



CERT Liability Guide

A Risk Management Overview
For Local CERT Programs



FEMA



Acknowledgements

FEMA wishes to gratefully acknowledge the support and assistance of the CERT programs which provided information, support and sample documents for inclusion in this Guide.

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Introduction

When disasters occur, professional first responders are not the first on the scene. If access is obstructed or the agency's capacity is exceeded, it may be hours — or days — before professional help arrives. In this environment, non-professional members of the public spontaneously reach out to help those affected. Without information and training, however, spontaneous assistance can sometimes fail to meet its objectives. Community Emergency Response Team (CERT) programs support and direct post-disaster public energy to ensure that non-professional response is as safe and effective as possible. CERT program activities can create risk and adverse consequences; however, perceptions about liability may be a larger barrier for CERT formation, activities and partnerships than is justified by reality. There is no indication that CERT programs have any unusual liability experience. Still, perceptions can pose as great a barrier as reality. The purpose of this Guide is to offer information and suggested techniques to help CERT programs overcome this barrier. Those who will benefit from this information include local CERT programs, their sponsoring government agencies and legal advisors, and CERT members themselves.

1. Overview

The foundation of the CERT Program is FEMA's CERT Basic Training Course, which provides a baseline of knowledge for all CERT members. This national training curriculum educates the public about emergency preparedness and teaches basic emergency response skills. Completing the course prepares the public to safely assist family, friends, neighbors, co-workers or fellow students before professional first responders arrive, whether or not the trainee joins a CERT team. Those who join a CERT team may also participate in organized activities (community service opportunities) that are not part of an emergency response, such as distributing preparedness materials. In an emergency, CERT members may be called upon to assist professional responders with operational activities under the command and control of an affiliated or sponsoring local government agency. To prepare for participation in operational activities, members complete training about the Incident Command System. Many CERT programs go beyond the baseline training and offer their members supplemental training to develop additional skills.

Examples of Supplemental CERT Training

- Animal response and care
- Advanced first aid
- Automatic external defibrillator
- CPR
- Community relations
- Debris removal
- Donation management
- Emergency communications
- Team leadership
- Shelter management
- Special needs concerns
- Traffic and crowd management

Local CERT programs around the country have much in common, but they also have significant differences. CERTs are grassroots community groups with specific goals and levels of expertise determined by their sponsoring organizations to fit community needs and resources. Thus, CERT programs differ in their mix of educational, operational, and community service activities. Local CERT programs are usually sponsored by local government—typically fire or police departments or emergency management agencies—or other organizations in the community such as large businesses or universities. With inherent differences in community hazards and available resources, there is no single CERT program profile.

Although CERT programs differ in some ways, they share the potential to offer substantial benefits to their sponsoring organizations, their communities, and their members. As with any activity, however, there is risk. Although not common in CERT program activities, bodily injuries, illnesses, property damage, and other harmful events can result in adverse consequences for the sponsoring agency or organization, the CERT, or the CERT members, trainers, leaders, and affiliates. Some of these consequences are direct: lawsuits, settlements, payment of benefits to injured CERT members, attorney's fees, court costs, and civil and criminal penalties under state law. Others are indirect, including the following: disruption of relationships, damage to reputation, and increased insurance costs. In this Guide, we refer to risk and its adverse consequences for brevity purposes as "liability."

Unfortunately, there is no simple, complete, and uniform remedy to address liability. Various state laws provide some relief, but many laws have detailed requirements and exclusions. Liability protections differ significantly from state to state, and even within different jurisdictions within a state. Although CERT's operational activities pose greater risk than non-operational activities, operational activities often receive greater liability protection and access to injury benefits. Insurance can be just as unpredictable. CERT members may be covered by their local government or sponsoring agency's liability and workers' compensation insurance in some activities, but not in others. Or they may not be covered at all. Consequently, neither the law nor insurance provides absolute protection to CERT programs and their members.

These complexities leave many advocating a federal liability solution, but there are factors working against that approach. Congress is reluctant, for constitutional reasons, to pass laws that override state liability laws. Even the Federal Volunteer Protection Act of 1997 (VPA) provides only limited protection, which leaves much control in the hands of the states. Thus, for the present, liability protection for most CERT members is likely to remain primarily at the state level.

Discussions about liability often focus on insurance and liability protection afforded under the law. The law and insurance are both important, but they are only part of the solution. CERT programs can best address liability protection by adopting risk management procedures that include, but are not limited to, using the protection provided by the law and by available insurance. This Guide suggests a five-step risk management process. The practices discussed will be familiar to many users because they are effective management practices, many of them already used by CERT programs. Highlighting good management practices within this document will provide a collection of sample resources and demonstrate the value of risk management procedures and their relationship to liability.

Risk management: A process of risk identification and analysis, risk control and mitigation, and risk financing that seeks to reduce the negative consequences of risk.

The *CERT Liability Guide* is offered for general informational purposes only. It does not provide legal advice, and the user is encouraged to seek out state-specific legal advice from a qualified attorney before taking any action. Keep in mind that, with a few limitations, anyone can file a lawsuit against anyone else. Nothing, including following the recommendations in this Guide, is a guarantee against being sued.

2. The Benefits of Risk Management

Meeting a CERT program's goals requires access to resources: volunteers, equipment, premises, funding, and relationships. Liability, and the perception of liability, diminish these resources and impact the program's ability to achieve its goals. A CERT program that manages risk preserves the resources it needs to achieve its goals. Benefits of risk management include the following:

Confidence in the program.

CERT programs must be affiliated with or sponsored by a local government agency, and engage in operational activities only under the command and control of that agency. Thus, CERT programs do not operate without the confidence of professional emergency response agencies, and those agencies are more likely to have confidence in a CERT program that takes steps to manage risk.

A positive public image.

CERT programs that successfully manage risk have a more positive public image, which enhances their ability to build relationships with other organizations, and obtain resources and funding. A reputation for safety in a CERT program's own operations also enhances the credibility of its emergency preparedness outreach efforts.

Reduced expenses.

Successful risk management helps avoid costs that include:

- Defense costs (the costs of attorneys and court fees)
- Claims administration costs (the costs of managing claims, including claims administrator fees and the lost productivity of workers involved in claims administration)
- Settlements (agreed sums paid to claimants to resolve claims or litigation)
- Judgments and awards (sums paid under an order of a court or administrative agency)
- Medical and income replacement benefits (sums paid to injured workers who are covered by workers' compensation or a similar program)
- Fines and penalties (sums required to be paid as a penalty for a legal offense)

Reduced insurance costs.

If the CERT program is covered by insurance, the premiums charged may be based in part on loss history. In those cases, reduction of insured losses is likely to result in lower premiums, preserving financial resources for other purposes.

Preservation of the CERT program's investment in members.

CERT programs make a substantial investment in their teams and members. If the CERT loses a member due to an injury or illness, it loses the value of its investment in that member, including training and screening. Ripple effects may include losing other members that become concerned about the safety of participating in CERT activities.

Increased participation in CERT

Some potential CERT members may be concerned about personal liability or about being injured or contracting an illness during CERT activities, and they may decline to participate if not protected. Providing liability protection and injury benefits limits this barrier and conveys the message that CERT members are a valuable part of the sponsor's team.

3. The Five Steps to Managing Risk

This section describes a five-step approach to managing risk in a CERT program. The steps are:

- Step One – Get Leadership Support
- Step Two – Gather Information
- Step Three – Identify and Assess Risk
- Step Four – Adopt Strategies to Manage Risk
- Step Five – Maintain the Momentum

This approach can be used by any CERT program, whether established or just beginning. Throughout this process, think about the program's mix of activities. Some activities are riskier and more likely to result in liability, but that does not mean that they should be avoided if they are otherwise useful. Effective risk management strategies can reduce the likelihood of liability and raise everyone's comfort level.

The CERT National Program Office has published a recommended process for starting a CERT program at <http://www.fema.gov/start-and-maintain-community-emergency-response-team-program>. The process includes many recommendations that incorporate key components of risk management. Review those recommendations to see how they complement the risk management process described in this Guide.

Here is a description of the five steps to managing risk:

Step One – Get Leadership Support

The support of local leaders is critical when establishing a CERT program and is just as important for managing risk. An effort that has the support of upper management is more likely to receive the resources and visibility it needs to make a difference.

The structure of the local CERT program will affect where it looks for support. CERT programs are most often sponsored by public agencies. Occasionally, CERT programs establish a separate nonprofit organization, or are sponsored by an educational or business entity, but they must *always* be endorsed by local government. Where multiple agencies or organizations are involved, obtain support from all of them.

The source of support for managing the CERT program's risk may differ among programs. If the CERT program is just beginning, then support may well come from some of the same leaders who are involved in establishing the program. If the CERT program is already established, then an advocate for managing risk will usually seek supporters from the leadership of the CERT program and the sponsoring organization.

Obtaining management support often requires diplomatic skills. Leaders who oppose the use of "non-professionals" - especially in operational activities - may see liability as an argument against starting or maintaining a CERT program. Not everyone understands the role and importance of CERT, therefore, it helps to begin with leaders who already support the CERT program and appreciate its value to the community. It is wise to anticipate questions and objections, and you should prepare responses before engaging leaders. Be prepared to negotiate differences with leaders and to help resolve differences of opinion.

