



# **AGRIBUSINESS AND FARM INSURANCE SPECIALIST (AFIS®)**

## ***AFIS 2: Farm Liability***





## AFIS 2: FARM LIABILITY



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# Introduction

This course is one of the core curriculum courses leading to the Agribusiness and Farm Insurance Specialist (AFIS®) certification. The AFIS program is a specialized curriculum focusing on the insurance and risk management needs of farmers, ranchers, and commercial agribusiness enterprises.

Farming, ranching, and agribusiness remain significant parts of the US economy. In fact, agricultural products raised in the United States find their way into the world's food supply. While the global marketplace represents a huge economic opportunity for the agribusiness community, it is not without its risks. People the world over are concerned about access to an abundant, safe food supply. Anyone in the food chain can be held responsible when food safety requirements are not met.

## Course Objectives

The purpose of this course is to provide an orientation to the liability exposures faced by farmers and a thorough understanding of the various insurance products that can be used in arranging an insurance program on their behalf. The course examines the most common insurance coverage forms available in the marketplace, including a study of coverage provided as well as excluded, commonly used endorsements, and policy conditions and miscellaneous provisions.

Upon conclusion of this course, you should be able to

- recognize a wide range of loss exposures that farm liability insurance can cover;
- determine whether a described loss exposure or claim is covered by Coverage H, I, J, or an additional coverage or coverage extension of the farm liability form, and identify the appropriate rationale for your conclusion;
- apply farm liability and umbrella policy definitions of various terms and phrases and indicate how they affect coverage in a given situation;
- recognize how the farm policy's limits of insurance and/or the coverage of an umbrella/excess policy applies in a given situation;
- identify the effect of various farm liability policy and umbrella policy conditions and recognize how each should apply in a given situation; and
- recognize the circumstances under which it may become necessary to attach an endorsement to a commercial general liability (CGL) or farm liability coverage form, select an appropriate endorsement, and recognize its effect on coverage in a given situation.



# Chapter 1

## Farm Liability Risks and Insurance Overview

Farm insurance products are designed to cover the various loss exposures that arise out of “farming operations.” A normal farming operation consists of such things as cultivation of soil, production of crops, raising of livestock, and other incidental operations like operating a roadside stand on the premises. One of the unique aspects of farm liability is that the farm premises consist of a combination of residential structures (the farmer’s home, private garage, etc.) and commercial structures (barns, silos, irrigation equipment, and other outbuildings). This combination of traditional personal and commercial exposures on the same piece of property resulted in the development of specific farm liability coverage forms.

Liability loss exposures arise out of legal wrongs. The three broad classes of legal wrongs are crime, breach of contract, and tort, each being addressed by a different branch of the law. General liability insurance, including farm liability, concerns itself with tort liability, which is governed by civil or common law.

Tort law protects the rights of individuals from civil wrongs and generally provides monetary remedies to tort victims. In some cases, a criminal act such as assault and battery can lead to a civil suit. Liability insurance typically responds to such civil suits, unless the act was committed with intent to harm, but defense of the criminal act is not provided by an insurance contract.

In addition to common law, contractual agreements also create legal duties, such as an agreement to perform certain services, deliver products, or assume responsibility for liabilities that might fall upon another party. For example, if a farmer agrees to perform a farming operation on another person’s property and assumes the liabilities of the land owner for injuries to third parties, this would be an example of contractual liability. The mere nonperformance of the work would not be covered by liability insurance.

This chapter looks at the various liability loss exposures present on farm property and arising out of farm operations from the customer’s perspective. It answers the question, “In what situations can a farmer or rancher be held legally responsible for incidents that happen on the farm premises or from products raised on the farm and later sold?”

### Chapter Objectives

In this chapter, you will learn how to:

1. recognize and distinguish among the broad categories of liability loss exposures,

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2. differentiate between farm operations and other commercial enterprises,
3. recognize common and unusual hazards associated with farming,
4. identify the legal bases on which liability claims against a farmer may be based, and
5. identify the structural components of the farm liability policy and recognize the types of information found in each of these components.

### Liability Loss Exposures on the Farm

The insurance industry broadly categorizes general and farm liability exposures into four groups. Premises and operations liability encompasses liability arising out of conditions in and around the insured's premises as well as its current and off-premises farming operations. Products and completed operations liability refers to just that—liability arising out of the insured's products or its completed work. This contemporaneous grouping of exposures—those that are based on current activities and in close proximity to the insured and those that arise out of past activities and are remote in time and distance from the insured—reflect the different risks and challenges facing insurers when writing farm accounts. The third group of exposures is contractual liability, introduced above, and the final is liability imposed upon a party that hires independent contractors to perform work on its behalf.

### *Premises and Operations Risks*

The premises liability exposures of farmers and ranchers are substantial. However, their operations exposures are minimal since most activity takes place at the insured's location. Farm premises often consist of vast amounts of land, contain "attractive nuisance" type hazards such as farm machinery, equipment, and livestock, and are difficult to contain and supervise.

Specific activities conducted on the farm premises that may increase liability exposures include those shown in Exhibit 1.1. Underwriting farm premises liability exposures involves a thorough understanding of the exact nature of the farming operations, the activities conducted on the premises, and the use (or lack of use) of appropriate loss control measures.

<b>Exhibit 1.1</b> <b>Additional Farm Liability Loss Exposures</b>	
✓	Horse breeding, training, or boarding
✓	Hunting, fishing, or other recreational activities open to the public
✓	Retail sale of farm produce, including roadside stands
✓	Use of farm machinery, equipment, or recreational vehicles by non-farm employees
✓	Processing of farm products or other commercial-type activities
✓	Provision of housing to farm employees or farm labor contractor employees

Some of the additional activities conducted on the farm that go beyond typical farming operations may require special underwriting and, in some cases, the use of the CGL in addition or as a companion to the farm liability policy.

As discussed previously, the farm property also may be a residential liability exposure if it is where the farm owner and his or her family reside. The personal loss exposures of farmers and ranchers are

contemplated in the farm liability coverage form and are underwritten similar to homeowners exposures.

### ***Products and Completed Operations Risks***

Farm products consist primarily of harvested crops, sold for further manufacturing, processing, packing, or distribution, and livestock, used for the production of food, fiber, or labor. The products liability exposures of farmers are considerable, although they usually have only limited completed operations exposures since most activity is conducted at or from the farm.

Farm products liability exposures have received increased attention of late due to heightened concerns about food safety. Contaminated products such as eggs, spinach, melons, tomatoes, and the like have accounted for several deaths and illness of many others due to *E. coli*, *Salmonella*, *Listeria*, and other food-borne bacteria and viruses.

### ***Contractual Liabilities***

Farmers may assume various liabilities under contracts they sign, such as for the lease of farm equipment, farm labor agreements, or leases of land upon which farm operations will be performed. Lease agreements sometimes call for the insured to “indemnify and hold harmless” another party for injuries or property damage to third parties caused by the lessee. Most of these agreements are within the scope of normal farming operations.

Of course, it is equally likely that the insured will have used contractual risk transfer in the reverse, meaning they are being indemnified and held harmless by another party with whom they have entered into a contract. This situation serves to lessen the contractual liability exposures of the insured.

### ***Independent Contractor Liability***

Farmers who hire independent contractors to perform certain functions such as planting, fertilizing, and harvesting face certain risks in connection with these arrangements. The basis of liability is usually some form of direct negligence, such as negligent hiring or supervision of the subcontractor. A farmer can also be legally responsible for the acts of a subcontractor under the theory of vicarious liability, in which the acts of the subcontractor or his or her employees are “imputed” to the farmer. Most general and farm liability policies respond to these types of situations.

### **Other Liability Exposures**

Farms with the following types of exposures are generally considered commercial enterprises and are not eligible for farm liability coverage:

- farms where the farm dwelling is used for business purposes other than permitted incidental occupancies;
- farm dwellings with more than four family units;
- farms whose principal purpose is to operate freezing, dehydrating, or poultry factories; and
- farms whose principal function is to supply commodities used by the insured for processing or manufacturing for sale to others (e.g., a dairy or creamery).

These exposures are typically insured under the CGL policy or some type of specialty insuring agreement as opposed to the farm liability form. Endorsements are available under the CGL program that can provide farm liability coverage under that policy if needed.

### Farm Liability Policy Structure

Farm liability insurance is a highly standardized coverage. Both the Insurance Services Office, Inc. (ISO), and the American Association of Insurance Services (AAIS) offer standard farm liability coverage forms. In addition, some insurers use their own proprietary forms, often incorporating some of the provisions of the ISO or AAIS coverage forms. For the remainder of this text, all coverage form references will refer to ISO policy language unless otherwise noted.

When issued as part of a farm package policy, the farm liability coverage part consists of the components shown in Exhibit 1.2.

<b>Exhibit 1.2</b> <b>Farm Liability Policy Components</b>
Common Policy Declarations
Common Policy Conditions
Farm Liability Declarations
Farm Liability Coverage Forms
Endorsements

The farm liability coverage forms are further divided into four sections, which are discussed below and summarized in Exhibit 1.3.

#### **Section I—Coverages**

Section I contains the three coverage parts based on the type of injury. Coverage H applies to bodily injury and property damage, and Coverage I applies to personal and advertising injury. Both of these coverages are based on the insured's legal liability for the alleged damages. Coverage J provides a smaller amount of coverage for medical costs incurred by third parties without the need to demonstrate legal liability.

Each of the coverage parts contains an insuring agreement, which outlines the insurer's basic coverage obligations, and a number of exclusions that eliminate coverage for certain types of claims. An additional coverage and coverage extension section are also included that expand the scope of coverage.

#### **Section II—Limits of Insurance**

The farm liability policy contains six separate coverage limits, and Section II sets forth the manner in which the limits apply. Some of the limits stand alone, while others operate in conjunction with other policy limits. For example, the per occurrence limit is the most the policy will pay for all claims arising out of a specific accident or event, while the general aggregate limit is the most the policy will pay for all covered claims in a policy period. The general aggregate is usually a multiple of the per occurrence limit. The operation of the limits of liability will be discussed in more detail later in this text.

### **Section III—Farm Liability Conditions**

Section III of the policy outlines various conditions of coverage. Some of these conditions place obligations on the insurer and some impose requirements on the insured. For example, one condition requires the insured to provide timely notice of a possible claim or legal action to the insurer. This allows the insurance company to conduct a proper investigation of the claim. Another condition involves legal action against the insurer and provides that all terms and conditions of the policy must be complied with prior to bringing an action against the company.

### **Section IV—Definitions**

One of the most important sections of any insurance policy is the definitions. Without this built-in “glossary” of the terms used in the policy, many words or phrases could be considered ambiguous and therefore subject to debate following a claim. Words or phrases to which the insurance company wishes to attribute a particular meaning are shown in quotation marks, and the definition must be reviewed within the context of the insurance policy provision that contains it.

<b>Exhibit 1.3</b> <b>Farm Liability Coverage Form Sections</b>	
<b>Section I—Coverages</b>	Contains three coverage parts (H, I, J) that define the scope of coverage for the different types of covered damages
<b>Section II—Limits of Insurance</b>	Defines how each of the policy limits apply
<b>Section III—Conditions</b>	Outlines various obligations of the insured and insurer
<b>Section IV—Definitions</b>	Provides specific definitions of key terms contained in the policy

### **Reading the Policy as a Whole**

Making a determination of coverage for a particular claim or loss under the farm liability policy requires a reading of all applicable policy provisions. Although one of the policy insuring agreements may indicate that a particular claim is within the scope of coverage, a number of other policy provisions might operate to eliminate coverage. For example, an exclusion may apply, the insured may have failed to comply with a policy condition, or the limit of insurance may be exhausted by payment of previous claims. By the same token, a claim may be precluded from coverage under one section, but coverage may be extended under a different provision.

Note that this process only applies to the basic policy. To the extent endorsements are attached that impact the scope of coverage, they must also be considered in this process.

### **Summary**

This chapter introduced the four basic categories of legal responsibility: premises and ongoing operations, products and completed operations, contractual liability, and liability arising out of the use

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of independent contractors. Farm liability insurance policies are designed to cover normal farming operations, and the presence of certain types of exposures may result in coverage being better provided under the CGL form, as opposed to the farm coverage form.

The structure of the farm liability policy was discussed, and further details on each of the policy's sections will be provided in the following chapters.





## Chapter 1 Review Questions

1. Alfonzo raises steers on his cattle ranch. A fairly typical rancher, Alfonzo faces liability exposures in all the following categories except

a. contractual liability.

**This answer is incorrect.** Like other farmers and ranchers, Alfonzo inevitably enters into various contracts in which he assumes other parties' liabilities.

b. premises and operations liability.

**This answer is incorrect.** Alfonzo's major liability exposures probably involve his premises and operations.

c. products and completed operations liability.

**This answer is incorrect.** Because his products are sold for human consumption, Alfonzo faces the possibility of a products liability claim, such as the threat of a mad cow disease claim.

d. professional liability.

**That's correct!** Professional liability is usually associated with members of the medical, legal, or design professions.

2. Benito sometimes has to chase away children who are climbing onto the farm equipment parked on his property when the equipment is not in use. This farm equipment presents a hazard because it is a(n)

a. attractive nuisance.

