$1,000,000 fire legal liability. A Waiver of Subrogation is required.
- Environmental Impairment (pollution) Liability: coverage in the minimum amount of \$5,000,000 combined single limit bodily injury and property damage each occurrence, \$10,000,000 Aggregate, including clean-up costs.
- Commercial Automobile Liability: coverage is required in the minimum amount of \$2,000,000 combined single limit bodily injury and property damage, including owned, non-owned and hired automobiles; should also include Uninsured/Underinsured Motorists coverage in the minimum amount of \$1,000,000.
- Pollution and/or Asbestos Pollution Liability and or Errors and Omissions: \$2,000,000 each occurrence; \$2,000,000 Aggregate.
- Workers' Compensation: as required under California State Law with Employer's Liability \$1,000,000.

Haz Mat Projects over \$5,000,000 contract value

- General Liability: comprehensive or commercial form minimum limits coverage in the minimum amount of \$10,000,000 combined single limit bodily injury and property damage each occurrence, \$10,000,000 General Aggregate, \$10,000,000 Products/Completed Operations Aggregate, and \$1,000,000 fire legal liability. A Waiver of Subrogation is required.
- Environmental Impairment (pollution) Liability: coverage in the minimum amount of \$5,000,000 combined single limit bodily injury and property damage each occurrence, \$10,000,000 Aggregate, including clean-up costs.
- Commercial Automobile Liability: coverage is required in the minimum amount of \$2,000,000 combined single limit bodily injury and property damage, including owned, non-owned and hired

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automobiles; should also include Uninsured/Underinsured Motorists coverage in the minimum amount of \$1,000,000.

- Pollution and/or Asbestos Pollution Liability and or Errors and Omissions: \$2,000,000 each Occurrence; \$2,000,000 Aggregate.
- Workers' Compensation: as required under California State Law with Employer's Liability \$1,000,000.

In addition to previous coverage noted under Contractor's auto liability, hazardous material transporter services must also have an MCS-90 endorsement (\$1,000,000 minimum for trucks up to 10,000 lbs Gross Vehicle Weight Rating {GVWR} and \$5,000,000 if over 10,000 lbs GVWR) and Sudden & Accidental Pollution Insurance Endorsement. The Sudden & Accidental Pollution Insurance must have minimum limits of \$2,000,000 per occurrence, \$5,000,000 total. A higher limit on the MCS-90 endorsement required by law must be matched by the Sudden & Accidental Pollution Insurance.

Exceptions: Any deviations from the standards as described above, a risk identification and evaluation process (see page 1 of this technical letter) must be completed and documented in the contract package.

Service Agreements or Orders (non Public Works)

These insurance requirements are for services, which are not related to public works projects.

- General Liability: comprehensive or commercial form minimum limits each occurrence \$1,000,000, General Aggregate \$2,000,000, Products/Completed Operations Aggregate \$1,000,000.
- Business Automobile Liability: minimum limits for Owned, Scheduled, Non-Owned, or Hired Automobiles with a combined single limit of not less than \$1,000,000 per occurrence.
- Workers' Compensation: as required under California State Law with Employer's Liability \$1,000,000.

Campus Facilities and Property Lease

- General Liability: comprehensive or commercial form minimum limits each occurrence \$1,000,000, General Aggregate \$2,000,000 (when available), Products/Completed Operations Aggregate \$1,000,000.
- Business Automobile Liability: minimum limits for Owned, Scheduled, Non-Owned, or Hired Automobiles with a combined single limit of not less than \$1,000,000 per occurrence.
- Workers' Compensation: as required under California State Law with Employer's Liability \$1,000,000.
- Hold Harmless Provision: Lessee shall hold harmless, indemnify, and defend the State of California, the Trustees of the California State University, the [campus name] and the officers, employees, volunteers and agents of each of them from and against any and all injury, loss, damage, expense, costs of every nature, and causes of actions arising out of or in connection with the use by the Lessee of said property.