Obtaining initial leadership support is just the beginning. Managing risk is an ongoing process, so support must be nurtured, expanded, and revisited when circumstances change or new information is identified. Think about Step One as playing a role in each of the following steps.

Step Two – Gather Information

During this phase, it is important to gather information about the local CERT program's history, activities, protocols, and the community's environment, which can help the local program identify its liability exposures. Risk management is successful only if it is grounded in the characteristics of the CERT program, its sponsoring agency, and the community.

Start off by reviewing the CERT program's written materials and talking to key players. Ask them to suggest others who may have useful information. Look for references in the written materials to other documents or people. Build upon that foundation by following up with the additional sources.

The following are suggestions for beginning an inquiry about liability exposure:

What type of organization is the CERT program sponsor?

Most sponsors will be public safety agencies. For much of the following discussion, the type of sponsoring organization is unimportant because the process for managing risk follows the same steps. For some issues, the type of sponsoring organization is important. For example, some public agencies provide governmental immunity to government-sponsored volunteers and this is not available to their nonprofit or business counterparts.

What is a liability exposure?

Liability is a legal responsibility, especially for one's acts or omissions. "Exposure" to a certain type of liability exists when an organization or person engages in activities that create the possibility for liability. Not every organization is "exposed" to all types of liability (for example, a CERT program and its volunteers are not "exposed" to motor vehicle liability if they do not operate motor vehicles as part of CERT activities).

Does the sponsoring agency have standard operating procedures or other policies and procedures that govern the operation of the CERT program?

These documents establish the expectations for management of the program and may address important topics such as recruitment and screening, work rules, and activation procedures.

Does the CERT program or the sponsoring agency have documentation beyond the CERT Basic Training materials that describes members' activities and responsibilities?

The key to identifying liability exposures is to know what members will be doing. The *CERT Basic Training* course cross-trains members for operational activities, so separate position descriptions are not required. Does your CERT program have documentation of the requirements of any activities that are not included within the *CERT Basic Training* course (for example, in supplemental training materials or descriptions of non-operational community service opportunities)?

Are other organizations closely involved with the CERT program?

Each organization's risk should be considered separately, because each has its own liability exposures.

Does the CERT program or the sponsoring agency already have volunteers?

Gather documentation about current and past volunteers and review past claims, losses, or "near-miss" events that can help identify the CERT program's liability exposures.

Does the CERT program have members under the age of 18?

A CERT program that has members under the age of 18 may have to comply with child labor law and must train its personnel about special issues related to interaction with minors, adapt its procedures to protect minors, and document parental consent for their participation in the program.

Does the CERT program have a set of forms that members are instructed to use during operational activities?

CERT Basic Training provides forms that are designed to document operational activities and communicate necessary information. Individual CERT programs may adopt other forms as well. Consistent use of adopted forms is important, so gather a complete set.

Are the members of a CERT program sponsored by a fire department identified as "members" in the fire department's by-laws?

Identification as "members" of a fire department may entitle volunteers to different protection under the law or the department's insurance in some circumstances.

Does the sponsoring agency or local government have a safety officer, human resources officer, or risk manager who handles injuries to CERT members?

If so, that person can provide information about the current program for managing CERT member injuries and about any injuries that have occurred.

Does the CERT program keep written training records for each member?

Training records document the training completed by each member, including supplemental training.

Does the CERT program deploy teams to other states to assist in disaster response?

If yes, find out whether the program works with state emergency management officials to ensure that CERT members are designated as part of the state's response force under the Emergency Management Assistance Compact.

The information gathered in Step Two forms the basis for Step Three.

Step Three – Identify and Analyze Risk

Step Three focuses on identifying and analyzing risk. This process lays the foundation for Step Four. Who conducts Steps Three and Four depends on the CERT program's needs and resources. A key person is likely to do the ground work of actually reviewing and distilling the existing information for a larger group of stakeholders. If possible, this key person should involve or consult with the sponsor's or local government's risk manager or attorney, who will be able to provide a broader perspective on potential liability. The information gathered can be brought to the key stakeholders to discuss how the CERT program's activities might result in liability, and how liability would affect members, the program, the sponsoring agency, and the public.

It is important to emphasize to all stakeholders that actively addressing liability does not mean that CERT programs are too risky. Liability risk is part of all activities. The goal of risk management is to ensure that the risk is outweighed by the benefits. CERT members who are properly selected, trained, and managed pose no greater risk of liability than do paid personnel performing the same activities.

Identify risk.

The first part of Step Three is to consider everything that has been learned about the CERT program and imagine how liability could result.

First, consider the different types of civil liability that volunteers and CERT programs should be aware of. Civil liability results when there is legal basis for holding someone responsible for injury or damage. The four main types of civil liability that apply to CERT programs include:

- **Negligent acts or omissions** —The failure to fulfill a duty to use “ordinary care”, which is the care that a reasonable person would use under similar circumstances. Any activity in which carelessness can cause injury or property damage may be considered negligent.
- **Intentional acts** — Intentionally committed wrongful act; this may require proof that person intended to cause harm.
- **Strict liability** — Legal responsibility for damages based on the nature of an activity, rather than on a negligent or intentional act. Because CERT members are trained only to respond to events they're capable and trained to handle, strict liability exposure is limited.
- **Liability for the acts of others** — Legally responsible for actions of someone you have the right to control. An employer is usually liable for job-related actions of its employee. Failing to screen or train a volunteer may result in CERT program being liable.

Activities are a primary driver of liability, so each activity deserves individual attention. CERT Basic Training materials emphasize safety and are an excellent resource for identifying risk related to CERT's baseline *operational* activities. Also consider the *non-operational* community service opportunities that are not described in CERT Basic Training., because they also have risks, for example, lifting heavy — or not so heavy — boxes of brochures, driving motor vehicles, helping to manage crowds or traffic, distributing materials from house to house, to name just a few.

Organizational responsibility is also a driver of liability, and several organizations may share responsibility for a CERT program and its members. CERT members are often trained by the employees of more than one public safety agency. Conversely, a business that sponsors a CERT may be responsible for its CERT's activities only until the CERT is activated to respond to an emergency under the command and control of its affiliated emergency response agency. It is not enough to identify *what* can go wrong. To address liability, it is also important to know *who is responsible* to prevent that outcome.

Review of loss history and near-miss events is part of any risk management effort because an event that has occurred previously can occur again, especially if the underlying cause was not addressed. In most CERT programs, however, there will have been few or no prior events that resulted in losses. If the program has a history of losses or near-misses, consider the risks, but do not be limited by it.

Standard operating procedures and rules of conduct minimize liability by instructing CERT leaders and members how to carry out their responsibilities. They also suggest the types of liability they seek to prevent, and thus can be useful risk identification tools.

The absence of procedures that address recruiting, screening, accepting, supervising, and terminating members increases risk. A CERT program that does not have and consistently follow such procedures is more vulnerable to liability based on its members' negligent or wrongful actions and on members' claims of wrongful discrimination. If the CERT program has no procedures, put this on the list of issues to address in Step Four.

Some CERT programs activate their members for response. For those programs, the absence of procedures for and documentation of activation, assignment, and deactivation is also a risk. Procedures help ensure a consistent activation and deactivation approach, and documentation can serve as useful defense evidence in the event a claim is made against a volunteer or the program. Keep in mind that instructing members/teams to self-activate does not eliminate all chances of liability, as will be discussed later in this Guide.

Look for any circumstances under which CERT members might respond outside their home state or jurisdiction. Members responding in another state or jurisdiction may be operating in a less familiar environment and have different liability and injury protection than is offered in their home state.

Peer discussions with other CERT programs can help identify risk. It is difficult to anticipate liability that has not yet occurred. Fortunately, most CERT programs do not have a substantial loss history from which to draw. Pooling knowledge with other CERT programs allows a program to benefit from others' experience.

Analyze risk.

The second part of Step Three is analyzing the identified risks to estimate their likely consequences for the CERT program, its sponsoring agency, and its members. Consider two things: how often liability is expected to result, and what the associated costs would be when it does. In addition to costs such as payment of judgments, settlements and member injury claims, remember intangible costs, such as damage to the CERT program's reputation and partnerships. Focus the analysis on identifying risks that can cause the greatest harm.

Step Four – Adopt Strategies to Manage Risk

There is no single correct approach to managing a CERT program's liability risk. Practices used by CERT programs differ significantly, and these differences provide an opportunity for CERT programs to learn from one another. The Appendices of this Guide provide examples of approaches that CERT programs throughout the U.S. have contributed to help their peers.

Ideally, strategies for managing liability in a CERT program are implemented before the program begins. In reality, they are often adopted over time as the need appears. Whatever a CERT program's current state of development is, the following strategies are worth considering.

Position descriptions.

Position or job descriptions are important risk management tools for most organizations. They help the organization identify risk and ensure the best fit between applicants and jobs.

A CERT program's need for position descriptions with regard to operational activities is satisfied by the *CERT Basic Training* course. These materials provide an excellent resource for identifying risk and CERT program policy of cross-training all members for operational activities gives both the CERT program and the potential member an opportunity to assess the fit. Development of position descriptions for the activities included in the *CERT Basic Training* course is therefore not necessary for risk management purposes.