**That's correct!** An attractive nuisance is a dangerous condition on a land owner's property that may attract children onto the land with risk or harm to their safety.

b. eyesore.

**This answer is incorrect.** An eyesore is something ugly that disfigures the landscape. Neighbors might not like to look at Benito's farm equipment, but an unattractive presence is not by itself likely to cause or exacerbate a loss.

c. motor vehicle.

**This answer is incorrect.** Even if the equipment in question is motorized, that is not the reason why it is a hazard.

d. unattended motor vehicle.

**This answer is incorrect.** Even if the equipment in question is motorized and unattended, that is not the reason why it is a hazard. Unattended motor vehicle concerns related to insurance usually generally involve theft from the vehicle and questions as to whether the vehicle was locked.

3. Merrill hired an independent contractor to do some excavation work on his field with a drainage problem. The theory of vicarious liability

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- a. absolves Merrill from liability resulting from the excavating contractor's actions.

**This answer is incorrect.** Merrill could be held accountable for his contractor's activities.

- b. has no applicability to this situation.

**This answer is incorrect.** The vicarious liability theory is clearly applicable.

- c. might impute liability to the Merrill, meaning he could be held legally responsible for injury or damage resulting from the excavating contractor's acts.

**That's correct!** The vicarious liability theory imputes acts of a subcontractor or his or her employees to the farmer that hired the subcontractor.

- d. provides Merrill with a defense strategy if anyone tries to hold him responsible for the excavating contractor's actions.

**This answer is incorrect.** The vicarious liability theory will be applied by the plaintiff, not the defendant.

- 4. Coverage H of the farm liability coverage form applies to

- a. advertising injury claims.

**This answer is incorrect.** Coverage I applies to advertising injury claims.

- b. bodily injury and property damage claims.

**That's correct!** Coverage H applies to bodily injury and property damage claims.

- c. medical expenses.

**This answer is incorrect.** Coverage J provides medical expense coverage.

- d. personal injury claims.

**This answer is incorrect.** Coverage I applies to personal injury claims.

- 5. After receiving notice of a claim, Lakeisha reads one of her farm liability policy's insuring agreements that affirms her hunch that the claim is within the scope of her policy's coverage. What else, if anything, should Lakeisha do to determine whether the claim is covered?

- a. Check the policy declarations to see whether the hazard that caused the loss is excluded

**This answer is incorrect.** Exclusions usually appear in the body of the policy.

- b. Read all applicable policy provisions and read any attached endorsements

**That's correct!** Determining whether a claim or loss is covered requires a reading of all applicable policy provisions and relevant endorsements.

- c. Read the policy's other insuring agreements

**This answer is incorrect.** Other insuring agreements are not likely to limit coverage, but exclusions, conditions, definitions, and endorsements might do so.

- d. Retain an attorney

**This answer is incorrect.** Legal advice is often helpful, but the lawyer will have to follow the same process as Lakeisha to determine whether coverage applies.

# Chapter 2

## Farm Liability Coverage Form (Part I)

In order to determine whether a loss is covered under any insurance policy, one must be familiar with the basic policy structure and how the various sections of the policy work together to provide or eliminate coverage. The next few chapters of this text will provide a detailed analysis of the policy provisions of the farm liability coverage form, but an analysis of this type can be completed for virtually any insurance contract.

### Chapter Objectives

In this chapter, you will learn how to

1. recognize what parties are insured under a farm liability coverage form,
2. recognize the extent of coverage granted under the Coverage H insuring agreement of the farm liability coverage form,
3. determine the exclusions and exceptions to exclusions under Coverage H of the farm liability coverage form and recognize how they affect coverage in a given situation, and
4. apply the policy's definitions of various terms and phrases and indicate how they affect coverage in a given situation.

### Section I—Coverages

The farm liability coverage form, FL 00 20, consists of three primary sections:

Coverage H—bodily injury and property damage liability

Coverage I—personal and advertising injury liability

Coverage J—medical payments

Coverages A through G are provided in the farm property coverage form and are addressed in a separate text of the AFIS<sup>SM</sup> program. Coverage H will be discussed in this chapter, while coverages I and J will be addressed in a subsequent chapter.

The introductory wording of the coverage form includes the following.

Throughout this policy the words “you” and “your” refer to the Named Insured shown in the Declarations. The words “we”, “us” and “our” refer to the Company providing this insurance.
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The first step in making a coverage determination under an insurance contract is to identify the named insured and any other “insureds” to whom coverage may apply, such as a spouse of a named insured. An insured is someone to whom coverage is provided, not because his or her name is included in the policy, but rather by virtue of a relationship he or she has with a named insured. If the party who suffered the loss is not a named insured or insured, it is likely that no coverage applies, since the insurance contract agrees to pay sums that the insured is legally obligated to pay.

### ***Who Is an Insured***

The farm liability coverage form contains a lengthy and somewhat complex definition of “insured” that combines concepts used in both the homeowners and CGL policies. This makes sense since the farm policy is a hybrid of personal and commercial coverages as we have mentioned previously.

The policy definition of insured contains five parts. The first part of the definition includes the named insured and, depending on the legal structure of the named insured, certain other parties. The first part of the definition of “insured” is summarized in Exhibit 2.1 below.

<b>Exhibit 2.1</b> <b>“Insured” Definition of the Farm Liability Coverage Form</b>	
<b>Insured means you, and if you are an individual,</b>	insured also means the following members of your household  your relatives;  any other person under the age of 21 who is in the care of any person specified above; or  a student enrolled in college full time, as defined by the school, provided the student is under the age of <ul style="list-style-type: none"> <li>– 24 and your relative or</li> <li>– 21 and in your care or the care of a person specified above.</li> </ul>
<b>Insured means you, and if you are a partnership or joint venture,</b>	insured also means your members, your partners, and their spouses, but only with respect to “farming” operations.
<b>Insured means you, and if you are a limited liability company (LLC),</b>	insured also means  your members, but only with respect to your “farming” operations, and  your managers, but only with respect to their duties as your managers.
<b>Insured means you, and if you are an organization other than a partnership, joint venture, or LLC (i.e., corporation, association, etc.),</b>	insured also means  your executive officers and directors, but only with respect to their duties as your officers and directors, and  your stockholders, but only with respect to their liability as stockholders.

The first part of the “insured” definition goes on to state that no coverage applies to a person or organization with respect to the conduct of a current or past partnership, joint venture, or LLC if that entity is not shown as a named insured in the policy’s declarations.

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“Insured” also means any of the insured’s employees, but only for acts that

(1) cause bodily injury or personal injury to someone other than the insured, its partners or members (if the insured is a partnership or joint venture), the members of a limited liability company or a co-employee. A specific exception applies (and therefore no coverage is provided) to the executive officers of an organization other than a partnership, joint venture, or LLC,

and

(2) are within the scope of the employee’s employment by the insured. Providing or failing to provide any professional health care services is not considered to be within the scope of any employee’s employment.

Note that coverage for injuries to co-employees, also called “fellow employees,” is not provided. So if in the course of farming operations, one employee injures another, the farm owner’s farm liability coverage form would not respond on behalf of the employee causing the injury. That person would have to rely on any personal liability policy in which he or she is an insured.

The third part of the definition of “insured” means any person (other than an employee) or organization while acting on behalf of the insured as a real estate manager.

The fourth part of the definition is similar to a provision in the homeowners policy. Coverage is extended to persons or organizations that have custody of an animal owned by the insured or an insured watercraft, but only to the extent coverage applies to occurrences involving those animals or watercraft. If a neighbor cares for an insured’s dog while the insured is on vacation, the neighbor would be protected under the insured’s policy for a suit that arises out of the dog’s actions. However, a specific exclusion applies to anyone having custody of an animal or watercraft in the course of business, such as a kennel. There is also no coverage for the use of an animal or watercraft by a person who does not have the owner’s permission.

The fifth and final part of the “insured” definition provides coverage for a person who uses a covered vehicle on the insured’s location with the insured’s consent if the vehicle is of a type covered by the policy. This coverage would apply to a person’s use of a piece of farm machinery operated on the insured’s premises. A closer examination of the types of vehicles covered under the farm liability coverage form will follow in the section on exclusions.

### ***Coverage H—Bodily Injury and Property Damage Liability***

Coverage H includes two subsections, (1) the insuring agreement and (2) the exclusions. Each will be discussed in detail below.

#### **Insuring Agreement**

The purpose of an insuring agreement is to outline the basic responsibilities of both the policyholder and the insurance company under the contract into which they have entered. Under Coverage H of the farm liability coverage form, the insurance company agrees to pay those sums for which an insured is legally obligated as a result of bodily injury or property damage as long as no exclusion applies. In addition, and importantly, the insurance company also has the right and duty to defend a suit against the insured seeking bodily injury or property damage, also as long as no exclusion in the policy would preclude coverage for the bodily injury or property damage. The insurance company also reserves the right to investigate and settle any covered claim.

The insuring agreement goes on to state that the maximum amount of damages payable under the policy is limited in Section II—limits and that the insurer’s duty to defend ends when the applicable limit has been exhausted by payment of claims. The reference to the maximum amount payable as damages means that other payments, such as the costs of defense, are payable in addition to the policy limits. This is commonly referred to in insurance as “defense outside the limits.”

An additional provision states that coverage for bodily injury or property damage applies only if caused by an “occurrence” as defined in the policy and if the bodily injury or property damage occurs during the policy period. The definition of occurrence in the farm liability coverage form reads as follows.

“Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

An additional provision was added to the insuring agreement of the farm liability coverage form (and the CGL) in response to an adverse court decision known as the *Montrose* decision. This “known loss” wording eliminates coverage for injuries or damage of which the insured or an authorized employee was aware prior to the policy period.

It is important to understand what the “known loss” provision does and does not do. It eliminates coverage under a current policy for a loss of which the insured was aware when that policy took effect. It does not, however, eliminate coverage for that same loss under prior policy periods. Both the policy during which the insured became aware of the loss and possibly prior policies would apply if the occurrence that caused the bodily injury or property damage took place during that policy period.

For example, assume an insured purchased a policy that became effective on January 1. Prior to that date, the insured received notification that a claim was being made against him or her. The current policy would not apply because the loss was “known” to the insured. However, any prior policies might provide coverage as long as the loss was unknown to the insured on the inception date, subject of course to the prior policy’s terms and conditions.

Damages payable under bodily injury include damages claimed by a person or organization for care, loss of services, or death that is the result of the bodily injury. Property damage coverage also includes loss of use of that property (e.g., the cost to rent temporary replacement property) as well as loss of use of tangible property that has not been physically injured.

This insuring agreement effectively combines the personal liability for the individual farm owner and the business liability coverage for the farm.

Interestingly, the farm liability coverage form contains no mention of farming in the insuring agreement. Coverage for farming operations, therefore, rests on the absence of an exclusion, which will be examined in the next section of this text. The policy does contain, however, a definition of “farming,” which means the operation of an agricultural or aquacultural enterprise and includes the operation of roadside stands on the farm premises and maintained solely for the sale of farm products produced principally by the insured. Unless specifically indicated in the declarations, “farming” does not include retail activity (aside from the aforementioned roadside stands) or mechanized processing operations.

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As in the case of “farming” itself, coverage for the product liability exposure in the farm liability coverage form stems from the absence of an exclusion of liability arising out of the sale or distribution of farm products. As noted above, the definition of “farming” includes the operation of roadside stands. Products liability arising from unaltered goods is also covered under the form, by virtue of the absence of an exclusion. However, the policy does not cover the exposure arising from the sale of any products that are purchased by the insured and then resold, since such activities do not fall within the definition of “farming.”

Similarly, the farm liability coverage form does not cover liability arising out of the sale of processed products. Contrast the dairy farmer that sells his milk to a processor with a farmer who processes and sells his own milk. The former would have coverage under the farm liability coverage form, while the latter would not. Another example would be a beekeeper who sells labeled jars of honey. A CGL policy would need to be secured to cover the exposure arising from the “altered” product. Likewise, a farmer who sells goods processed or manufactured by others, such as seed corn, fertilizer, pesticides, etc., must insure the products liability exposure using the CGL coverage form.

The insurance agreement of the farm liability coverage form contains numerous potential ambiguities. For example, while products liability coverage applies to a farmer’s exposure in selling fruits and vegetables at a roadside stand on the farm premises, the answer is less clear when the sale of the farm produce takes place at a local farmers’ market. Although the products in both cases are unaltered and unprocessed, the definition of “farming” specifically excludes retail activities other than the operation of roadside stands on the farm premises. It is always prudent to confirm with the underwriter any activities that may fall outside the scope of the policy’s farming definition.

### Exclusions

The scope of coverage afforded under the farm liability coverage form, similar to the CGL, is defined and limited by the exclusions. Thus, like most liability coverage forms, “everything is covered except what’s not covered.” There are 27 exclusions in the farm liability coverage form, and others may be added by endorsement. We will examine each of the policy’s standard exclusions.