Long-term leases of real property require case-by-case analysis to determine insurance requirements and will vary depending on the nature of the agreement. Insurance requirements should be commensurate with the activities associated with the lease that may cause damage to person or property.

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Auxiliary Operation Agreements

When a campus enters into an operating agreement with an auxiliary, the following insurance provisions shall be required operating conditions for the auxiliary.

Participation in a coverage program of the California State University Risk Management Authority (CSURMA) shall fully comply with the insurance requirement for each type of required coverage, which may include but not be limited to, general liability, auto liability, directors and officers liability, fiduciary liability, professional liability, employer's liability, pollution liability, workers' compensation, fidelity, property and any other coverages necessary based on the Auxiliaries operations. Auxiliaries shall ensure that CSU and campus are scheduled as additional insured or loss payee as its interests may appear.

If not a participant in a CSURMA program, auxiliaries shall maintain applicable insurance protecting the CSU and Campus as provided in this section. CSU's Systemwide Office of Risk Management shall establish minimum insurance requirements from Auxiliaries, based on the insurance requirements described herein or its successor then in effect.

- General Liability: comprehensive or commercial form minimum limits each occurrence \$5,000,000, General Aggregate \$10,000,000, Products/Completed Operations Aggregate \$5,000,000.
- Business Automobile Liability: minimum limits for Owned, Scheduled, Non-Owned, or Hired Automobiles with a combined single limit of not less than \$1,000,000 per occurrence.
- Workers' Compensation: as required under California State Law with Employer's Liability \$1,000,000.
- Hold Harmless Provision: Auxiliary agrees to indemnify, defend, and save harmless the State of California, the Trustees of the California State University, the [campus name] and the officers, employees, volunteers and agents of each of them (all of which are hereinafter referred to as "State") from any and all loss, damage, or liability that may be suffered or incurred by State, caused by, arising out of, or in any way connected with the operations of Auxiliary.
- Insurance is to be placed with insurers with a current AM. Best's rating of no less than A: VII.
- Any deductibles or self-insured retentions must be declared to and approved by the Campus. At the option of the Campus, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Campus, its trustees, officers, employees and volunteers; or the Auxiliary shall provide a financial guarantee satisfactory to the Campus guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- Auxiliary shall furnish the Campus with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the Campus or on other than the Campus' forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by the Campus before work commences. The Campus reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.
- Auxiliary shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

The General Liability and Automobile Liability policies above are to contain, or be endorsed to contain, the following provisions: 1) The Campus, its trustees, officers, employees, and volunteers are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired

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or borrowed by or on behalf of the Auxiliary; and with respect to liability arising out of work or operations performed by or on behalf of the Auxiliary including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Auxiliary's insurance, or as a separate owner's policy.

- 2) For any claims related to a project, the Auxiliary's insurance coverage shall be primary insurance as respects the Campus, its trustees, officers, employees, and volunteers. Any insurance or self-insurance maintained by the Campus, its trustees, officers, employees, or volunteers shall be excess of the Auxiliary's insurance and shall not contribute with it.
- 3) All insurance required under this agreement shall contain an endorsement naming the State of California, the Trustees of the California State University, the (campus name), and the officers, agents and employees of each of them as additional insureds. Should any of the above described policies be cancelled before the expiration thereof, notice will be delivered in accordance with the policy provisions.

Long-term leases of real property require case-by-case analysis to determine insurance requirements and will vary depending on the nature of the agreement. Insurance requirements should be commensurate with the activities associated with the lease that may cause damage to person or property.

Placement Agreements

These agreements typically provide for students to be placed with other agencies or institutions for course-required work experience. Student placement agreements must be in writing and shall specify minimum insurance requirements applicable to the contracting parties and appropriate hold harmless provisions based upon the needs of the contracting parties. The following hold harmless provision may be used as a minimum:

- *Hold Harmless Provision: [insert entity] shall be responsible for damages caused by the negligence of its officers, employees and agents. Trustees shall be responsible for the damages caused by the negligence of its officers, employees and agents. The intent of this paragraph is to impose responsibility on each party for the negligence of its officers, employees and agents.*