Some CERT programs offer supplemental training for functions beyond those in the *CERT Basic Training* course. If they are sufficiently detailed, the training materials for those functions can serve the same purpose to document operational activities for specific positions.

Some CERT members may assume managerial responsibilities. These include the CERT leader and any section chiefs designated by that leader during an operational response. Their responsibilities require additional management, communication, documentation, and organizational skills, and their decisions may affect the safety of more people. Consequently, their liability exposures are broader than those of team members who are assigned to individual tasks. Supplemental position descriptions for these responsibilities will help CERT members prepare to discharge these additional responsibilities effectively and with less risk for everyone.

Non-operational community service opportunities are different because CERT Basic Training does not cover these activities. A CERT program should consider developing an activity description for each community service opportunity it offers and manages. In addition to providing a basis for identifying risk, these descriptions can do the following:

- Identify which non-operational member activities are CERT related
- Provide an objective basis for determining eligibility to participate (i.e., prior training or qualifications)
- Provide information that helps members make a fully informed decision about participating
- Establish supervisory authority and accountability

Here are some basic elements to consider including in community service opportunity descriptions:

- Title of the opportunity
- Date(s) and location(s)
- Working conditions (inside/outside, extensive walking, etc.)
- Narrative description of purpose (usually a sentence or two)
- The essential functions (a brief description of each important activity)
- Required qualifications, if any (education, special skills, completion of supplemental training, etc.)
- Required satisfactory completion of any additional background checks
- Required time commitment
- The title of the CERT leader in charge of that opportunity

Some CERT programs announce to their members community service opportunities offered by other organizations. There is no need to develop activity descriptions for opportunities in which the CERT program does not play a role, but keep a copy of all announcements and be sure they clearly identify the sponsor.

Membership management.

The CERT program mission means that its recruitment goals differ somewhat from those of other programs. CERT programs recruit for multiple purposes. First, CERT programs train members of the public about community emergency preparedness, even if those people never go beyond meeting the needs of their own families and neighbors. Second, CERT programs train people who are willing to become involved in non-operational community service opportunities. Finally, CERT programs train people who are willing to join CERT teams and activate to support professional first responders in their immediate surroundings and throughout the community.

To meet these goals, CERT programs cast a broad net to recruit participants for CERT Basic Training. To manage the potential risk associated with new participants, CERT programs often adopt a formal application, screening, and acceptance process, especially for those who want to take a response role in CERT. The application and screening process is a risk management tool, but it also poses its own risk if it is discriminatory or inconsistently followed.

Application

Complete and accurate information about potential CERT members is a powerful tool for reducing risk. Using a standard application form helps the program collect consistent information about each applicant. Application forms that require the applicant to sign a statement agreeing that the information provided is accurate and complete (the language used may vary) may also discourage misrepresentation. In addition, the application form can include language that:

- Notifies applicants that the CERT program will verify the information provided and reject the application if it is inaccurate or incomplete
- Obtains the applicant's written permission to conduct specific types of background checks, as discussed under *Screening* below
- Notifies the applicant that any position offered will be "at will" and subject to termination at the CERT program's discretion

The content of application forms used around the country may vary, because the content must meet the needs of each CERT program. Avoid including questions that could lead to actions that would be discriminatory in an employment setting (for example, questions about age, race, religion, national origin, pregnancy, disability, health problems, and prior workers' compensation claims). Several forms used by existing CERT programs are included in the Appendices as examples. Prior to use, it is advisable to have the application form approved by an attorney or a human resources professional familiar with federal law and your state's employment law. Programs that accept participants under the age of 18 should also require the youth to provide a parent's or guardian's written permission to participate. This can be included on the application form.

Require any participant and, if the participant is a youth, his or her parents or guardians, to sign a written waiver of liability that describes the risks of the CERT program's activities. Waivers of liability are often not enforceable under a state's laws, especially against minors, however, a waiver that describes the activities and associated risks shows that the volunteer (and his or her parents) knew of the risks and chose to participate. Waivers can also be useful in settlement negotiations. Check with an experienced attorney for advice on the best language to use in your state.

Interview

Some CERT programs conduct personal interviews of applicants. Interviews may be conducted prior to training or as a requirement for joining a team after training. Interviews can help assess the applicant's suitability for a team, and, if conducted improperly, they are also a potential source of liability or bad publicity based on wrongful discrimination.

If the CERT program conducts interviews, use the same caution as for paid positions. A standardized list of interview questions helps the interviewer gather all the required information and reduces the chances of asking a discriminatory or other problematic question. Have the questions pre-approved by an attorney or a human resources professional familiar with federal and state employment laws. Inevitably additional conversation and follow-up questions occur, so be sure CERT interviewers know how to make good decisions about follow-up questions.

Screening

Screening verifies an applicant's representations and identifies background or history inconsistent with the responsibilities of the position. Programs make different decisions about when and how they screen. Some screen only applicants who want to be included in a team activated for response. Others screen applicants before they are admitted to CERT training. If the CERT offers membership to applicants before screening is completed, the offer should be in writing and contingent upon the satisfactory completion of the screening.

An incorrectly managed screening process can be a source of liability either for wrongful discrimination against an applicant or for failure to screen adequately to identify an applicant who poses a risk to the community. To avoid claims of wrongful discrimination, screen all applicants in the same manner. Identify in advance how the program will address specific findings and equally enforce those consequences with all applicants. To avoid liability for failure to identify an applicant who poses a risk, be certain to meet state requirements for screening individuals who will work with vulnerable populations. Keep complete records of all screening results for both accepted and declined applicants, and be certain those results are addressed consistently with each applicant. Screen CERT applicants in a manner consistent with paid employees who perform similar functions. When developing screening protocols, it may be helpful to consider protocols used by surrounding jurisdictions.

Do not begin screening without the applicant's written permission for the specific types of screening the program will use. Consent may be obtained on the application form or a separate consent form signed prior to screening. The consent should identify the specific screening to be performed and include an agreement that the applicant releases and holds harmless from liability the program and any person or organization that provides information about the applicant. The sponsoring agency's existing policies and procedures for screening employees or emergency response volunteers may be helpful models. Additional examples are included in the Appendices.

Common screening approaches include:

- **Volunteer interviews.**
- **Reference checks.** *Contact employers for which the applicant has performed paid or volunteer work and any personal references identified by the applicant.*
- **Criminal background checks.** *Criminal background checks may not be required for every member, but they are advisable (and may be legally required) when members' work puts them in a position to deal directly with vulnerable individuals, such as children, the elderly, people with disabilities, and disaster survivors. Check with local police to determine the appropriate agency, which may include a state law enforcement agency or department of justice.*
- **Fingerprinting.** *Fingerprinting is one component of a criminal background check. Contact the local police department.*
- **Drug testing.** *This is more invasive testing and thus should be used with caution. If drug testing is necessary, consider contracting with a private vendor who provides good recommendations from trusted sources.*
- **Driving record checks.** *Driving record checks are good practice for members who will operate their own or the sponsoring agency's motor vehicle as part of CERT activities. Contact the state department of motor vehicles for procedures.*

Acceptance and offer

The procedures used to accept members from the pool of applicants differ among programs. Any process that is based on consistently applied objective criteria and is not wrongfully discriminatory will help the program avoid liability and unfavorable publicity.

The program can avoid possible misunderstandings by putting information into a written offer letter or service agreement to be signed by the member and the member's parents, for minors.

The information should include:

- Name, address, and contact information for the member
- Title of position ("CERT Member" for example)
- Effective date
- A statement that the member's appointment is "at will" and can be terminated at any time by the program or by the member
- Any contingencies the member will have to fulfill before the appointment is official, such as screening or completion of training
- Any specific requirements the member must fulfill after the appointment is official, which could include participating in program activities a minimum number of hours per month, attending refresher training, etc.

Other information and commitments may also be included:

- A description of benefits (such as workers' compensation or accident and injury insurance and liability protection) and privileges (such as use of sponsoring agency vehicle or personal vehicle on program business) that apply to the member
- A waiver by the member of program and sponsoring agency liability for injury, illness, or death sustained by the member in connection with CERT service
- An Oath of Allegiance, which may sometimes be required by state law for the member to qualify for liability and injury protection as an emergency or disaster volunteer
- Any requirement that the member must meet to use a personal vehicle on program business (for example, to maintain liability insurance)
- Acknowledgement that the member has received a copy of the program's policies and procedures (or member Handbook) and will comply with their terms (including any work conduct rules)
- A commitment by the member to maintain the confidentiality of certain information

Any statements made in the offer letter or service agreement will be a binding commitment by the CERT program and the member. Consequently, use great care in describing benefits (for example, do not refer to accident and sickness insurance as workers' compensation coverage). Secure legal

or human resources approval of the offer letter or service agreement before adopting it for use in the CERT program.

Privacy of volunteer records

The recruitment and selection process generates written information about potential members that can be highly confidential. Disclosure of this information can harm the individual and expose the CERT and its sponsor to significant liability. Consequently, the confidentiality of all volunteer records, including information about unsuccessful applicants, should be respected to the same degree as the records of sponsoring agency personnel.

Work and conduct rules.