The reasons for exclusions in policies may seem obvious to an insurance professional but often must be explained to a policyholder. The insurance-buying public sometimes assumes that exclusions are contained in the “fine print” of a policy and are meant to eliminate coverage for everything. This is clearly not the case. Exclusions serve various purposes, including:

- eliminating coverage for what are considered uninsurable exposures,
- eliminating coverage typically provided under other types of policies,
- allowing for specialized underwriting and pricing of certain exposures, and
- eliminating coverage for exposures not faced by a typical insured.

There are no insurance policies without exclusions, and, although they are not required, they serve the overall purpose of keeping the policies affordable for the typical policyholder.

### ***Expected or Intended Injury***

It is considered a matter of public policy that insurance coverage should not apply to injuries or damages caused intentionally by an insured. Therefore, the farm liability coverage form excludes coverage for bodily injury or property damage that is expected or intended from the standpoint of the insured, even if the resulting bodily injury or property damage is of a different kind or is sustained by



a different person than originally intended. Thus, if Farmer Brown throws a rock at a neighbor, misses, and hits another party, no coverage would apply because the act of throwing the rock was intentional, even though a different person suffered the injury. An exception to the exclusion provides coverage for bodily injury resulting from the use of reasonable force to protect people and property.

### ***Contractual Liability***

Liability assumed under contract is excluded in the farm liability coverage form, but two important exceptions to the exclusion provide the protection needed by most insureds.

First, the exclusion does not apply to liability the insured would have in the absence of a contract or agreement. Assume an insured leases a piece of equipment and signs a contract holding the owner of the equipment harmless from any injuries caused by its operation. Due to the insured's negligence, a person is injured while he is operating the equipment. The insured would be liable to the injured party under the negligence theory of law, not because he or she signed a contract agreeing to hold the equipment owner harmless. Thus, coverage would apply.

The second exception to the exclusion states that coverage does apply to liability assumed under an "insured contract." In order to determine what contractual liability coverage is actually provided by the policy, we must turn to the definition of "insured contract." Exhibit 2.2 below summarizes the definition of "insured contract" found in the farm liability coverage form.

<b>Exhibit 2.2</b> <b>Definition of "Insured Contract"</b>
A contract for a <u>LEASE</u> of premises, except that portion of such a contract that indemnifies the lessor for fire damage to premises rented or temporarily occupied by the insured.
An <u>EASEMENT</u> or license agreement, except in connection with work within 50 feet of a railroad.
An <u>AGREEMENT TO INDEMNIFY A MUNICIPALITY</u> as required by ordinance, except in connection with work for the municipality.
A <u>SIDETRACK</u> agreement.
THAT part of any other contract or agreement pertaining to the insured's "farming operations" under which they assume the tort liability of another to pay for bodily injury or property damage to a third party.

A similar definition of insured contract is contained in the CGL policy, with one exception. The CGL also includes as an insured contract an elevator maintenance agreement. Since this exposure is not faced by the typical insured and, because in some situations coverage might be extended to the insured's assumption of liability for elevators used in grain silos and other structures, the exception was not included in the farm liability coverage form, and, therefore, such a contractual assumption would not be covered.

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Contractual liability coverage is limited to bodily injury and property damage that occurs after the execution of the contract or agreement. Coverage also applies to reasonable attorneys' fees and necessary litigation expenses incurred by an indemnitee of the insured if they have been assumed under an "insured contract" and the policy applies to the damages being sought. Other limitations apply to defense of an insured's indemnitee that are discussed in a later section of this text.

### **Pollution**

The pollution exclusion of the farm liability coverage form is essentially the same as that in the CGL. Bodily injury and property damage arising out of pollution and pollution clean-up costs are excluded except under certain limited circumstances. While not an "absolute" pollution exclusion, the obvious intent is to eliminate coverage for nearly all pollution-related events and the costs to clean them up. The definition of "pollutant" under both the farm liability coverage form and the CGL is very broad.

"Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

The reference to waste in the definition of "pollutants" is of particular interest in the context of a farm operation. Although the form does not explicitly refer to animal waste, presumably the intent of the exclusion is to preclude coverage for animal waste products that represent environmental exposures. Agricultural clients clearly have a wide range of pollution exposures, in addition to animal waste, since they possess fuel, pesticides, insecticides, and other pollutants, but these exposures are best treated with some type of environmental impairment liability policy. This issue will be discussed in another AFIS<sup>SM</sup> course.

Farm liability underwriting manual rules require the attachment of two mandatory amendatory endorsements to the farm liability coverage form that expand the coverage for certain types of pollution unique to farm risks. The first is FL 01 63, titled simply "Amendatory Endorsement," which provides coverage for two specific types of pollution:

under Coverage H, bodily injury, or property damage caused by heat, smoke, or fumes from a fire on the insured location that was set for purposes of burning off crop stubble or other vegetation and

physical injury to crops or animals of others caused by chemical drift (Coverage M).

Without modification, the pollution exclusion of the farm liability coverage form eliminates coverage for bodily injury or property damage that arises out of heat, smoke, or fumes from a "hostile fire." The policy definition of "hostile fire" is as follows.

"Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.

By definition, the burning of crop stubble would not be a “hostile fire” because it is a fire set intentionally by an insured for a specific purpose. However, to eliminate any potential ambiguity under the policy, the amendatory endorsement clearly extends coverage for any resulting pollution.

The chemical drift coverage is a very limited form of pollution liability that is the result of discharge, dispersal, release, or escape into the air of chemicals, liquids, or gases used in normal farm operations. The release must be from an insured location and cannot be the result of spraying by aircraft. The coverage for chemical drift is limited to a \$25,000 aggregate limit.

The coverage for chemical drift is subject to the following additional exclusions:

- any loss, cost, or expense arising out of a government cleanup order;
- injury to crops or animals arising out of agricultural operations in violation of law;
- injury to crops or animals expected or intended from the standpoint of the insured;
- contractual assumptions of liability for injury to crops or animals, other than an “insured contract” or where the insured would be liable in the absence of the contract; and
- injury to crops or animals owned, rented, or borrowed by the insured.

The second mandatory amendatory endorsement is FL 04 30—limited farm pollution liability extension endorsement. This endorsement deletes the pollution exclusion of the farm liability coverage form and replaces it with a new exclusion. The new exclusion is far less restrictive, stating:

This insurance does not apply to ...

Bodily injury or property damage arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants:

At or from a storage tank, other container, duct or piping

- Which is below or partially below the surface of the ground or water; or
- Which at any time has been buried below the surface of the ground or water and subsequently exposed by erosion, excavation or other means

At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste

Which are or were at any time transported, handled, stored, treated, disposed of or processed as waste by or for any insured or any person or organization for whom the insured may be legally responsible

The new pollution exclusion eliminates coverage for pollutants released from an aircraft and for government-mandated cleanup costs.

### ***Release or Discharge from Aircraft***

Bodily injury or property damage caused by or resulting from any substance released or discharged from an aircraft is excluded. The exclusion does not apply, however, to a model or hobby aircraft that is not designed to carry people or cargo.

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Coverage for bodily injury or property damage resulting from a release of substances from an aircraft (crop-dusting) is available by endorsement and will be discussed in a later chapter of this text.

### ***Aircraft, Motor Vehicle, Motorized Bicycle, or Tricycle***

This exclusion eliminates coverage for various types of vehicles for which coverage is available under other coverage forms, such as automobile or watercraft liability. The exclusion is very complex and requires the study of the appropriate policy definitions alongside the exclusion itself. Bodily injury and property damage are excluded when they arise out of the ownership, maintenance, use, or entrustment to others of any owned, operated, rented, or borrowed vehicle. The exclusion also applies to vicarious liability for the actions of a child or minor operating any excluded vehicle.

Since most policyholders do not have aircraft exposures, this coverage elimination does not pose many problems. Aircraft liability coverage is available in specialty markets should the insured require it.

The obvious intent of the exclusion for motor vehicles, motorized bicycles, or tricycles is to eliminate coverage for items better insured under some form of automobile insurance. However, since there are a variety of farm vehicles located on the insured's premises that may never be used off premises, it is also the intent of the farm liability coverage form to provide coverage for these vehicles under certain circumstances.

Four types of vehicles are specifically *excluded*:

- motor vehicles, meaning a motorized land vehicle, trailer, or semitrailer designed for travel on public roads or used on public roads, unless it qualifies as "mobile equipment," and any machinery or equipment attached to such a vehicle;
- motorized bicycles;
- motorized tricycles; and
- recreational motor vehicles.

Some of these vehicles can be covered using endorsements that will be discussed in a subsequent chapter of this text.

There are five exceptions to the exclusion, meaning coverage would be provided for the following situations:

- aircraft that causes bodily injury or property damage to a residence employee who is not operating or maintaining the aircraft;
- parking a motor vehicle or motorized bicycle or tricycle on or on the ways next to premises owned or rented to the insured if the vehicle is not owned, rented, or borrowed by the insured;
- vehicles not subject to motor vehicle registration that are used to assist the handicapped or designed for recreational use off public roads and not owned by the insured;
- bodily injury or property damage arising out of the operation of machinery or equipment that is attached to or part of a land motor vehicle that would qualify as "mobile equipment" if it were not subject to a compulsory insurance or financial responsibility law; and
- bodily injury or property damage arising out of the operation of "mobile equipment."

In addition, the definition of “motor vehicle” contains an exception that provides coverage under the farm liability coverage form for

a boat, camp trailer, home trailer, or utility trailer unless it is being towed by or carried on a motorized land vehicle and

a motorized golf cart designed to carry up to 4 people and not modified to exceed 25 miles per hour of speed that is within the legal boundaries of a golfing facility or a private residential community.

In order to fully understand what additional types of vehicles are covered under the farm liability coverage form, it is also necessary to examine the definition of “mobile equipment.”

“Mobile equipment” means the following, including any attached machinery or equipment:

- a. Bulldozers, forklifts and tractors designed for use principally off public roads and other farm machinery designed for use principally off public roads and as implements for cultivating or harvesting;
- b. Vehicles while on premises you own or rent;
- c. Vehicles that travel on crawler treads, except that snowmobiles are “mobile equipment” only while on an insured location or any premises you own or rent;
- d. Vehicles, whether self-propelled or not, on which are permanently mounted power cranes, shovels, loaders, diggers or drills or road construction or resurfacing equipment such as graders, scrapers and rollers;
- e. Vehicles not described above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - Cherry pickers and similar devices used to raise or lower workers
- f. Vehicles not described in a., b., c., or d. above that are maintained primarily for purposes other than the transportation of persons or cargo.

However, “mobile equipment” does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where they are licensed or principally garaged. Land vehicles subject to compulsory or financial responsibility law or other motor vehicle insurance law are considered “motor vehicles”.

Obviously, the overall intent of this exclusion is to ensure that aircraft and automobiles are insured under appropriate policies, while farm machinery and equipment that is used exclusively on the premises are covered under the farm liability coverage form.

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Although the analysis of this exclusion is lengthy and sometimes complicated, it can be summarized as shown in Exhibit 2.3.

<b>Exhibit 2.3</b> <b>Summary of Vehicles Covered and Not Covered</b>	
Farm Liability Coverage Form <b>EXCLUDES:</b>  Owned and nonowned “motor vehicles” away from the insured premises  Owned recreational motor vehicles off premises  Motorized bicycles and tricycles off the premises	Farm Liability Coverage Form <b>INCLUDES:</b>  “Mobile equipment” both on and off premises  Owned recreational motor vehicles on premises

### ***Watercraft***

Bodily injury or property damage that arises out of the ownership, maintenance, use, or operation of certain types of watercraft is excluded by the farm liability coverage form. Excluded watercraft are those that are designed to be propelled by engine power or electric motors, or sailing vessels, that are owned by or rented to an insured.

As with other exclusions we have discussed, the watercraft exclusion contains exceptions that leave coverage in place for the types of vessels shown in Exhibit 2.4.

<b>Exhibit 2.4</b> <b>Vessels Covered under the Farm Liability Coverage Form</b>	
<p>Watercraft that are <b>NOT</b> sailing vessels and are powered by:</p> <ul style="list-style-type: none"> <li>Inboard or inboard-outdrive engine or motor power of 50 horsepower or less and <b>NOT OWNED</b> by an insured</li> <li>Inboard or inboard-outdrive engine or motor power of more than 50 horsepower <b>NOT OWNED</b> by or <b>RENTED</b> to an insured</li> <li>One or more outboard engines or motors with 25 total horsepower or less</li> <li>One or more outboard engines or motors with more than 25 total horsepower if the outboard engine or motor is <b>NOT</b> owned by an insured</li> <li>Outboard engines or motors of more than 25 total horsepower <b>OWNED</b> by an insured unless they are acquired during the policy period</li> </ul>	<p>Watercraft that <b>ARE</b> sailing vessels, with or without auxiliary power that are:</p> <ul style="list-style-type: none"> <li>Less than 26 feet in overall length</li> <li>26 feet or more in overall length and <b>NOT OWNED</b> by or <b>RENTED</b> to an insured</li> </ul>

Vessels that are stored are also covered, and the watercraft exclusion does not apply to an occurrence that takes place on the insured location (regardless of the vessel's size and type) or to injuries sustained by a residence employee in the course of his or her employment by an insured.