CERT programs are often sponsored by public safety organizations that operate in high-risk environments and adopt strong management practices to help them safely achieve their missions. CERT members usually do not face the same degree of danger as professional emergency responders, but CERT programs that follow management practices geared to their operations can operate more safely and better manage liability.

Clear work and conduct rules are an important management practice. They provide guidance on how members carry out their responsibilities and apprise them of actions that the program considers to be unacceptable. Work and conduct rules let members know what is expected of them and provide the program with an objective basis for managing performance and, if necessary, terminating members. These rules should include even the obvious – such as prohibiting sexual harassment and disclosure of confidential information. Identify within the work and conduct rules any infractions that warrant immediate termination. Refer to the program’s progressive discipline and termination procedures, if the program has them. Give each CERT member a copy of the rules and require the member to sign an agreement to obey them.

The following are examples of work and conduct rules that can help reduce the chance of liability:

Time commitments and records

Require that CERT members meet the program’s minimum time commitments (if any) and that they record their time when engaged in program activities.

Periodic retraining and background check requirements

Require that CERT members meet the program’s periodic retraining and background check requirements.

Uniforms and program issued identification

Require that CERT members wear “uniforms” and carry program identification while they are participating in CERT activities. The uniforms may be simple – a program logo T-shirt, a safety vest, and a hard hat, when

appropriate. Uniforms and identification help the program prevent unauthorized persons from accessing restricted areas and posing as program members.

Because logo materials and identification represent the member as part of the CERT and a representative of any agency whose name is on the materials and identification, clear instructions should be given about when they are – and when they are not – permitted to use those items.

Procedures for reporting injuries, illnesses, accidents, and property damage

Require CERT members to report any injuries or illnesses they believe to be related to their CERT activities. Give them detailed instructions about when, how, and to whom reports shall be made based upon written program procedures. Also require them to report any accidents they have in a motor vehicle and any injuries or property damage they cause while participating in CERT activities.

Compliance with safety rules, including use of required personal protective equipment

CERT members usually do not engage in activities that require the kind of personal protective equipment used by firefighters, however, their activities may require protective headgear, safety vests, goggles, gloves, or dust masks. If the CERT program has responsibilities that require the use of personal protective equipment, make its use an explicit requirement in the position descriptions and work rules and enforce that requirement.

Statements to media

Require that CERT members refer media representatives to a designated public relations contact.

Confidentiality and privacy

Prohibit disclosure of confidential or private information about the program, its members, the sponsoring agency and its employees, members of the public, and others.

Wrongful discrimination

Prohibit discrimination, including but not limited to discrimination based on race, gender, religion, color, national origin, age, marital status, disability, and sexual orientation.

Harassment (sexual and other)

Prohibit all harassment as well as the display of sexually suggestive or other offensive materials.

Alcohol and drug use

Prohibit the use of alcohol, drugs, or substances that can impair physical or mental functioning while participating in CERT activities.

Smoking

Prohibit smoking while participating in CERT activities.

Cell phone usage

Adopt reasonable restrictions on personal cell phone use while participating in CERT activities and prohibit any cell phone use while driving as part of performing CERT activities.

Photography

Prohibit photography while participating in CERT activities unless it is ordered by the member's supervisor and taken with the CERT program's or the sponsoring agency's equipment. Assure that members have signed a release form to allow the program to use their image in any print or digital material to which the program might contribute or that the program might produce itself. Require the supervisor's approval for any publication or distribution of photos, and prohibit members from using any photographs taken while participating in CERT activities for private purposes. Digital cameras and the Internet increase the chance that a photo taken by a CERT member could be widely published in violation of a subject's privacy rights, and the program and sponsoring agency could be liable to the subject for damages.

Personal use of computers/e-mail

Prohibit personal use of sponsoring agency's or CERT program's computers and e-mail.

Carrying weapons

Prohibit members from bringing weapons to CERT activities unless they are sworn law enforcement officers and carrying the weapon is part of their job.

Reporting changes in driving record, criminal background, or professional licensure status

Require members to report any change in their driving record, criminal record, professional licensure, or other record required for the position they hold.

CERT training.

Training helps CERT manage liability because it helps CERT members know what is expected of them and prepares them to deal safely and effectively with the situations they are likely to encounter. Training is especially important for CERT's operational activities. Deploying CERT members into emergency situations without adequate training would increase significantly the likelihood of liability for the sponsor, its trainers, and CERT members.

Fortunately, CERT programs do not have to create a training program from the ground up. The CERT National Program Office at FEMA has an extensive pre-prepared training curriculum that is available for download online at

<http://www.fema.gov/community-emergency-response-teams/training-materials>.

The *CERT Basic Training* course materials include a Participant Manual, and an Instructor Guide and PowerPoint files for use by CERT trainers.

The materials provide background information and describe CERT procedures in detail. This national baseline for CERT training promotes consistency among programs and makes it more difficult to argue that a program is not training its members adequately.

CERT training provides information to help members respond safely in emergencies; it does not establish inflexible standards to which members must strictly adhere. Inflexible standards could increase liability risk for CERT members who must adjust or even disregard a particular part of CERT training based on the circumstances at the scene. Consider including on any CERT materials that might be construed as standards, including training, a statement that the content does not replace what a reasonable person would do under similar circumstances, and that the content may be adjusted or disregarded based on circumstances at the scene. Review standard operating procedures and other program materials to be sure they do not suggest that they impose inflexible standards. An exception may be work rules that prohibit certain actions (for example, sexual harassment) that are never appropriate. Consult with an attorney for advice on establishing the right balance under the state's law.

It is good practice to maintain training records that identify the members who were trained, when they were trained, and the topics covered. Records help manage the training schedule and ensure there are no training gaps. If the training of CERT members becomes an issue in a lawsuit, the records will document that the appropriate training was provided.

CERT training is a more effective risk management tool if the CERT program requires refresher and ongoing training for members who join CERT teams. Refresher training enables members to maintain their current skill levels and informs them of any updates in procedures. Without refresher training, skills will rapidly be forgotten and the chances of liability increase. Information about planning and delivering refresher training is available online at

<http://www.fema.gov/community-emergency-response-teams/training-materials>

CERT programs can customize their training to better reflect the community's hazards and vulnerabilities and the characteristics of the group being trained. Step 5 of the CERT document *Starting and Maintaining a CERT Program* contains information on tailoring training, located at <http://www.nationalservice.gov/sites/default/files/resource/tads-CERT.pdf>. Some additional topics to consider addressing include:

- The mission and goals of the sponsoring agency and the CERT program
- The chain of command in the sponsoring agency and the CERT program
- The program's work and conduct rules

- The benefits offered to participants, including any liability and injury protection provided to members by the program or by law
- Periodic re-training requirements
- Procedures for volunteer evaluation and termination
- Training for additional skills, community service opportunities, or other non-operational CERT activities that are not covered by the *CERT Basic Training* course

Developing and distributing a member handbook helps members remember this information and can also serve as an important foundation for the program's performance evaluation, progressive discipline, and termination procedures. A handbook can summarize information not included in the standard CERT curriculum and should incorporate by reference the *CERT Basic Training* Participant Manual. If you distribute a handbook, have each member sign an agreement acknowledging receipt and agreeing to comply with its requirements.

The *CERT Basic Training* course is delivered in a classroom setting, so selection and preparation of trainers is important. Good presentation skills are important to hold students' attention and effectively convey the information. Training is often delivered by a sponsoring agency's first responders, but a CERT program may choose to use other instructors, such as experienced CERT members, to present some of the units. The National CERT Program Office offers a framework to guide the process of choosing and training instructors at <http://www.fema.gov/community-emergency-response-teams/training-materials>. In addition, FEMA offers training for CERT instructors (*E428 CERT Train-the-Trainer* course), as well as training for local CERT program managers (*E427 CERT Program Manager* course). Both are offered at FEMA's Emergency Management Institute. More information about the courses and applications are available at <http://training.fema.gov/>.

CERT members who want to join a CERT that is activated to respond to emergencies are sometimes required to complete additional Incident Command System training, such as ICS 100a and subsequent courses in that series. This course is available online at <http://training.fema.gov/EMIWeb/IS/IS100a.asp>. Be sure that completion of this course is part of the training record for any CERT member who participates in operational response.

State and federal law mandate certain types of employee training, usually on safety or discrimination issues (for example, federal and state occupational safety and health laws ("OSHA") require employers to train employees about safety issues relevant to their positions. Some states require training of employees about sexual harassment). Statutes that mandate training often require that certain information be included and that trainees have an opportunity to ask questions and receive an answer.

Mandatory training laws usually apply only to volunteers who are considered to be employees under their state's law, but this is not absolute. Some training requirements may apply to volunteers. A few states extend their occupational safety and health laws to volunteer emergency response personnel. Environmental Protection Agency regulations require that volunteer firefighters receive hazardous materials training. Even where training requirements apply only to employees, the line between employee and volunteer under state law is not always clear (for example, some CERT members may be considered "members" of a fire department for purposes of workers' compensation coverage, which might tip the balance in favor of "employee" status). Check with an attorney before concluding that CERT members are not subject to mandatory training requirements.

Training decisions should not be driven solely by legal requirements. It is good practice to train volunteers if the sponsoring agency would train an employee performing the same activities. The relatively small training investment is offset by the benefits of reducing the chance of costly liability.