### ***Mobile Equipment***

This exclusion applies to bodily injury or property damage that arises out of the transportation of mobile equipment by a motor vehicle that is owned by, operated by, rented to, or loaned to any insured. Mobile equipment that is being towed or carried is covered under the policy that applies to the vehicle that is towing it or upon which it is carried, typically an auto policy.

The second part of the exclusion applies to bodily injury or property damage that occurs while a covered vehicle is practicing for or participating in a prearranged racing, speed, strength, or demolition contest or any other stunting activity.

### ***Use of Livestock or Other Animals***

Similar to the exclusion for mobile equipment above, there is no coverage under the farm liability coverage form for bodily injury or property damage that arises out of the use of any livestock or other animal while practicing for or participating in a prearranged racing, speed, or strength contest or any

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prearranged stunting activity. This portion of the exclusion applies only to occurrences that take place at the site designated for such a contest or activity.

The second part of the exclusion eliminates coverage for the use of livestock or other animals, with or without an accessory vehicle (such as a wagon or cart), used to provide rides to any person for a fee or in connection with a fair, charitable function or similar type of event. These are not considered a part of normal farming operations. Coverage may be available by endorsement.

### ***Business Pursuits***

Bodily injury or property damage is excluded if it arises out of or in connection with a business engaged in by the insured. “Business” is defined in the policy as a trade, profession, occupation, enterprise, or activity, other than farming or custom farming, that is engaged in for the purpose of monetary compensation. The exclusion applies to any act or omission, regardless of its nature or circumstance, involving a service or duty rendered, promised, owed, or implied to be provided. The exclusion does not distinguish between a business in which the insured is an employee of others or when acting as an entrepreneur.

The only exception to the exclusion is for an insured under the age of 21 who is involved in a part-time or occasional self-employed business with no employees.

Endorsements are available to cover some business activities under the farm liability coverage form and will be discussed in a subsequent chapter of this text.

### ***Custom Farming***

No coverage is provided for an insured who provides custom farming operations if the receipts from this activity are over \$5,000 in the 12 months prior to the occurrence of the bodily injury or property damage. “Custom farming” is defined as the performance of specific planting, cultivating, harvesting, or similar specific farming operations by an insured at a farm that is other than an insured location and under the direction or supervision of the owner or operator of that farm.

An endorsement to the farm liability coverage form is available to provide coverage when receipts are in excess of \$5,000.

### ***Professional Services***

Bodily injury or property damage that arises out of the rendering of or failure to render professional services is excluded by the farm liability coverage form. Coverage would be available under separate professional liability policies.

### ***Rental of Premises and Ownership or Control of Premises***

This exclusion eliminates coverage for bodily injury or property damage that takes place at an uninsured location. An uninsured location includes one that the insured owned at the inception of the policy but did not declare to the insurer. The purpose of this exclusion is to allow the insurer to collect a premium when an exposure exists.

In order to understand what an uninsured location is, it is necessary to examine the policy definition of “insured location.” While it may seem obvious that an insured location includes the farm premises, the policy also extends coverage to a number of other locations.



“Insured location” means:

- a. The farm premises (including grounds and private approaches) and “residence premises” shown in the declarations;
- b. The part of other premises, or of other structures and grounds, that is used by you as a residence and is shown in the declarations or acquired during the policy period for use as a residence;
- c. Premises used by the insured in conjunction with the premises listed above;
- d. Any part of premises not owned by any insured, but where an insured is temporarily residing (e.g., a hotel room);
- e. Vacant land owned by or rented to an insured;
- f. Land owned by or rented to an insured on which a dwelling is being constructed for occupancy by an insured, an insured’s farm employee or a residence employee or a building or structure being constructed for use by an insured in farming operations;
- g. Individual or family cemetery plots or burial vaults of an insured;
- h. Any part of premises occasionally rented to an insured for other than business purposes (e.g., a church hall rented for a wedding reception); and
- i. Any farm premises, including its grounds and private approaches that the insured or the insured’s spouse acquires during the policy period.

A related definition is that of “residence premises,” which means the insured’s principle residence and the grounds and structures appurtenant to it. Residence premises does not include any part or parts of a building or structure that are used for business purposes. Note that these definitions clearly draw a distinction between the personal residential exposures of the farm owner and the farm premises, although both are covered under the farm liability coverage form.

A second part of the exclusion applies to the rental or

holding for rental of an insured location. However, many exceptions to this exclusion allow coverage under the following circumstances:

rental of a farm premises shown in the declarations if it is rented for farming purposes and the rental began during the policy period;

rental of a farm premises acquired during the policy period and used for farming purposes;

rental of a residence for residential purposes if it is a residence located on a farm premises used for farming purposes and the premises is shown in the declarations or acquired during the policy period;

occupancy of a part of the insured’s principal residence and used as living quarters by no more than two roomers or boarders or as an office, studio, or private garage; or

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the occasional occupancy of the insured's residence by people using the residence exclusively as living quarters.

### ***Communicable Disease***

Like homeowners policies, the farm liability coverage form does not cover bodily injury or property damage that arises out of the transmission of a communicable disease by an insured.

### ***Workers Compensation***

This is one of two exclusions that deal with injuries to the insured's employees. It is an absolute exclusion for liability of the insured under any workers compensation, disability benefits, unemployment compensation, or similar law. The impact of this exclusion varies based on whether or not a farm employee is subject to a workers compensation law in the jurisdiction of the insured. In many states, farm employees are not subject to the workers compensation laws of the state. If the insured is subject to a workers compensation law, a workers compensation policy should be obtained to provide required benefits. If not subject to such a statute, a farm employer may wish to provide coverage voluntarily to farm employees, but this would also need to be accomplished using a workers compensation policy. Coverage is not provided under the farm liability coverage form.

In applying this exclusion, it is helpful to look at the definition of farm employee.

Farm employee means any insured's employee whose duties are principally in connection with the maintenance or use of the "insured location" as a farm. These duties include the maintenance or use of the insured's farm equipment. But "farm employee" does not mean any employee while engaged in a business of the insured other than farming.

### ***Employers Liability***

This is the second exclusion that pertains to injuries to employees. Bodily injury sustained by an employee, other than a residence employee, is excluded. Residence employee means an insured's employee whose duties are principally in connection with the maintenance or use of the "residence premises" including house cleaners, housekeepers, butlers, and the like. A residence employee does not include a farm worker or a person engaged in a business of the insured other than farming.

The exclusion applies whether the insured is held liable as an employer or in any other capacity and to the obligation to share damages or indemnify another party who must pay damages as a result of the injury. Employers liability coverage is typically provided under a workers compensation policy or as an endorsement to the farm liability coverage form.

### ***Building or Structure under Construction***

Bodily injury is excluded that arises out of the construction of a building or structure. However, exceptions to the exclusion provide coverage for bodily injury sustained by someone other than an insured or residence employees of the insured if the injury arises out of or in the course of their employment. The exception requires, however, that the injury take place at a location to be used as a dwelling by the insured, residence employees, or farm employees or a building or structure to be used in farming operations.

### ***Bodily Injury to an Insured***

This exclusion is designed to prevent intra-family lawsuits from being covered under the farm liability coverage form. The rationale for this exclusion is the same as that of a similarly worded homeowners exclusion—that providing coverage for intra-family suits is likely to encourage litigation that would otherwise not occur. When a family is viewed as a single economic unit, there is little to be gained from one family member suing another, unless the suit is covered by insurance. Because of this potential for a moral hazard, such suits are not covered under the farm liability coverage form.

### ***Damage to Property***

Property damage is excluded under the policy when it occurs to

- property owned by an insured;
- property rented or occupied by an insured;
- premises the insured has sold, given away, or abandoned, if the property damage arises out of any part of those premises;
- property loaned to the insured; or
- personal property that is in the care, custody, or control of the insured

The basic purpose of this exclusion in a liability policy is that property the insured owns, rents, leases, or borrows is more appropriately covered by a property insurance policy, where it is also easier to determine the insurable value of the property.

There is one important exception to the care, custody, and control exclusion, which is traditionally referred to as “fire legal liability” or fire damage liability. The coverage derives from a final provision in the exclusion section that makes certain exclusions inapplicable to damage by fire to premises rented to or temporarily occupied by the insured with the permission of the owner. The policy contains a separate limit for fire damage per occurrence and may range from \$25,000 to \$500,000 or more, depending on the exposure faced by the insured.

### ***Damage to Your Product***

Products liability insurance, which is provided under the farm liability coverage form, is designed to protect when bodily injury or property damage is caused *by* the insured’s product, not damage *to* the product itself. If a farmer sells contaminated milk to a dairy, there is no coverage for the value of the farmer’s milk. If the milk, however, contaminates other property, that damage would be covered.

### ***Damage to Your Work***

Similar to the exclusion for damage to the insured’s product, no coverage is provided for property damage to the insured’s work. Since few farmers perform work at property other than their own, this exclusion has only limited implications for most farming operations. An exception is the insured performing custom farming operations. The exclusion does not apply to custom farming operations when the receipts are \$5,000 or less in the 12 months prior to the occurrence. If custom farming receipts exceed that amount, the policy would have to be endorsed to provide coverage for damage to the property being worked upon.

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### ***Damage to Impaired Property or Property Not Physically Injured***

Property damage is excluded for “impaired property” or property that has not been physically injured when it arises out of a defect, deficiency, inadequacy, or dangerous condition in the insured’s product or work or is caused by a delay or failure by the insured to perform under the terms of a contract or agreement.

“Impaired property” is defined in the policy as tangible property that cannot be used or is less useful because the insured’s product or work has been incorporated into it but can be restored to use by repair, replacement, adjustment, or removal of the insured’s product or work.

As an example, assume the insured sells powdered eggs to a firm that uses them in creating pancake batter. After the insured’s product has been mixed with flour, sugar, salt, and other ingredients, it is discovered that the eggs were contaminated. The other ingredients are not merely “impaired”; they must be disposed of and thus constitute damaged property for which the policy will pay.

If, however, the insured is selling a component that is incorporated into another product and it can be removed, repaired, or replaced if determined to be faulty, the other product is not damaged but is “impaired.” This type of exclusion is considered a “faulty workmanship” exclusion that encourages an insured to make its products and work right when they have not caused physical injury.

### ***Recall of Products, Work, or Impaired Property***

The cost to recall or withdraw a farm product from the market can be substantial. While the exposure is very real, the farm liability coverage form does not contemplate coverage for the costs associated with recalling, withdrawing, or removing a product from use. This type of coverage is available under specialty policies.

### ***Sexual Molestation, Corporal Punishment, or Physical or Mental Abuse***

Similar to homeowners insurance, farm liability policies contain an exclusion for bodily injury or property damage that is caused by sexual molestation, corporal punishment, or physical or mental abuse. It is considered against public policy to have an insurance company pay sums for which the insured may be liable under these circumstances.

### ***Controlled Substances***

Similar to the above exclusion, coverage is not provided for bodily injury or property damage that arises out of the use, sale, manufacture, transfer, or possession of any controlled substance. A controlled substance is defined under state and federal law. This exclusion does not apply to the legitimate use of prescription drugs by a person who is following the orders of a licensed physician.

### ***Personal Injury***

Personal injury coverage is provided under Coverage I of the farm liability coverage form and is therefore excluded under Coverage H.

### ***Distribution of Material in Violation of Statutes***

Coverage under the farm liability coverage form is excluded for bodily injury or property damage that arises out of a violation of various federal laws that have been enacted to protect people’s privacy, including the Telephone Consumer Protection Act (the so-called do not call list), the Controlling the Assault of Non-Solicited Pornography and Marketing Act, or other similar laws.

### **War**

The final exclusion of the farm liability coverage form is for bodily injury or property damage that arises directly or indirectly out of a war, including undeclared or civil war, warlike action by a military force or insurrection, rebellion, revolution, or usurped power. These types of acts are considered commercially uninsurable.

### **Summary**

This chapter has looked at the two most important parts of the farm liability coverage form when it comes to determining which bodily injury and property damage losses would be covered by the policy under Coverage H: the insuring agreement and the exclusions.

The insuring agreement is a brief and broad statement of the responsibilities of both the insured and the insurer under the policy. Following the insuring agreement, coverage is further defined by the exclusions, many of which have exceptions that return coverage under the form.

An important part of policy analysis is to understand the definitions that are used to give specific meaning to words and phrases under the policy. The definitions can sometimes serve as coverage grants or exclusions, depending on the situation.