Supervision, performance evaluation, progressive discipline, and termination.

Every CERT program should assign a supervisor for its members. Ideally, a supervisor should be an agency employee who is familiar with CERT responsibilities and able to carry out the program's performance evaluation, progressive discipline, and termination procedures.

A CERT program invests significant time and resources in recruiting and training members. Regrettably, an occasional member will be unable or unwilling to perform as expected. A procedure for progressive discipline and termination will help the CERT program manage these situations consistently and successfully. The program should develop the procedure with the advice of an employment attorney or skilled human resources professional. It is important that the progressive discipline and termination process include:

- Clear identification of actions that warrant immediate dismissal rather than progressive discipline (often those that present an unacceptable risk of damage to property or injury to a person, or that evidence intent to do harm or break the law)
- Consistent communication with the member of any deficiencies in performance, the reasons for any disciplinary action, and expected changes
- Written documentation of each step
- Administration in an objective, consistent, and non-discriminatory manner

A sponsoring agency that has adopted progressive discipline and termination procedures for its employees and/or volunteer emergency responders but that does not intend to apply those procedures to CERT members should consult with

an attorney. It is very important to clearly identify procedures that apply to emergency responders but not to CERT members. Failure to differentiate can result in CERT members benefiting from procedures intended to apply only to emergency responders.

Privacy is important in the disciplinary and termination process. Avoid making written or oral public statements that could damage the member's reputation and possibly provide grounds for a lawsuit. Administer discipline and termination in a private setting, with only the member, the supervisor, and a witness (who will maintain confidentiality) present. Keep member files in a secure place at all times, providing them with the same protection as the sponsoring agency's personnel files. If contacted for a reference on the member, follow the sponsoring agency's or the local government's procedures for employee references.

Activation/deployment approaches.

CERT programs adopt different approaches to activation of members in emergencies. Some CERT programs have a standard operating procedure that instructs members in advance when and how to self-activate. Others require their members to activate only when ordered. Still others may combine approaches, permitting self-activation in the member's immediate surroundings (i.e., neighborhood, university, or workplace) and issuing specific activation orders for participation in larger emergencies.

Both forms of activation have benefits. The self-activation approach recognizes the realities that people naturally respond to emergencies in their immediate surroundings, and that they will respond more effectively and safely if they have basic CERT training. The activation upon order approach enables the sponsoring agency to maintain greater direct control of responding CERT members.

When adopting an activation strategy, it is important to understand that there is no activation approach that guarantees against liability. On its face, self-activation may appear to insulate the program leaders and the sponsoring organization from liability by separating them from deployment or direction of members. This fails to recognize two important factors.

First, there are links with the CERT program even if members self-activate.

- Self-activation may be pursuant to a standing order, and not all that different – for liability purposes – from an order to activate issued at the time of an emergency.
- CERT programs have multiple points of contact with their members. Even if its members self-activate, an injured person might argue that the CERT program has put the member in a position to respond and that CERT training shaped their actions. An injured member might argue that CERT training did not adequately prepare for the situation encountered.
- By accepting members and instructing them to self-activate, some might argue that the CERT program has implicitly made a decision that the

members are capable of responding without supervision, and an injured person may question that decision.

- Even self-activated CERT members can appear to the public to be acting on behalf of the CERT program if they carry officially issued CERT identification, wear CERT identifying vests or personal protective equipment, or identify themselves as CERT members during a response.

Any of the above might be argued as grounds for program liability, even if CERT members self-activate.

Second, self-activation does not offer the risk control benefits of program activation for specific emergencies. A CERT that activates its members to respond to specific emergencies may reduce the chance that its members will respond to situations that are beyond their capabilities. If CERT program activation enhances oversight at the emergency scene, it can also help ensure that members work within their level of training and comply with the CERT program's rules. Both of these effects reduce, although they do not eliminate, the chances of liability.

Another concern is that self-activation may prevent CERT members from qualifying for liability protection under various federal and state laws. This will be discussed further below in ***Providing benefits for injured CERT members*** and ***Protecting CERT members from liability***.

Neither activation strategy eliminates a CERT program's potential liability for the acts of, or injuries to, its members. Each program should analyze the risks and benefits of each approach and choose the strategy that is most effective for its needs. Then acknowledge and manage the remaining risks.

Protection from the financial effects of liability.

Even the best risk control program cannot eliminate all liability. There remains a small but real chance of an injury, property damage, or other harm. A sponsoring agency has this "residual" risk from all of its activities – whether or not it sponsors a CERT program. The cost of damages, defending a claim or lawsuit, and providing injury benefits can be substantial, so no risk management program is complete until there is a plan to pay these costs. Recruiting members is also easier if there is a plan to protect volunteers from liability and to provide them with benefits if they are injured or become ill.

While CERT programs are most often sponsored by a local government agency, incorporated nonprofit organizations, businesses, or educational institutions may coordinate training and organize teams. In addition, a few CERT programs have established separate nonprofit organizations to raise funds. Thus, more than one legal entity can be involved in a CERT, and each is responsible for protecting itself and its officials, employees, and volunteers from the financial effects of

liability. Protection for one person or legal entity – whether by law or insurance – does not automatically protect others.

The remainder of this section summarizes different sources of protection that may be available for CERT programs and their members. For a more in-depth discussion and guidelines on how to investigate a specific state's law, see *Finding Statutes and Bills Online* (from the Citizen Corps Volunteer Liability Guide) in the Appendix.

Providing benefits for injured CERT members

Statutory benefits. A paid employee who suffers a work-related injury, illness, or death usually receives from the employer “no-fault” workers’ compensation benefits, including replacement for lost wages and medical expenses. Most state laws require employers to have workers’ compensation insurance or an approved self-insurance plan to ensure they can provide these benefits to their employees. To avoid double compensation, state laws usually limit an injured employee’s right to sue an employer that provides workers’ compensation benefits.

Paid firefighters and emergency medical service (EMS) workers are “employees” and are thus covered under their employer’s workers’ compensation coverage. Unpaid volunteers, such as CERT members, often do not qualify for protection under their states’ workers’ compensation laws.

In some states, CERT members are covered by workers’ compensation, or can be covered at their sponsoring agency’s option. If they are covered, it is likely to be under a provision in their state’s emergency management or homeland security statute. Occasionally workers’ compensation protection will be available because the state’s workers’ compensation statute specifically includes emergency volunteers in its definition of “employee.” Benefits for emergency volunteers may be subject to limitations or contingencies that do not apply to regular employees.

The wording of the statute(s) is critical to determining whether coverage is provided to CERT members during a specific CERT activity. One consistent requirement in emergency management and homeland security statutes is that the volunteer be engaged in emergency or disaster work, as defined by the statute. Another is that the volunteer be registered with, accepted by, or working under the direction of a state or local emergency management agency. Some states protect during participation in drills and exercises, but others limit coverage to emergencies or disasters declared by the governor. Thus, CERT members are more likely to be protected during operational activities than during non-operational or administrative activities. Members who self-activate, especially without a standing order to do so, are less likely to be protected than are members who are activated by an order of their sponsoring agency to work under the agency’s direction. Find out what the sponsoring agency says it does

and does not cover. Because state laws differ significantly, only a qualified attorney can give state-specific advice.

CERT members who are considered to be “members” of a fire department may have access to different protection. Again, the terminology used in the state’s statutes is the key to making this determination. Some state laws require or authorize workers’ compensation benefits for “members” of fire companies or departments. Others do so only for volunteer “firefighters.” A state law that requires or authorizes workers’ compensation benefits for “volunteer firefighters” is less likely to protect CERT volunteers than is a law that protects volunteer “members” of fire companies or departments. In states that mandate or authorize workers’ compensation for “members” of fire companies or departments, an amendment to the department’s by-laws or a local ordinance classifying CERT members as “members” of the fire company or department may allow those members to benefit from workers’ compensation coverage for purposes of those activities.

Even if CERT members cannot receive administrative workers’ compensation benefits, that does not preclude liability for their injuries or illnesses. An injured CERT member who is not eligible for workers’ compensation benefits can file a civil lawsuit seeking lost wages, medical costs, pain and suffering, and other damages from an injury caused by the act or omission of someone else. Potential targets of lawsuits include the sponsoring agency or local government, other volunteers, trainers and team leaders, to name a few. The lawsuit will fail, however, unless the target was at fault, the fault caused the injury and resulting damages, and the target of the lawsuit is not protected by governmental or another statutory immunity.

A different avenue for providing injury and illness benefits to injured volunteers is accident and sickness insurance. This is discussed in the next section. Talk to an experienced risk manager or attorney for additional information and options.

Accident and sickness insurance. If workers’ compensation is not an option, “accident and sickness” insurance can provide some injury benefits to CERT members. The local government or the sponsoring agency may have existing accident and sickness insurance for its regular volunteers that can cover CERT members. Compare the coverage provided under such insurance with the benefits the program wants to provide. Volunteer accident and sickness insurance sometimes covers only medical expenses, not lost income, has a relatively low maximum payment, or pays only what the volunteer’s regular health insurer does not pay. Also, before choosing this path, be sure that the policy does not exclude emergency or public safety volunteers.