### Chapter 2 Review Questions

1. The only party identified as a named insured in the declarations of her farm liability coverage form is Olive North. Which one of the following also qualifies as an insured?
  - a. Andy, a self-employed handyman who does odd jobs around Olive's farm  
**This answer is incorrect.** Employees are insureds, but Andy seems to be an independent contractor.
  - b. Oliver, her 23-year-old son who lived with Olive until he moved to a dormitory in State College, where he is a full-time graduate student  
**That's correct!** A full-time college student who is a member of the household under the age of 24 is an insured.
  - c. Olivia, Olive's mother who lived with Olive until she moved into a nursing home  
**This answer is incorrect.** The mother is a relative, but she is no longer a member of Olive's household.
  - d. Pimento, Olive's watchdog  
**This answer is incorrect.** A person having custody of Pimento could be an insured, but a dog cannot be an insured.
2. The exclusions in a farm liability policy serve various purposes. Which one of the following is one of the purposes that exclusions serve?
  - a. Allowing for specialized underwriting and pricing of certain exposures  
**That's correct!** Some less-common exposures, such as the ownership and operation of aircraft, require specialized handling.
  - b. Denying coverage to policyholders that cannot afford it  
**This answer is incorrect.** If anything, exclusions make coverage more affordable by carving out the more difficult-to-insure exposures.
  - c. Protecting loss payees and mortgageholders  
**This answer is incorrect.** One role of insurance is to provide protection for creditors, but this is accomplished by providing property insurance on property that serves as collateral for a loan.
  - d. Providing coverage for catastrophic events that simultaneously affect many policyholders  
**This answer is incorrect.** Catastrophic events that simultaneously affect many insureds are often excluded, not covered; war is an example.
3. Lyon Forest is driving a standard, unmodified four-passenger golf cart on a golf course with some other farmers while texting his wife to tell her he will be late for dinner. He never gets any dinner that day; instead, he and a passenger spend the evening in the emergency room after Lyon runs the golf cart into a tree while sending the text. The injured passenger blames

Lyon's distracted driving and sues him to collect damages for his injuries. Lyon's farm liability insurance

- a. covers this claim.

**That's correct!** An exception to the motor vehicle exclusion applies, meaning coverage is provided.

- b. does not cover this claim because it did not take place on farm property.

**This answer is incorrect.** Coverage applies to some losses away from farm property.

- c. does not cover this claim because it occurred within the boundaries of a golfing facility.

**This answer is incorrect.** An exception to the exclusion applies to losses within the legal boundaries of a golfing facility.

- d. does not cover this claim because the motor vehicle exclusion applies.

**This answer is incorrect.** The policy has a motor vehicle exclusion, but there are some exceptions to that exclusion.

- 4. Besides harvesting his own crops, Cyrus uses his combine to harvest the crops of neighboring farmers who do not own a combine; he charges them \$100 per acre and earned more than \$10,000 last year. Cyrus's farm liability policy covers liability arising out of

- a. his own farming activities and his custom farming activities.

**This answer is incorrect.** Some business activities are excluded.

- b. his own farming activities but not his custom farming activities.

**That's correct!** Business pursuits other than farming or custom farming are covered, and custom farming is covered if receipts during the 12 months before the accident do not exceed \$5,000.

- c. his custom farming activities but not his own farming activities.

**This answer is incorrect.** His own farming activities are clearly covered.

- d. the first \$5,000 of his custom farming activities.

**This answer is incorrect.** Custom farming is not covered at all if the insured's receipts during the 12 months before the occurrence exceed \$5,000. Custom farming that generates receipts under \$5,000 is covered.

- 5. Princess claims that her bruises are the result of a beating her father, King, inflicted after he caught her rolling in the haymow of his barn with one of the hired hands. Princess, who is now 16 years old, plans to sue her father and collect damages from his farm liability policy. In complying with the terms of its policy, her father's insurer can be expected to

- a. defend King and pay any judgment on his behalf.

**This answer is incorrect.** Coverage will be denied.

- b. deny coverage because intra-family bodily injury claims are excluded.

**That's correct!** The farm liability policy has an exclusion that precludes coverage for intra-family lawsuits, which often involve collusion.

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- c. deny coverage because Princess has no protection under her father's policy.

**This answer is incorrect.** The policy protects Princess against liability claims as an insured. In this case, however, she is a claimant.

- d. deny coverage because the alleged beating took place inside the barn, which is not considered farming premises.

**This answer is incorrect.** The barn is part of the farm premises.



# Chapter 3

## Farm Liability Coverage Form (Part II)

In addition to Coverage H, examined in Chapter 2, the farm liability coverage form includes two additional insuring agreements—Coverage I, personal and advertising injury liability, and Coverage J, medical payments. This chapter addresses the insuring agreements for both of these coverages, as well as the specific exclusions that apply to each.

### Chapter Objectives

In this chapter, you will learn how to

1. differentiate between bodily injury and personal injury,
2. recognize the coverage provided under the farm liability coverage form for personal injury and advertising injury,
3. recognize the extent of coverage granted under the insuring agreements of Coverage I and J of the farm liability coverage form,
4. identify the exclusions and exceptions to exclusions under Coverage I and J of the farm liability coverage form and recognize how they affect coverage in a given situation,
5. recognize why and how medical payments coverage is provided on a no-fault basis, and
6. apply the policy's definitions of various terms and phrases and indicate how they affect coverage in a given situation.

### Coverage I—Personal and Advertising Injury Liability

Under Coverage I, the insurance company agrees to pay all sums that the insured is legally obligated to pay as damages for “personal injury” and “advertising injury,” subject to the policy limit of liability. As in the case of bodily injury and property damage (Coverage H), the insurer also has the right and duty to defend the insured in a suit seeking personal injury or advertising injury. The obligation to defend a suit ends when the limit has been exhausted by payment of claims.

The insurance applies to personal injury only if caused by an offense that is committed during the policy period and arises out of personal activities or out of operations usual or incidental to farming and to advertising injury that is committed during the policy period.

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### ***Personal Injury Coverage***

Under the farm liability coverage form, personal injury means injury, including consequential bodily injury, arising out of one or more of the following offenses:

- false arrest, detention, or imprisonment;
- malicious prosecution;
- wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling, or premises that a person occupies, committed by or on behalf of its owner, landlord, or lessor;
- oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products, or services; or
- oral or written publication of material that violates a person's right of privacy.

### ***Advertising Injury Coverage***

The farm liability coverage form includes advertising injury coverage, which is defined as an injury arising out of one or more of the following offenses:

- oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products, or services;
- oral or written publication of material that violates a person's right of privacy;
- the use of another's advertising idea in your advertisement; or
- infringing upon another's copyright, trade dress, or slogan in your advertisement.

In understanding the coverage grant for advertising injury, it is necessary to examine the policy's definition of "advertisement."

"Advertisement" means a notice that is broadcast or published to the general public or specific marketing segments about your farm-related goods, products or services for the purpose of attracting customers or supporters.

Note that personal injury coverage applies to both farm and personal activities of the insured, while advertising liability coverage is confined to advertisement of farm-related goods.

### ***Exclusions***

The exclusion section of the personal and advertising injury liability coverage is divided into four parts:

- exclusions that apply to both personal injury and advertising injury,
- exclusions that apply to only personal injury,
- exclusions that apply to only advertising injury, and
- pollution-related loss, cost, or expense.

### Exclusions Applicable to Personal Injury and Advertising Injury

Eight exclusions apply to both the personal and advertising injury coverage of the farm liability coverage form. Some are similar to exclusions that were discussed under the bodily injury and property damage coverage form, while others are somewhat unique to personal injury and advertising injury liability.

#### *Knowing Violation of Rights of Another*

There is no coverage for personal injury or advertising injury that is caused by or at the direction of the insured with knowledge that the act would violate the rights of another and would inflict personal injury or advertising injury.

#### *Material Published with Knowledge of Falsity*

The insurance does not apply to personal injury or advertising injury that arises out of oral or written publication of material if it is done by or at the direction of the insured with knowledge that it is false. This and the exclusion referenced above are similar to the exclusion for expected or intended injury under the bodily injury and property damage coverage.

#### *Material Published Prior to Policy Period*

Coverage does not apply to oral or written publication of material if the publication took place before the beginning of the policy period.

#### *Criminal Acts*

This exclusion eliminates coverage for personal or advertising injury that arises out of criminal acts committed by or at the direction of the insured.

#### *Contractual Liability*

There is no coverage for personal injury or advertising injury that the insured has assumed under contract or agreement, with the usual exception of liability the insured would have in the absence of the contract or agreement.

#### *Pollution*

The insurance does not apply to the actual, alleged, or threatened discharge, dispersal, seepage, migration, release, or escape of pollutants. It may seem bizarre to include a pollution exclusion under coverage for personal and advertising injury; however, the root of the exclusion lies in court cases that held that forced evacuation of a building due to a pollution incident could be considered an “invasion of the right of private occupancy” of premises.

#### *Distribution of Material in Violation of Statutes*

This is identical to the exclusion under bodily injury and property damage that precludes coverage for violation of state and federal privacy laws.

#### *War*

This exclusion also exactly duplicates that contained in the bodily injury and property damage coverage part.

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### Exclusions Applicable to Only Personal Injury

In addition to the eight exclusions discussed above, there are three additional exclusions under the personal injury liability coverage.

#### *Business Pursuits*

Coverage does not apply to personal injury that arises out of or in connection with a business engaged in by an insured. Just as in Coverage H, however, the exclusion does not apply to farming or custom farming activity by virtue of the wording of the definition of “business.”

#### *Civic or Public Activities for Pay*

Similar to the exclusion for business pursuits, personal injury coverage does not apply to the insureds’ performance of civic or public activities for which they are paid. This would be covered under the organization’s policy for which the services are provided.

#### *Personal Injury to an Insured*

This exclusion is similar to the one under Coverage H that prevents intra-family suits.

### Exclusions Applicable to Only Advertising Injury

Four additional exclusions apply to the advertising injury liability coverage.

#### *Breach of Contract*

Coverage does not apply to advertising injury that arises out of a breach of contract, except an implied contract to use another person’s or firm’s advertising idea in the insured’s advertisement.

#### *Quality or Performance of Goods—Failure To Conform to Statements*

The failure of goods, products, or services to conform to advertised quality or performance is excluded. This exclusion is designed to encourage the insured to engage in fully truthful advertising.

#### *Wrong Quotation or Description of Prices*

This exclusion applies when the insured, or someone acting on his or her behalf, misstates the price for goods, products, or services in an advertisement.

#### *Business of Advertising, Broadcasting, Publishing, or Telecasting*

This exclusion applies to an insured who is in the business of advertising, broadcasting, publishing, or telecasting. Professional liability policies are available to such firms, and coverage still applies to the insured who is in the business of farming.

#### *Pollution-Related Loss, Cost, or Expense*

The final exclusion under Coverage I is for any loss, cost, or expense that arises out of any request, demand, order, or statutory requirement to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize the effects of pollutants. Coverage also does not apply to claims or suits brought by or on behalf of governments to conduct such activities.

## **Coverage J—Medical Payments**

Medical payments coverage, which is contained in most personal and commercial liability policies, is designed as a “good will” type of coverage to deal with minor injuries sustained by third parties while on the insured’s premises or arising out of their activities. The objective is to provide reimbursement for medical expenses on a “no-fault” basis and thus avoid a claim under the bodily injury portion of the policy, which has a substantially higher limit. Payment of expenses under medical payments does not constitute an admission of liability, and, therefore, any claim later made by the injured party for bodily injury could still be paid under Coverage H, subject to the terms and conditions of that coverage.

### ***Insuring Agreement***

The insurance company agrees to pay reasonable medical expenses that are incurred or medically ascertained with 3 years from the date of an accident that causes bodily injury. These payments will be made without regard to fault. Reasonable medical expenses means expenses incurred or ascertained (determined to be necessary, but not yet incurred) for

- first aid administered at the time of the accident;
- necessary medical, surgical, X-ray, and dental services, including prosthetic devices; and
- necessary ambulance, hospital, professional nursing, and funeral services.

Coverage applies only to a person, other than an insured, who is on an insured location with the permission of an insured or to a person (other than an insured) off an insured location if the bodily injury

- arises out of a condition on an insured location or the ways immediately adjoining it;
- is caused by activities of an insured or by a farm employee in the course of employment by the insured;
- is caused or sustained by a residence employee in the course of employment by the insured;
- or
- is caused by an animal owned by or in the care of an insured.

### ***Exclusions***

There are six exclusions that apply to the coverage afforded under Coverage J—medical payments.

#### **Professional Services and Business Pursuits**

Medical payments coverage does not apply to a person on an insured location because professional services are being offered there or because a business (other than farming or custom farming) is being conducted there. This exclusion does not apply to injuries suffered by a residence employee.

#### **Location Rented, Owned, or Controlled by Insured**

Coverage does not apply to persons injured at any location owned, rented, or controlled by the insured that is other than an “insured location,” as previously defined. An “insured location” is one that has been declared to the insurance company. Again, this exclusion does not apply to bodily injury to a residence employee.

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### Farm Employees or Others Maintaining the Farm

The medical payments coverage does not apply to bodily injury to any farm employee or other person engaged in work usual or incidental to the maintenance or use of an insured location as a farm. The only exception to this exclusion is bodily injury to a residence employee or an injury sustained by a person on an insured location in a neighborly exchange of assistance for which the insured is not obligated to pay money. In jurisdictions where workers compensation benefits apply to farm workers, coverage for these expenses would be under a workers compensation policy. In those jurisdictions where the employer is not obligated to provide workers compensation benefits, medical payments coverage can be added to the farm liability coverage form by endorsement. This endorsement will be discussed more fully in a later chapter.

### Workers Compensation or Similar Law

This exclusion is related to the one discussed above. Medical payments does not apply to any person who is eligible to receive any benefits that an insured voluntarily provides or is required to provide under any workers compensation, nonoccupational disability, or occupational disease law.