Waiver of liability. A written waiver signed by an adult CERT member can help limit potential liability for injuries and illnesses. A waiver documents in writing that the member understands the risks of the position and agrees to waive the right to bring a claim for an injury or illness. It can thus help establish that the activity is

not risk-free and that an injury does not necessarily mean the program was at fault. It can also include written notice of any injury and illness benefits that are provided.

The enforceability of waivers is governed by state law, and such waivers are not equally effective in all states. States are usually unwilling to recognize an advance waiver of liability for careless actions. Waivers for injury to minors are even more problematic than waivers by adults, because state law often permits minors to avoid their obligations under contracts they have signed. Waivers on behalf of minors should be signed by both the minor's parents or legal guardians and the minor. Check with an attorney for advice on how to craft a waiver that will have maximum effect.

Protecting CERT members from liability

Liability law enforces the critical social value of accountability by encouraging individuals and organizations to use reasonable care and discouraging them from committing wrongful acts. However, concerns about liability can discourage volunteerism, which is another important social value. If these social values remain in balance, society benefits from volunteerism without sacrificing accountability. Thus, state and local governments and agencies that use volunteers or promote volunteerism seek solutions that balance these values.

In most states, protective laws have been adopted over a period of many years to address then-current needs. Volunteer liability protection takes two basic forms: immunity (legal exemption of the volunteer from liability) and indemnity (payment of the volunteer's costs arising from a liability claim – such as attorney's fees, judgments, and settlements). Immunity and indemnity are complementary. Immunity limits an injured person's legal right to recover damages from the volunteer, but does not pay any costs to defend the volunteer. Indemnity does not limit the injured person's rights to recover, but it provides the volunteer with a legal defense and pays judgments and settlements, if necessary. Some immunity laws are statutory, and others are part of the state's common ("case") law. Indemnity may be provided by statute, by agreement, or a combination of both. For the volunteer, it is ideal to have both immunity and indemnity.

The critical points to remember are that immunity and indemnity vary greatly from state to state and that they are helpful but do not provide complete liability protection. Most immunity and indemnity laws have threshold requirements that the volunteer must meet - such as type of activity and registration as a volunteer. They uniformly exclude protection for gross negligence, willful misconduct, and similar extreme conduct. Many also exclude protection for volunteers when they are driving motor vehicles.

The following are the general categories of volunteer liability protection. An attorney can provide complete information about the scope of protection available in a particular state.

Volunteer protection laws. The federal and many state governments have adopted volunteer protection laws that provide certain volunteers with limited immunity. The protection offered by state laws can differ, so this discussion is based on the federal Volunteer Protection Act of 1997 (VPA).

The VPA gives individual volunteers who are working without compensation for government or nonprofit organizations limited immunity from liability for harm based on the volunteer's actions. It does not protect any specifically described set of activities, and so it can apply in both emergency and non-emergency situations. It does not protect the organization that uses the protected volunteers. Under the VPA, a CERT's sponsoring agency can still be sued if otherwise permitted by law, even if its member cannot.

The VPA and its state cousins include many exclusions. The VPA excludes protection for volunteers who are operating a motor vehicle or other vehicle for which the state requires an operator's license or insurance. It also excludes volunteers who are performing acts for which the volunteers are not appropriately licensed or are not within their area of responsibility. It provides only immunity, and thus does not provide for payment of legal defense costs, judgments, and settlements. It does not protect against liability for gross negligence, willful and wanton negligence, or similar extreme conduct. Despite these (and other) limitations, however, volunteer protection acts may be the best source of immunity for CERT members who volunteer for non-operational/community service opportunities.

Emergency volunteer protection. The following types of laws provide liability protection specifically to volunteers who assist in emergencies. Protection varies and follows specific criteria set forth in the state's statute. Check with an attorney to determine what protection is available under your state's law.

Good Samaritan laws: "Good Samaritan law" is the popular name for statutes that provide limited immunity to individuals who, in good faith, without a duty, and without compensation, help a person who is experiencing a health emergency in a setting where there is no ready access to professional care. Protection is not limited to declared emergencies, so Good Samaritan laws can protect people who happen to be present at the scene of an emergency as well as CERT members or teams who self-activate, if they meet the other requirements of the statute. These laws are unlikely to protect CERT members in their non-operational or administrative capacities. Every state offers some form of Good Samaritan protection, but the scope of protection varies greatly. Some states protect "any person" who tries in good faith to assist, while others require that the "Good Samaritan" have certain professional qualifications (for example, as a health care provider). In states that require the Good Samaritan to have specified credentials, the protection is less useful to most CERT members.

Emergency management and homeland security laws: State emergency management and homeland security statutes may provide limited immunity from liability to individual CERT members who are working as registered emergency or disaster workers. These laws sometimes provide indemnity as well. They are most likely to protect CERT members who are ordered to activate and participate in an official emergency response under the direction of an emergency response agency. Members who self-activate under a standing order or standard operating procedure may also be protected. Members who self-deploy without any order are less likely to be protected by emergency management laws, but they may still benefit from Good Samaritan protection. Check with an attorney or risk manager to determine how activation methods affect CERT members' liability protection.

Historically, organizations (such as businesses) that volunteer their resources in an emergency have not been provided with similar liability protection. As the important role of businesses and nonprofit organizations in emergency response has become more apparent, however, there is increasing attention to protecting them as well. State laws are thus beginning to incorporate protection for these important partners.

Fire/EMS volunteers: Some states provide limited immunity to fire/EMS volunteers. CERT members who work with fire and EMS organizations may benefit from this protection. A statute that gives immunity to "all persons providing voluntary service to a fire department, ambulance service, or rescue squad" is more likely to protect CERT members who work for a fire or other rescue service than is a statute that limits protection to "volunteer firefighters." Fire/EMS volunteer immunity laws often limit their application to active fire/emergency response situations, so look carefully at the scope of activities covered by the immunity.

Interstate mutual aid: Some CERT programs operate teams that are capable of responding to disasters across state lines. Activities outside the home state often raise concerns about the adequacy of liability protection in the state where the aid is being provided. These concerns can be warranted, because protection varies from state to state, and CERT members are protected outside their home state only to the extent that the other state has adopted protection for emergency management volunteers. Many states' emergency management laws protect emergency workers from other states who are responding to an official request for assistance. It pays to be familiar with the liability protection provided by the states to which the CERT(s) responds, but this can be difficult due to variation in state laws and the speed with which response takes place in the aftermath of a disaster.

The Emergency Management Assistance Compact (EMAC) is a partial remedy to this challenge, but its effect is limited. Under EMAC, a responding state and its "officers and employees" are protected from liability.

Local government employees, volunteers, and employees of businesses who respond across state lines in a disaster are not protected by EMAC unless their state designates them as part of its official response force. Those who self-activate are not protected by EMAC. Do not rely on EMAC to protect your CERT program's members without legal advice.

Liability insurance/self-insurance. Liability insurance is a form of indemnity and is an important tool for protecting CERT members. It does not prevent an injured party from suing and recovering damages, but, from a CERT member's perspective, the protection of good liability insurance can be broader than immunity. Liability insurance that covers emergency management volunteers is less likely to have some of the exclusions and limitations that leave gaps in the protection offered by immunity statutes, and, unlike immunity laws, liability insurance also provides funds to pay defense costs, settlements, and judgments.

Some states require political subdivisions to provide their emergency volunteers with liability insurance and others allow but do not mandate coverage. This protection may be in the form of liability insurance or inclusion under a government's self-insured plan. In states where government volunteers also have limited immunity, this can provide two-part protection.

CERT programs may be operated by or affiliated with many different types of emergency services organizations. Any of these legal entities may have existing liability protection for volunteers that could cover CERT members. Here are some possibilities to investigate:

- The local government or agency liability insurance policies
- The local government's self-insurance plan
- The coverage document from a public risk pool that provides insurance to the local government or agency
- The volunteer liability insurance policy held by the local government or one of its agencies (it may be possible to add CERT members to a volunteer liability insurance policy held by another agency)
- A separately incorporated CERT or auxiliary program's general liability and directors and officers liability insurance policies
- A contract for fire/EMS services in which CERT members may participate, including a nonprofit volunteer fire/EMS company's contract to provide services to a local government
- Mutual aid agreements
- Insurance available to volunteers through other affiliations if the volunteers will respond in a dual capacity

The protection afforded by liability insurance, self-insurance plans, public risk pools, and contracts is not all the same. With a knowledgeable risk manager or attorney, identify and review available insurance and other protection to confirm that it includes the CERT activities the program wants to protect.

Review insurance maintained by local governments to be sure it includes volunteers and does not exclude emergency management activities. Find out how the activation approach affects coverage: many sponsoring agencies do not cover CERT members during self-activation. Identify any coverage required to protect CERT members' special activities. If no existing insurance coverage or other protection is available, consider investigating commercially available volunteer liability insurance policies.

Protecting CERT members from penalties for violation of license, certificate, or permit requirements

This usually is not an issue for CERTs because their members respond within the level of their CERT training, rather than in their professional capacity. The functions they perform should not trigger the need for a license, certificate or permit.

This issue might arise for professionals who are dual trained for CERT and another emergency volunteer program. Clear activation procedures help to differentiate when a volunteer is responding as a CERT member and when he or she is responding with the other group.

If the issue of credentials arises, there is some statutory protection. EMAC provides that states receiving assistance will recognize licenses, certificates, and permits held by members of a responding state's forces, subject to conditions and limitations imposed by the state governor. Many states include similar provisions in their regular emergency management statutes, without the explicit requirement of a link to EMAC forces. Often these state-specific statutes recognize existing credentials from another jurisdiction, but sometimes they just state that their requirements do not apply to emergency forces working in a declared emergency. Few states currently provide for recognition of retired professionals who do not maintain a current license.

Protecting CERT sponsors from liability

A CERT sponsor's best liability protection is the five-step process described above, because it focuses on preventing the losses that result in liability. Immunity and indemnity do not prevent a loss; they only shift the cost to the injured party or to an insurer. Everyone wins if the loss is prevented.

The following are general categories of protection that may be available to the sponsoring organization. Contact an attorney or an experienced risk manager for complete information about the scope of protection available in a particular state.

Immunity. Governments and their agencies often benefit from governmental immunity, especially during emergency operations. This immunity may extend to liability for volunteers' negligent actions and for volunteer injuries.

Because businesses and educational organizations that coordinate CERTs are much less likely to have entity immunity, it is important that they operate under the guidance of the community's CERT program. The scope of immunity varies substantially from state to state, and its application may depend on factual

issues. It is good practice to obtain legal advice before relying on immunity. Even if immunity is available, a source of indemnity is important to pay for defense.

Indemnity. CERT program sponsors that are government departments or agencies are likely to have some protection through the local government's self-insured plan or liability insurance from liability for the negligent actions of their volunteers. Talk to the local government's risk manager or attorney to be sure there is coverage and that there are no significant limitations (for example, exclusion of volunteers or emergency management activities).

A CERT sponsor that is an independent emergency response organization (for example, an independent volunteer fire company) may also have its own liability insurance. A sponsor that buys separate insurance designed for emergency response organizations is likely to be covered for liability arising from harm caused by its volunteers, and its volunteers may also be covered. If CERT volunteers are "members" of a volunteer fire/EMS company, those volunteers may also be covered under the company's workers' compensation coverage. Review any policies upon which the sponsor relies and consult with a risk management or legal advisor to understand the limits of the protection provided.

Businesses and educational organizations that coordinate CERTs should check their insurance carefully and consult with a risk manager or insurance agent to determine whether it covers their CERT activities and volunteers, especially for involvement in activities outside the coordinating entity's own operations. Be alert for any exclusion of emergency response activities. Explore with an attorney whether an agreement that gives the local emergency management agency control of the coordinator's CERT members in an active response will help separate the coordinator from liability for volunteers' actions or injuries.

When relying on inclusion under another organization's insurance or self-insured plan, require written documentation of coverage for the sponsoring agency, such as a current insurance certificate.

Workers' compensation and accident and sickness insurance. A sponsor that provides statutory workers' compensation benefits to CERT members may be protected under the workers' compensation law from a lawsuit for the same injury (referred to as "exclusive remedy" protection). Organizations that provide CERT members with accident and sickness insurance do not receive exclusive remedy protection, but combining accident and sickness insurance with a waiver of liability signed by the CERT member may reduce the chances of being sued.

State laws differ on the exclusive remedy protection and in their recognition of waivers of liability, so check with an advisor experienced in the state's law before adopting a strategy.

Step Five – Maintain the Momentum

Managing liability is an ongoing process. A CERT program's activities, partners, and environments change, and so must its strategies. Some strategies will be less effective than expected, and so must be revised or replaced. The keys to success are monitoring changes in the CERT program, evaluating the effectiveness of adopted strategies, and making changes as needed.

The five-step process discussed above helps liability management in two ways. First, it provides structure for a regular, fresh look at the CERT program's risk management approaches. Working through the five steps every few years – especially with new participants - gives the program a fresh perspective on vulnerabilities and new ideas about strategies. Secondly, the five steps suggest how the organization can incorporate managing liability into its ongoing operations, ensuring that everyone from the chief to the newest volunteer thinks about liability when working.

Revisiting Step One – Get Leadership Support.

Changes in priorities - and even in upper management personnel - can diminish support over time if the liability management effort does not maintain visibility and demonstrate its value. Regularly scheduled reports to upper management about activities and outcomes can help maintain upper management support.

Revisiting Step Two – Gather Information.

The environment of a CERT program is not static. Changes in the community or the sponsoring agency will affect the operations and resources of the CERT program. Although change is inevitable and often desirable, unrecognized change is dangerous because it increases the chances of liability.

Stay alert for changes that affect the CERT program by reading reports, budgets, and proposals for new activities and maintaining contacts throughout the sponsoring agency, and the emergency management community, and the state and National CERT Program Office. Empower CERT members to advise program leaders of changes they observe. Review the CERT program's documents, including policies and procedures and position descriptions, to ensure they are still accurate.

Revisiting Step Three – Identify and Analyze Risk.

When new activities or other changes in circumstances are identified under Step Three, examine them and determine how they may increase the chances of liability. Encourage everyone associated with the CERT program to think about potential liability within the scope of their activities.

Empower CERT members to immediately correct problems within their authority (anyone can wipe up liquid spilled on the floor to prevent a fall) and to report to their supervisors problems that must be addressed at a higher level (for example, the need for retraining in a specific procedure).

Revisiting Step Four – Adopting Strategies to Manage Risk.

When a new liability exposure is identified, work within the system to develop and adopt a strategy. The information in this Guide, the CERT Web site, the *Citizen Corps Volunteer Liability Guide*, and networking with other CERT representatives are all resources that can help identify solutions.

4. Conclusion

CERT programs that consistently follow the process described in this Guide benefit themselves, their sponsors, their members, and the community. Programs that successfully manage liability are more likely to have long-term viability because they are more useful and pose less risk to their sponsors. They are also more attractive to new members, because they work in a safer environment, have clear responsibilities, and may benefit from injury and liability protection. Finally, the public benefits from the additional services performed by CERT members, and is protected from harm by the program’s screening and training procedures.

The National CERT Program Office welcomes thoughts, comments, suggestions, and additional contributions to this effort. If you know of a resource that would be helpful or an innovative program effort, or if you have comments or suggestions about anything in this Guide, contact CERT at cert@dhs.gov.

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Appendices

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Glossary

CERT member: An individual who has successfully completed the Federal Emergency Management Agency's *CERT Basic Training* course.

Community service opportunities: Non-operational activities engaged in by CERT members, such as distributing disaster preparedness materials.

Hold harmless and indemnification agreements: An agreement, often part of a contract or memorandum of understanding, in which one person agrees to assume the liability and risk that may arise from an activity.

Indemnity: Protection against hurt, loss or damage; exemption from liabilities or penalties.

Immunity: Exemption from liability under the law in situations where liability would otherwise exist.

Incident Command System: The command and control structure that is the organizing principle for emergency response in the United States and in many areas of the world, and is used by CERTs.

Intentional tort: A deliberate act that causes damage for which there may be liability. Examples include assault, battery, defamation, fraud, discrimination, and trespass.

Liability: A legal responsibility, especially for one's acts or omissions. The term "liability" is often used to mean direct adverse financial consequences, such as payment of damages, legal costs, and fines and penalties.

Negligence: Failure to act as a reasonable person would act under similar circumstances, which can result in liability for damages arising from resulting bodily injury, property damage, and personal injury.

Non-operational activities: See community service opportunities.

Operational activities: Emergency response and recovery activities undertaken by a CERT under the command and control of a local government agency.

Professional errors and omissions/malpractice: Similar to negligence, but for someone with professional skills or expertise: the failure to provide professional services as would a reasonable person with similar skills or expertise. Medical malpractice is a familiar example.

Risk: A measure of the potential for deviation from an expected outcome: uncertainty.

Risk management: A process of risk identification and analysis, risk control/mitigation, and risk financing that seeks to reduce the negative consequences of risk.

Sponsoring agency or organization: A government agency that endorses a CERT and, in many cases, funds and administers the program, conducts training, organizes teams, and sets program policies. Sponsoring agencies are typically the local fire department, emergency management agency, or law enforcement agency.

Strict liability: Liability imposed by law for harm arising from inherently dangerous activities, even in the absence of the liable person's fault.

Tort: A negligent or intentional act that violates a duty owed by a person or entity to someone else, other than a breach of contract or statutory law, and that causes damages that are recoverable under the law.

Resources: Sample Documents

See each document on the following pages.

Butler County Kansas CERT

Application form

Organization and Standard Operating Guidelines

Fresno California CERT

Registration and Hold Harmless Agreement

Release Waiver and Indemnity Agreement for Volunteer Service

Volunteer Application Form

Workers' Compensation Resolution

Los Angeles California CERT

Code of Conduct

Hold Harmless Form

Nassau County New York CERT

Acknowledgement of Information and Equipment

Background Check Request

CERT Activation Plan

Preparedness Memo

Training Evaluation Form

Santa Rosa County Florida CERT

Online Application Form - <http://www.santarosa.fl.gov/citizencorps/cert.html>

Stearns and Benton County Minnesota CERT

Criminal Background Check Consent Form

Volunteer Enrollment Form

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Resources: Links to Other Resources

CERT Resource Page

<http://www.fema.gov/community-emergency-response-team-liability-guide>

Links to information about liability during various CERT activities.