### Injury to Resident

Medical payments coverage is not available to any person who regularly resides on any part of an insured location or who is a resident member of the insured's household. The only exceptions to this exclusion are occurrences of bodily injury to a residence employee. Thus, a tenant, roomer, or boarder on an insured location is not covered for medical payments. If, however, a resident were to sue the farm owner for injuries sustained, the liability section of the policy would respond.

### Coverage H Exclusions

There is a sweeping exclusion of medical payments to any person if there is no coverage under the bodily injury section of the policy. This effectively makes all the exclusions under Coverage H applicable to the medical payments section of the policy as well.

## Summary

This chapter has examined two of the additional coverages provided under the farm liability coverage form—personal and advertising injury and medical payments. In order to understand how coverage applies under these two parts of the policy, both the insuring agreements and applicable exclusions were discussed. Although most claims under the farm liability coverage form are for bodily injury or property damage, Coverage H, these two additional coverage parts also are important for farm owners and operators.



### Chapter 3 Review Questions

1. The farm liability policy covers claims arising out of certain specified advertising injury offenses. The list of covered offenses does not include
  - a. malicious prosecution.

**That's correct!** Malicious prosecution is a personal injury offense, but it is not an advertising injury offense.
  - b. oral publication of material that slanders someone.

**This answer is incorrect.** The advertising injury definition includes injury arising out of oral publication of material that slanders a person or organization.
  - c. publishing material that violates someone's privacy rights.

**This answer is incorrect.** The advertising injury definition includes injury arising out of oral or written publication of material that violates a person's right of privacy.
  - d. written publication of material that libels someone.

**This answer is incorrect.** The advertising injury definition includes injury arising out of written publication of material that libels a person or organization.
2. The disparagement claim against Ebenezer alleges that he is responsible for causing Ferguson Farm Equipment to lose sales by picketing Ferguson's premises after equipment that Ebenezer had purchased from Ferguson repeatedly broke down. Ebenezer's farm liability insurer is obligated to pay this claim unless
  - a. coverage is precluded by any of the exclusions that apply to both personal injury and advertising injury.

**This answer is incorrect.** Additional exclusions may also apply.
  - b. coverage is precluded by any of the exclusions that apply only to advertising injury.

**This answer is incorrect.** Consideration of only these exclusions may overlook other relevant and applicable exclusions.
  - c. coverage is precluded by any of the exclusions that apply only to personal injury.

**This answer is incorrect.** Other exclusions should also be considered.
  - d. coverage is precluded by any of the exclusions that apply to personal injury and advertising injury, any of the exclusions that apply only to advertising injury, or any of the exclusions that apply only to personal injury.

**That's correct!** Disparagement can qualify as either personal injury or advertising injury, so it is necessary to examine all relevant exclusions. Pollution is not a factor in this case.
3. As the president of the Former Farmers of America society, Alden Gray receives a modest stipend in recognition of the time and effort he devotes to his opinionated speeches, which call attention to certain issues the society considers important. If one of his speeches offends someone enough to result in a slander claim, Alden's farm liability policy (which is still in force) will

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- a. cover the claim because it involved a civic or public activity.

**This answer is incorrect.** This public activity is not covered.

- b. cover the claim because the definition of advertising specifically includes political speeches.

**This answer is incorrect.** The definition does not refer to political speeches.

- c. cover this claim because the policy includes coverage for slander.

**This answer is incorrect.** Claims for slander are not covered when an exclusion applies.

- d. not cover this claim because of the civic or public activities for pay exclusion.

**That's correct!** Personal injury coverage does not apply to the performance of an insured's civic or public duties for which he or she is paid.

- 4. Jethro sprained his ankle while visiting his grandfather's farm, but he has not yet submitted a claim for his medical bills in case he needs additional treatment. How long does he have?

- a. A 90-day grace period applies.

**This answer is incorrect.** Grace periods apply to delayed premium payments, not delayed claims.

- b. Until 1 year after the accident

**This answer is incorrect.** A claim made more than 1 year after the accident could be covered.

- c. Until 2 years after the accident

**This answer is incorrect.** The policy specifies a different time period.

- d. Until 3 years after the accident

**That's correct!** The expenses must be incurred or ascertained within 3 years from the date of the accident.

- 5. Hillary rents one of the spare bedrooms in her large Whitewater Farm house to Bill. After living there for a few months, Bill claims he was bitten by a spider while he was asleep, and he asks Hillary to pay for his doctor visit. How should Hillary's farm liability insurance respond?

- a. Bill's medical payments are covered by Coverage J, and if he makes a bodily injury liability claim, Coverage H will also apply.

**This answer is incorrect.** Both coverages do not apply to this claim.

- b. Bill's medical payments are covered by Coverage J, but if he makes a bodily injury liability claim, Coverage H will not apply.

**This answer is incorrect.** Coverage H does not exclude coverage for injury to a household resident.

- c. Bill's medical payments claim is not covered by Coverage J, but if he makes a bodily injury liability claim, Coverage H will respond.



**That's correct!** A tenant, roomer, or boarder is not covered for medical payments, but if he sues the farm owner for injuries he sustained, then the liability section of the policy will respond to the bodily injury liability claim.

d. The policy provides no liability coverage for injury to a household resident.

**This answer is incorrect.** An injured household resident can collect damages under some circumstances.



# Chapter 4

## Additional Coverages, Coverage Extension, and Limits

An additional coverages section of a typical insurance policy provides limited coverage for losses that would otherwise not be covered under the terms of the policy form. The limit that applies to an additional coverage is usually quite a bit smaller than the overall policy limit. The farm liability coverage form includes two additional coverages.

A coverage extension is used to expand the scope of coverage beyond the terms of the policy in which it is included. The farm liability coverage form contains only one coverage extension.

The farm liability form has six different limits of insurance. The final section of this chapter describes these limits and how they apply.

### Chapter Objectives

In this chapter, you will learn how to:

1. recognize the distinction between a coverage extension and an additional coverage,
2. cite the additional coverages available under the farm liability coverage form and recognize how they might apply in a given situation,
3. identify the coverage extension provided under the farm liability coverage form and its limitation and recognize how it might apply in a given situation,
4. identify the various limits of insurance that apply in the farm liability coverage form and recognize the relationship among these limits, and
5. recognize the effect of the sublimit for statutorily imposed vicarious liability.

### Additional Coverages

There are two additional coverages included in the farm liability coverage form:

Supplementary payments—Coverages H and I

Damage to property of others

#### ***Supplementary Payments—Coverages H and I***

The supplementary payments section of the farm liability coverage form is similar to that contained in the CGL policy. Supplementary payments states that the insurer will pay, in addition to the limit of

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liability, certain other expenses associated with investigation or settlement of a suit against an insured that the company defends. These additional covered expenses are summarized in Exhibit 4.1. Note that supplementary payments does not apply to the medical payments portion of coverage.

<b>Exhibit 4.1</b> <b>Supplementary Payments</b>
All expenses incurred by the insurance company
Up to \$250 for the cost of bail bonds required because of a covered accident or traffic law violation involving a covered vehicle—the insurance company is not required to furnish the bond
The cost of court bonds to release attachments for bond amounts within the policy limit
All reasonable expenses incurred by the insured at the company's request to assist in the investigation or defense of a claim or suit, including loss of earnings up to \$250 per day
All costs taxed against the insured in the suit
Prejudgment interest awarded against the insured on the part of a judgment the insurer pays
Interest on the full amount of any judgment that accrues after entry of the judgment and before the insurer has paid, offered to pay, or deposited the amount with the court

The payment of the items listed above does not reduce the limit of insurance under the policy.

An additional supplementary payment was added to both the CGL and the farm liability coverage form with the last revision by ISO. This section deals with the defense of an indemnitee of the insured. When the insurance company defends its insured in a suit to which an indemnitee of the insured is also a party, the insurer agrees to also defend the indemnitee, subject to certain policy conditions. An indemnitee is defined in the policy as a person or organization whose liability for payment of damages because of bodily injury or property damage has been assumed by an insured under an “insured contract.”

Indemnity or hold harmless agreements are contractual provisions under which one party agrees to be responsible for certain liabilities for which another party would otherwise be legally responsible. The party who agrees to take on another's liabilities is known as the indemnitor. The party shifting its legal responsibility to another party is the indemnitee.

As discussed previously in regard to contractual liability and insured contracts, the farm liability coverage form covers liabilities assumed in an agreement to indemnify another party for tort liability. In most cases, a suit against an insured would also name the insured's indemnitee and arise out of the same cause of action. Therefore, it makes sense for the indemnitor's insurance company to also provide a defense to the other party because any damages awarded against the indemnitee likely would be paid by the insurer.

The policy provides that if certain conditions are met, a duty to defend an indemnitee is created, and defense costs are payable as supplementary payments outside (in addition to) the policy limit. However, if any of the conditions are breached, the duty to defend the indemnitee is extinguished and

the indemnitee's defense costs would be payable under the contractual liability coverage as damages. The conditions under which defense would be provided to an indemnitee are shown in Exhibit 4.2.

<b>Exhibit 4.2</b> <b>Requirements for Triggering a Duty To Defend Indemnitees</b>
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<p>The insured has specifically agreed in an insured contract to assume the liability on which the suit is based, including the defense costs.</p>
--

<p>The liability assumed in the hold harmless agreement must be of a kind covered by the policy. In other words, if the damages would not be payable as a direct claim against the insured, they would not be covered by contractual liability.</p>
---

<p>The insured and the indemnitee are both named in the suit.</p>
---

<p>There is no apparent conflict of interest between the insured and the indemnitee.</p>
--

<p>The request for a defense is made by both parties, and they have agreed to be represented by the same counsel.</p>
---

<p>The indemnitee agrees to cooperate with the insurer in defending the suit (just as the insured agrees to do so in the policy conditions) and to provide records and documents related to the suit.</p>
---

<p>The indemnitee agrees to notify any other insurer whose policy may be triggered by this claim and to cooperate in coordinating such other coverage.</p>
--

### ***Damage to Property of Others***

Similar to medical payments, this additional coverage is not liability based. The insurance company agrees to pay up to \$1,000 per occurrence for property damage to property of others caused by an insured and for which the insured feels morally, but is not legally, obligated to pay. The limit cannot be increased.

The insurer retains the option to either pay the actual cash value of the property or repair or replace it with other property of like kind and quality.

Three exclusions apply to this coverage:

- damage caused intentionally by an insured who is 13 years of age or older;

- property owned by or rented to an insured, a tenant of an insured, or a member of the insured's household; and

- property damage arising out of the professional services or a business of the insured (other than farming or custom farming), arising out of a location other than an insured location, or the ownership, maintenance, operation, use, loading, or unloading of any motor vehicle, motorized bicycle or tricycle, farm machinery or equipment, aircraft, or watercraft.

The exclusion for property owned or rented makes no mention of borrowed property, so presumably the \$1,000 limit would apply to such damage.

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### Coverage Extension

The sole extension of coverage under the farm liability coverage form reads as follows.

The words “you” and “your”, throughout this Coverage Form, include your spouse if a resident of the same household.

This is similar to a provision in the homeowners policy, and insurance professionals are encouraged to give pause to this “extension” of who is an insured under the policy. Remember that an “insured” is not named in a policy but is given insured status based on a relationship with a named insured. In this case, that relationship is that of a spouse with the proviso that the spouse is a resident of the same household. The homeowners policy grants a limited period of time when a spouse ceases to be a resident for coverage to continue. The farm liability coverage form contains no similar “grace period.” Therefore, unless the spouse is included as a named insured, the spouse’s coverage under the policy would cease the instant he or she was no longer a household resident, such as during a separation or divorce.

### Section II—Limits of Insurance

The policy states that the limit of insurance shown in the declarations page is the most the insurer will pay regardless of the number of insureds under the policy, the number of claims or suits brought against the insureds, or the number of persons or organizations making claims or bringing suits.

#### ***Aggregate Limit***

Like the CGL, the farm liability policy contains a general aggregate limit, which is the most the insurer will pay during a 12-month policy term for damages under Coverages H and I and for medical expenses under Coverage J.

#### ***Occurrence Limit***

The farm liability coverage form also contains a limit that applies to each occurrence. The each occurrence limit is the most that will be paid by the insurer for the sum of damages under Coverage H and medical expenses under Coverage J. All bodily injury and property damage from any one accident or from continuous or repeated exposure to the same harmful conditions is considered the result of one occurrence.

In addition, the policy contains a separate per occurrence sublimit of \$10,000 for covered damages the insured is legally obligated to pay due to statutorily imposed vicarious liability for the actions of a child or minor. This is similar to a provision in the homeowners policy that is meant to limit the insurance company’s payment for damages caused by a minor or child for whom the insured is vicariously liable under a state law that makes the insured responsible for damages caused by those in his or her care. For example, the insured’s son vandalizes a local building by spray painting graffiti on it. If the state in which the vandalism took place holds the parent responsible to pay damages to the building owner, the policy would pay only up to \$10,000 for each such occurrence. (Of course, if multiple similar occurrences take place, the insurance company would probably invoke its right to nonrenew the policy).

### ***Fire Damage Limit***

The most that will be paid under Coverage H for property damage to premises rented to or temporarily occupied by the insured with the permission of the owner is the limit stated in the declarations. The limit applies to any one fire and is typically set at \$50,000 or \$100,000, although it can be as low as \$25,000 or as high as \$500,000. The fire damage limit is also subject to the per occurrence limit.

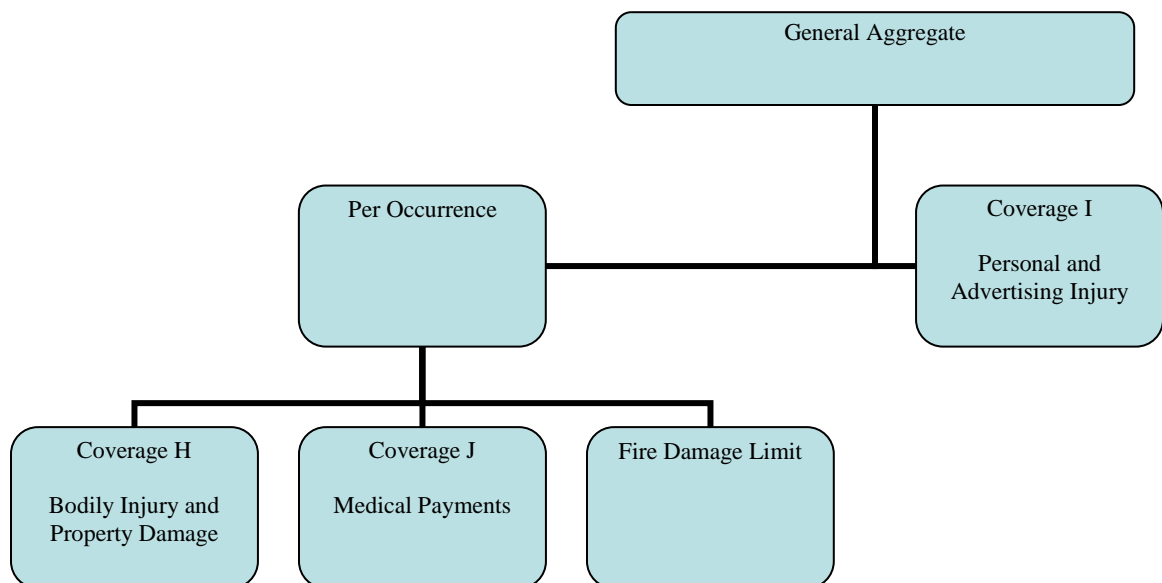
### ***Personal and Advertising Injury Limit***

The limit for personal injury and advertising injury is subject to the general aggregate but not the per occurrence limit. The most that will be paid for the sum of all damages for personal injury and advertising injury sustained by any one person or organization is the limit stated in the declarations.

### ***Medical Payments***

The most that will be paid for bodily injury sustained by any one person is the limit shown for medical expenses. A separate limit applies to any one residence employee, if indicated in the declarations.

The following graphic illustrates the way limits apply in the farm liability coverage form.



### ***Damage to Property of Others***

As discussed above, the additional coverage—damage to property of others is limited to \$1,000 per occurrence and is not subject to either the general aggregate or each occurrence limit of the policy.

## **Summary**

In this chapter, we identified and studied the two additional coverages and one extension of coverage provided under the farm liability coverage form. The additional coverages include supplementary payments—that is, those paid in addition to damages for bodily injury, property damage, or personal and advertising injury—and a separate insuring agreement for damage to the property of others. The

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coverage extension simply expands the scope of who is insured under the farm liability coverage form to include a spouse of the named insured who is a resident of the same household.

This chapter concluded with an explanation of the manner in which the various policy limits apply under the farm liability coverage form. The specific limits are shown on the declarations page of the policy and vary by insured; however, some sublimits are a part of the coverage form, such as those for damage to property of others and statutorily imposed vicarious liability.

Limits under the farm liability coverage form are interrelated, much the same as they are in a CGL policy. This means that, while there is no limit to the number of occurrences that can take place during the policy period, the aggregate limit caps the total amount that the insurer will pay in any given year.





## Chapter 4 Review Questions

1. Colossal Casualty Insurance Company spent \$75,000 in defending Sara against the property damage liability claim. However, the claimant prevailed and was awarded \$400,000 in damages. Sara's farm liability policy has a \$300,000 occurrence limit. How much will Sara's insurer pay in total for the damages and/or defense costs associated with this claim?
- a. \$75,000

**This answer is incorrect.** The insurer also has an obligation to indemnify the claimant who prevailed in this case.

- b. \$300,000

**This answer is incorrect.** The insurer also has an obligation to pay defense costs.

- c. \$375,000

**That's correct!** The insurer will pay the policy limit of \$300,000 in damages and the \$75,000 in defense costs.

- d. \$400,000

**This answer is incorrect.** The policy has a \$300,000 limit.

2. Bonnie, who has a farm liability policy, learns that a bodily injury liability claim is being made against Clyde, an independent contractor doing some gardening work for her. Bonnie's insurer will defend Clyde against this claim if certain requirements are met. Which of the following is one of these requirements?

- a. Because their interests may conflict, Bonnie and Clyde must agree to be defended by separate attorneys.

**This answer is incorrect.** No conflict of interests should exist or appear to exist.

- b. Bonnie and Clyde must both be named in the suit.

**That's correct!** To trigger a duty to defend the indemnitee, the insured and the indemnitee must both be named in the suit.

- c. Bonnie's agreement to assume Clyde's liability must not have been made in an "insured contract."

**This answer is incorrect.** It must be an "insured contract" in which the insured has agreed to assume the indemnitee's liability, including defense costs.

- d. The liability Bonnie assumed in a contractual agreement must not be of a kind that her policy would cover if the claim were made directly against Bonnie.

**This answer is incorrect.** The damages must be of a type that the policy covers.

3. The farm liability coverage form's damage to property of others coverage is intended to cover claims for damage to others' property that the insured has caused and that the insured

- a. could not otherwise afford to pay.

**This answer is incorrect.** The limit for this coverage is \$1,000, an amount that most insureds could afford to pay if insurance does not.

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- b. feels morally obligated to pay.

**That's correct!** The insurer agrees to pay up to \$1,000 per occurrence for property damage to others' property caused by an insured and for which the insured feels morally, but not legally, obligated to pay.

- c. is legally obligated to pay.

**This answer is incorrect.** This coverage is not liability based.

- d. would not otherwise pay.

**This answer is incorrect.** These are typically claims the insured would want to pay with his own funds if insurance did not apply.

4. Samuel and Hannah are both named insureds in a farm liability policy. Hannah found it difficult to adapt to life as a farmer's wife. She moved back to her parents' house 2 months ago, and she has just filed for a divorce. What is Hannah's current protection status under Samuel's policy?

- a. Hannah currently has as much protection as Samuel, because her name is shown in the policy.

**That's correct!** Because Hannah is included as a named insured, she is covered.

- b. Hannah's protection ended when she ceased to be a resident of Samuel's household.

**This answer is incorrect.**

- c. Hannah's protection will end if she does not move back into Samuel's residence within 90 days of her departure.

**This answer is incorrect.** The policy contains no 90-day rule.

- d. Hannah's protection ended when she filed for a divorce.

**This answer is incorrect.** Filing for a divorce does not change her legal status or alter her situation as a named insured.

5. Tom's Turkey Farm is covered by a farm liability policy with a \$500,000 occurrence limit. To which of his policy's coverages does this limit apply?

- a. Coverage H only

**This answer is incorrect.** The limit also applies to another coverage.

- b. Coverages H and I only

**This answer is incorrect.** The per occurrence limit does not apply to one of these coverages.

- c. Coverages H, I, and J

**This answer is incorrect.** The per occurrence limit does not apply to all three coverages.

- d. Coverages H and J only

**That's correct!** The each occurrence limit is the most that will be paid by the insurer for the sum of damages under Coverage H and medical expenses under Coverage J.

# Chapter 5

## Farm Liability Conditions

Section III of the farm liability coverage form details the conditions of the policy. The conditions section of an insurance policy contains contract provisions that define the rights and duties of both the insurer and insured. Some of these provisions are truly conditions—that is, actions that, if not performed, void the contractual obligations of the parties.

Some of the policy conditions apply exclusively to the named insured, and others apply to all insureds, including those that automatically qualify for insured status under the policy. For example, the policy requires the named insured to provide timely notice of any claim; however, all insureds are required to cooperate in the investigation and defense of any claim against them.

The farm liability coverage form contains 10 conditions, split into two different sections titled loss conditions and additional conditions.

### Chapter Objectives

In this chapter, you will learn how to

1. recognize the duties imposed upon an insured in the event of a claim, suit, occurrence, or offense that may give rise to a claim and the potential effect of breaching those duties and
2. identify the effect of the policy's 10 conditions and recognize how each should apply in various situations.

### Loss Conditions

Seven liability-specific conditions apply (in addition to the common policy conditions) at the time of a loss.

#### ***Bankruptcy***

If the insured or the insured's estate becomes insolvent or bankrupt, the insurance company is not relieved of its obligations under the terms of the policy.

#### ***Duties in the Event of Occurrence, Offense, Claim, or Suit***

These are true conditional statements that require the insured's compliance as a precedent to coverage. The insurer has no duty to provide coverage under the policy if failure to comply with these duties is prejudicial to it, meaning the noncompliance inhibits the insurance company's ability to perform. The specific conditions are summarized in Exhibit 5.1.

<p style="text-align: center;"><b>Exhibit 5.1</b> <b>Insured's Duties in the Event of Occurrence, Offense, Claim, or Suit</b></p>
<p>The insured must notify the insurance company "as soon as practicable" of an occurrence or an offense that may result in a claim. This includes providing the following information, to the extent possible:</p> <ul style="list-style-type: none"> <li>How, when, and where the occurrence or offense took place</li> <li>The names and addresses of any injured persons and witnesses</li> <li>The nature and location of any injury or damage arising out of the occurrence or offense</li> </ul>
<p>If a claim is made or a suit is brought against any insured, the insured must:</p> <ul style="list-style-type: none"> <li>Immediately record the specifics of the claim or suit and the date received</li> <li>Notify the insurer as soon as practicable</li> <li>See to it that the insurer receives written notification of the claim or suit as soon as practicable</li> </ul>
<p>The insured must:</p> <ul style="list-style-type: none"> <li>Notify the police if a law may have been broken</li> <li>Immediately send copies of any demands, notices, summonses, or legal papers received in connection with the claim or suit</li> <li>Authorize the insurer to obtain records and other information</li> <li>Cooperate with the insurer in the investigation or settlement of the claim or defense against the suit</li> <li>At the insurer's request, assist in the enforcement of any right against any person or organization that may be liable to an insured because of injury or damage to which the insurance applies</li> </ul>
<p>No insured can make any payment, assume any obligation, or incur any other expense, other than for first aid, without the consent of the insurer. Failure to obtain consent will result in the insured having to pay the amount at the insured's own expense.</p>
<p>Any injured person who makes a claim for medical expenses must:</p> <ul style="list-style-type: none"> <li>Provide the insurance company with a written proof of claim, under oath if required, as soon as practicable</li> <li>Execute an authorization to allow the insurer to obtain copies of medical reports and records</li> <li>Submit to physical examination by a physician selected by the insurer when and as often as they reasonable require</li> </ul> <p>The first two requirements may be met by someone acting on behalf of the injured person.</p>
<p>For a loss claimed under damage to property of others, the insured must submit to the insurer a signed, sworn proof of loss within 60 days after the loss and must exhibit the damaged property if it is within the insured's control.</p>

The wording “as soon as practicable” leaves room for interpretation about what is a reasonable amount of time for giving notice of a claim, suit, occurrence, or offense. When courts have been required to make such a determination, they typically give consideration to the following circumstances, among others:

The length of the delay

The reason for the delay

The probable effect the delay will have on the insurer

The court often gives the most weight to the last circumstance. The insurer, to be relieved of its obligations under the contract, would have to demonstrate that the late notice resulted in its inability to conduct a thorough investigation and defense of a claim.

### ***Insurance under Two or More Coverages***

If a loss could be covered under two or more sections of the same policy, this provision limits the amount of the loss to the actual amount of loss or damage. In other words, having coverage provided under multiple sections of the policy does not increase the amount paid in the event of a loss.

### ***Legal Action Against Us***

No person or organization, whether an insured or a third-party claimant, has the right to join the insurer as a party to a suit seeking damages from an insured or to sue the insurance company unless all of the policy’s terms and conditions have been fully complied with. A person or organization may sue the insurer to recover an agreed settlement or final judgment.

### ***No Admission of Liability with Medical Payments***

Any payment made by the insurer under Coverage J—medical payments does not constitute an admission of liability by the insured or the insurer, and, thus, any subsequent suit by an injured party would still require proof of the insured’s negligence.

### ***Other Insurance***

This condition applies if the insured has coverage for the same loss under this or any other insurance policy. It allows for the apportionment of damage and defense costs based on the limits of liability under the policies. For example, if the insured has a \$1,000,000 per occurrence limit under this policy and a \$2,000,000 limit under another, both of which would apply to the loss, this policy will pay one-third of the loss and defense ( $\$1,000,000/\$3,000,000$ ) because its limit is one-third of the total of all coverage.