CERT National Website

<http://www.fema.gov/community-emergency-response-teams>

CERT training materials and other resources for local CERT programs.

Citizen Corps Volunteer Liability Guide

http://www.fema.gov/media-library-data/20130726-1844-25045-0834/cert_liability_guide.pdf

A toolkit that provides an overview of liability issues affecting Citizen Corps, liability checklists, and other resources.

Emergency System for Advance Registration of Volunteer Health Providers Legal and Regulatory Issues Draft Report

<http://www.publichealthlaw.net/Research/PDF/ESAR%20VHP%20Report.pdf>

This publication provides a thorough discussion of liability, licensing, and volunteer injury issues relating to volunteer health providers in emergencies. Includes state-by-state details on some issues.

State Liability Laws for Charitable Organizations and Volunteers — 4th Edition

Online Library of the Nonprofit Risk Management Center, www.nonprofitrisk.org. Beginning with an overview of the liability environment, this publication provides a state-by-state review of the evolving landscape of charitable immunity and volunteer protection laws.

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Finding Statutes and Bills Online

This section is from the *Citizen Corps Liability Guide*.

Statutes

When researching the law online, it is important to distinguish between statutes and bills. Statutes are current laws that have been passed by the state's legislature and signed by its governor. Statutory law is already in effect. **Bills** are proposed law that have not yet been passed by the legislature and signed by the governor. Bills are important to include in research because they show what the statutory law may become.

Statutory Websites

Most states provide access to their statutes through a link from their website. The page will usually say that it provides access to the state's "code", "statutes" or "laws". In most cases, the website for a state's current statutes can be located by:

- Using the direct links provided in the ***Links to State Statutory and Legislative Websites***. While these links were current at the time this Toolkit was released, links change from time to time, so it may be necessary to conduct your own search.
- Searching the Internet for the state's official website (search for the state's name or the state's name and the word "statutes") and looking on the home page for a link to "statutes", "code", or "laws".

Legislative Websites

Most states also provide a link from their home page to their legislature's web page. The legislature's web page provides information about:

- Bills that have been introduced but have not yet passed, including each bill's status, text, and sponsors
- Bills that have been passed by the legislature

Links to the state legislatures' web sites are also included in ***Links to State Statutory and Legislative Websites***. A state legislature's website is an important supplement to the statutory website because it often provides the most current information about changes to the state's law. It can take several months for the state's online statutes to reflect changes made by the legislature. New legislation is usually posted more promptly on the legislature's website.

Many states post a disclaimer on their statutory website, warning that the website may not be current or accurate, or that the statutes posted are an "unofficial version". Be sure to obtain advice from a legal professional before taking any action based on the statutes you find on the state's website.

Federal Legislation

Federal statutes and legislation can be accessed online through the GPO Access website, <http://www.gpoaccess.gov/>. For federal statutes, look under the “U.S. Code” link. Federal statutes and legislation are also accessible through the Library of Congress’ website, Thomas, at <http://thomas.loc.gov/>.

General Guide to Finding Statutes

The following tools are often available to find statutes on a state’s website:

- **Search for keywords**
 - **Statutes as a whole:** The state statutory website may provide a search function for words likely to be in the statute. The search function is similar to searching the Internet for a topic of interest: type in the words that describe the topic and the search function should provide relevant results.
 - **Particular statutes:** It may also be possible to search lengthy statutory text for an important term by using the find function, which is under “edit” in the internet browser toolbar, or other find tools available for the software being used.
- **Browse** (read through) the table of contents for the state’s statutes, looking for topics where volunteer liability protection is likely to be located. Browsing is similar to looking at a textbook table of contents to find a section of particular interest.
- **Search for statutory numbers.** Statutes are identified by section numbers for organizational purposes. If a statute’s number is available from another source – for example in a handout from a meeting - that number can be used to either search or browse the statutes.

Search functions may permit a search for more than one keyword at once: for example, volunteer, liability, immunity and emergency. This type of search produces fewer but usually more specific results. However, the narrower results may exclude statutes that would be of interest. Note that search functions do not all work the same way. It is important to read the website’s instructions for its search function before beginning. Suggested search terms for different topic areas are provided below. Alternative terms with similar meanings are separated by “/” mark.

Every State is Different

Every state organizes its statutes differently. Some states, like Texas and California, have a number of different “codes” not just one state code. Other states have “titles” that are not part of the statute number, which can complicate the search, as the researcher tries to determine in which title a specific section is located. Be prepared for a learning curve.

Civil Liability

Civil liability protection for emergency management volunteers can be found in several different parts of state statutes. The most common locations are the state's emergency management act or in a Good Samaritan Act. Governmental immunity under the state's tort claims act may be extended to emergency management volunteers through an emergency management or homeland security act.

To locate emergency management and homeland security statutes:

- Use the citations provided in ***Links to State Statutory and Legislative Websites*** for the emergency management acts in each state where one was located.
- Search for:
 - Emergency
 - Disaster
 - Military/military affairs/militia/civil defense/civil preparedness/defense
 - Law enforcement
 - Public safety/public health/health and safety

Results can be refined by combining one of the above terms with “immunity” or “immune”, “liability” or “liability”, or “volunteer”

- Browse for:
 - Emergency management
 - Homeland security
 - Military/military affairs/militia/civil defense/civil preparedness/defense
 - Law enforcement
 - Public safety/public health/health and safety
 - Government
- Once the emergency management or homeland security act is identified, look or search for sections that refer to:
 - Volunteer
 - Emergency management worker
 - Disaster worker
 - Liability/liable
 - Immunity/immune
 - Tort
 - Claims

To locate statutes relating to governmental immunity:

- Locate the state's emergency management or homeland security statutes, as described above, and look for references to immunity or liability of public entities, their employees and emergency or disaster workers during emergency management activities. Immunity may be provided within the emergency management or homeland security statute; or by providing emergency or disaster workers “the same rights and immunities as” public

employees engaged in similar functions; or by referring to the section number of the state's tort claims act.

- Search or browse for:
 - Tort claims
 - Public employees
- If a statute providing immunity or other liability protection is identified, then look for:
 - Inclusion of emergency or disaster workers in the group protected by immunity, and
 - A section (including a definition) that treats volunteers as protected emergency or disaster workers for purpose of immunity.

To locate Good Samaritan acts and volunteer protection acts:

Good Samaritan and volunteer protection acts are often part of a state's statutes on courts or judicial remedies. They may also be included in state licensing statutes for certain types of licensed workers.

- Search for:
 - Good Samaritan
 - Volunteer
 - Civil procedure/civil remedies/civil practice/civil proceedings/civil actions/causes of action/actions/courts/judicial procedures/rights of action
 - Exemption from liability
 - Emergency medical
 - Professions/professionals
 - Health professionals
 - Public health

Results can be refined by combining one of the above terms with "immunity" or "immune", "liability" or "liability", "volunteer"

- Browse for:
 - Civil procedure/civil remedies
 - Courts
 - Professions/professionals/physician (or other professional group that is of specific interest)
 - Health and safety
 - Public health
 - Insurance/health security
- If a statute providing immunity or other liability protection is identified, then look for the requirements to be in the protected group as defined and the scope of protection provided.

Workers' Compensation

Workers' compensation for emergency management volunteers will likely be found either in the state's emergency management or homeland security act or in its workers' compensation statute. Worker's compensation statutes may be referred to by other names, which are likely to include the word "industrial" or "labor" in their title. The emergency management or homeland security act may incorporate by reference the protection provided to state or local government employees.

Locate emergency management and homeland security laws as described above in *Civil Liability*.

- If a statute providing workers' compensation for emergency or disaster workers is identified, look for:
 - Language extending protection to *volunteer* emergency or disaster workers as well as those employed by a government
 - A separate, more limited program for volunteer emergency or disaster workers

To locate the state's workers' compensation act:

- Search for:
 - Workers' compensation
 - Labor/labor and industry/labor and employment
 - Industrial board/industries
- Browse for:
 - Workers' compensation
 - Labor/labor and industry/labor and employment
 - Industrial board/industrial commission
- If a statute providing workers' compensation or other injury, illness or death benefits for emergency management or disaster workers is identified then look for:
 - A definition of "employee" that includes *volunteer* emergency or disaster workers, or
 - A special section of the workers' compensation or similar statute for emergency or disaster workers, including volunteers

Licenses, Certificates and Permits

Statutory provisions that recognize out of state licenses, certificates or permits or waive those requirements in an emergency will likely be found in an emergency management or homeland security act. Licenses for retired professionals who are volunteer emergency or disaster workers are likely to be found in the state licensing statute for that type of professional.

Locate emergency management and homeland security laws as described above in *Civil Liability*. Refine the search by including the term “license” in the search, or search or browse the statute for the word “license”.

To locate state licensing statutes:

- Search for
 - Professions/professionals/specific name of a profession (architect, engineer, physician nurse etc.)/professions and occupations
 - Licenses
- Browse for
 - Licensure statutes for the affected professions and occupations
- If a statute is found, look for:
 - Waiver of license requirements during emergencies or disasters
 - Recognition of licenses from other jurisdictions during an emergency, and any limitations on that recognition.