If the occurrence arises out of the ownership, maintenance, use, operation, or loading and unloading of a covered motor vehicle, mobile equipment, or watercraft, no coverage applies under this policy if the insured has other collectible insurance, regardless of the other insurance provision of that policy. This makes the farm liability coverage form quite different from most liability policies, which typically put one insurer in a primary or excess position relative to the other.

### ***Transfer of Rights of Recovery Against Others to Us***

This subrogation provision states that if the insured has a right to recover from another party, payment of the loss by the insurer requires that the insured transfer any such rights to the insurance company.

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The insured is prohibited from doing anything following a loss that would impair these rights and is required to help the insurer enforce them.

### **Additional Conditions**

Three additional conditions apply under the farm liability coverage form that are not related to losses.

#### ***Liberalization***

If the insurance company adopts a new version of the coverage form within 45 days prior to or during the policy period, the broadened coverage applies to this policy without payment of any additional premium or the necessity of endorsing the policy.

#### ***Representations***

By accepting the insurance policy, the insured agrees that

- the statements made in the declarations are accurate and complete,
- those statements are based on representations made by the insured to the insurer, and
- the policy was issued in reliance upon those representations.

When completing an application for insurance, the policyholder makes certain representations that the insurance company must rely on in issuing the coverage requested. If these statements are subsequently determined to have been false, this may give the insurer the right to void the policy or deny a claim.

#### ***Separation of Insureds***

Except with respect to the limits of insurance under the policy and any rights or duties specifically assigned to the first named insured, the insurance under the farm liability coverage form applies as though each named insured were the only named insured and applies separately to each insured against whom a claim is made or suit is brought.

This provision is of particular importance. Although intra-family suits are specifically excluded in the policy, it is possible for one insured to sue another. In a corporate farming operation, for example, an injured employee, an “insured” under the policy, may sue a corporate officer (also an insured), and coverage would apply as long as the loss is within the scope of the policy’s insuring agreement and not otherwise excluded.

### **Summary**

This chapter discussed the two different conditions sections of the farm liability coverage form. These important provisions require specific actions on the part of the insured and the insurer, in some cases as a precedent to coverage. The most significant of these conditions is the one that deals with requirements in the event of a claim, occurrence, offense, or suit to which coverage may apply.



## Chapter 5 Review Questions

1. Bull is the named insured in a farm liability policy. A severe blizzard recently killed most of Bull's livestock. He had not insured the cattle and is forced to declare bankruptcy. An earlier liability lawsuit against Bull is still in litigation. Now that Bull is bankrupt, Bull's insurer
  - a. has no further obligation to defend or pay the claim, because Bull would be unable to pay any judgment.

**This answer is incorrect.** The insurer has continuing obligations.

- b. is still obligated to defend Bull and pay any covered judgment or settlement on his behalf.

**That's correct!** The insured's bankruptcy does not relieve the insurance company of its obligations under the policy's terms.

- c. will continue to defend the claim but is not obligated to pay damages that Bull could not afford to pay anyway.

**This answer is incorrect.** The insurer is still obligated to pay damages.

- d. will stop defending the claim and tender the policy limits to the claimant.

**This answer is incorrect.** The insurer is still obligated to defend the insured.

2. The farm liability policy requires an insured who experiences an occurrence, an offense, a claim, or a suit that might be covered to perform various of duties that include
  - a. helping the insurer subrogate against another party that might be liable for the loss.

**That's correct!** At the insurer's request, the insured has a duty to assist the insurer in enforcing any right against another party that might be liable to an insured for the injury or damage that is the subject of the claim.

- b. paying the claim and submitting documentation to the insurer for reimbursement.

**This answer is incorrect.** The insured has a duty to cooperate with the insurer in investigation or settlement of the claim or its defense, but the insured is not required to pay the claim first.

- c. retaining an attorney.

**This answer is incorrect.** The insurer provides the defense counsel.

- d. trying to amicably settle the claim without involving the insurer.

**This answer is incorrect.** The insurer should be notified as soon as possible of any occurrence or defense that might result in a claim.

3. Bridget tried to teach her snobby friend Penelope how to ride Bridget's white horse, Marshmallow. Penelope rode a few feet and promptly fell off her high horse, breaking her ankle. Bridget informed her farm liability insurer of this incident, and Bridget's insurer paid Penelope's medical expenses under the policy's Coverage J—medical payments. Penelope subsequently demanded that the insurer also reimburse her lost wages, stating that the insurer's prior payments were an admission of responsibility for her entire loss. What does Bridget's farm liability policy have to say about this situation?

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- a. Making a medical payments claim is not an admission of liability.

**That's correct!** The policy says that any payment made under the medical payments coverage does not constitute an admission of liability by the insured or the insurer, so any subsequent suit by Penelope would require her to prove Bridget's negligence.

- b. Penelope has no right to sue the insurer.

**This answer is incorrect.** Penelope has the right to sue the insurer to recover any agreed settlement or final judgment.

- c. Penelope's lost wages are covered under the supplementary payments coverage.

**This answer is incorrect.** The supplementary payments would cover Bridget's lost wages if she has to take time off work to defend a suit against herself.

- d. Unless the insurer reserved its rights to deny a subsequent claim, the insurer is on the hook for the lost wages.

**This answer is incorrect.** The insurer is not automatically obligated to pay for the lost wages, and payment of the medical expenses does not estop the insurer from defending Bridget against a claim based on liability.

4. Dudley discovers that he has coverage under not one but two farm liability policies that apply to a \$12,000 loss. Policy A has a \$100,000 limit, and Policy B has a \$500,000 liability limit. How much will be paid under Policy A?

- a. \$2,000

**That's correct!** Policy A provides one-sixth of the total limit available and will pay one-sixth of the loss.

- b. \$6,000

**This answer is incorrect.** The two policies have different limits, so they do not split the loss equally.

- c. \$10,000

**This answer is incorrect.** Policy B will pay \$10,000.

- d. \$12,000

**This answer is incorrect.** Both policies provide coverage, but they will not both pay the full amount of the loss.

5. The farm liability policy includes a "transfer of rights of recovery against others to us" provision. What topic does this provision address?

- a. Arbitration

**This answer is incorrect.** The "suit" definition explains that the phrase "suit" includes arbitration; that has nothing to do with the provision in question here.

- b. Deductibles

**This answer is incorrect.** A farm liability policy usually provides first dollar coverage with no deductible.



c. Recovered property

**This answer is incorrect.** Property policies (but not liability policies) often include provisions that prescribe how to proceed when an insurer pays a claim for lost property that is subsequently recovered.

d. Subrogation

**That's correct!** This provision describes the insurer's right to subrogate against a responsible party without interference by the insured.



# Chapter 6

## Endorsements

A standard farm liability coverage form is designed to provide the core coverages commonly needed by most policyholders. Tailoring the policy to meet the needs of an individual farmer or rancher requires a variety of modifications to the policy. Some of these modifications are inexpensive and easy to obtain, while others are available only at a significant cost, if at all. Some endorsements expand the scope of coverage; some narrow the scope. Others change how the policy operates, such as how the limits apply or who is insured under the policy, or they change other policy conditions.

Standard endorsements are available for accomplishing a variety of policy modifications, but in some cases, nonstandard or proprietary endorsements are required or desired by the insured or insurer. Individual insurance companies typically have their own endorsements they use for certain purposes. Sometimes the insurer and insured will create a new endorsement from scratch to accomplish a specific objective for which no standard endorsement exists. These negotiated endorsements are referred to as “manuscript” endorsements.

Previous chapters mentioned certain endorsements that can be used to tailor the farm liability coverage form. In most cases, these endorsements were used to expand the coverage under the standard policy or to remove certain exclusions or limitations and were reviewed in some detail.

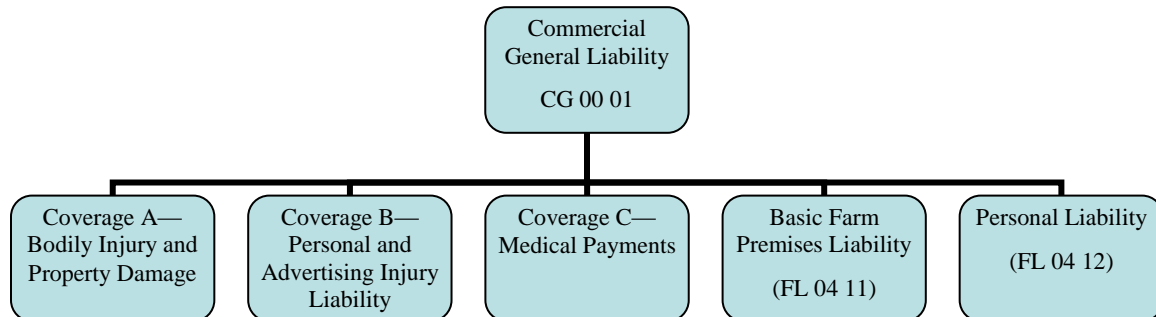
### Chapter Objectives

In this chapter, you will learn to

1. list various ways in which an endorsement can alter a policy’s coverage,
2. given a case situation, recognize the circumstances under which it may become necessary to attach an endorsement to a CGL or farm liability coverage form and select an appropriate endorsement,
3. identify many common farm liability endorsements, and
4. demonstrate an understanding of how specific CGL and farm liability endorsements affect coverage.

### Endorsements to the CGL Policy

As previously noted, some agribusiness operations fall outside the customary definition of “farming operations” or are beyond the scope of what an insurer contemplates within its farm program. In these cases, it is necessary to obtain coverage under the CGL policy and endorse the policy to provide coverage specifically for farm operations. When farm liability coverage is combined with general liability, the structure of the policy would appear as shown in the chart below.



This would make coverage for farming operations roughly the equivalent of the farm liability coverage form, FL 00 20, but would also provide the broader coverage needed for other operations under the CGL policy.

Because of the very broad nature of the CGL policy, some farm underwriters are reluctant to provide that form of coverage without a complete and thorough description of the non-farming operations, a reasonable request to be sure.

The numbering convention for standard endorsements contains three parts:

- a letter designation that specifies the program to which the endorsements apply—for example, FL for farm liability, FP for farm property, CG for commercial general liability, etc.;
- a form number; and
- an edition date of the endorsement.

Three endorsements available under the CGL policy are specific to farm operations and therefore carry the “FL” form designation of ISO, rather than the “CG” form number that would typically apply.

### ***Basic Farm Premises Liability***

The basic farm premises liability endorsement (FL 04 11) modifies the CGL policy to provide coverage for liability arising out of the ownership, maintenance, or use of farm premises. It includes the provisions of the “mandatory amendatory” endorsement (FL 01 63) relating to the pollution exclusion and chemical drift. This is necessary because it is not a mandatory endorsement under the CGL program as it is under the farm program.

The provisions of the basic farm premises liability endorsement track with the CGL coverage form and contain the modifications outlined in Exhibit 6.1.

<b>Exhibit 6.1</b> <b>CGL Basic Farm Premises Liability Endorsement</b>	
Coverage A—Bodily Injury and Property Damage	<p>Changes the expected or intended injury exclusion to duplicate that contained in the farm liability coverage form</p> <p>Modifies the pollution exclusion to provide coverage for fires set by the insured for purposes of burning crop stubble or other vegetation</p> <p>Amends the auto exclusion to provide coverage for mobile equipment occurrences that take place on the farm premises when the equipment is not subject to motor vehicle registration because it is used exclusively on the premises or is in dead storage on the premises</p> <p>Modifies the damage to your work exclusion so that it does not apply to operations necessary or incidental to the ownership, operation, or use of farm premises</p> <p>Adds an exclusion for use of farm premises for non-agricultural business purposes or premises rented to others for non-agricultural business or dwelling purposes; however, the exclusion does not apply to a residence rented to a person who occupies and farms the premises or a residence occupied by two or more roomers or boarders</p> <p>Adds an exclusion for bodily injury or property damage that arises out of the ownership, use, or maintenance of</p> <ul style="list-style-type: none"> <li>– farm tools, farm tractors, or trailers under contract to others for a charge;</li> <li>– draft animals or vehicles used with the items listed above under contract to others for a charge; or</li> <li>– saddle animals rented to others or used in practicing for or participating in any exhibition or contest</li> </ul> <p>Adds an exclusion for property damage arising out of release or discharge of a substance from an aircraft</p> <p>Adds an exclusion for bodily injury or property damage arising out of rendering of or failure to render professional services</p>
Coverage C—Medical Payments	Excludes coverage for any person engaged in work usual or incidental to the maintenance or use of farm premises

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Chemical Drift Liability	Duplicates the provisions of amendatory endorsement (FL 01 63)
Who Is an Insured	Duplicates the provisions of the farm liability coverage form
Conditions	Duplicates the provisions of the farm liability coverage form
Definitions	<p>Adds definitions for</p> <ul style="list-style-type: none"><li>– custom farming,</li><li>– farming, and</li><li>– farm premises</li></ul> <p>Modifies the definition of “your work” to match that of the farm liability coverage form</p> <p>Deletes definitions of employee, leased worker, temporary worker, and volunteer worker under this endorsement</p>
Additional Coverage—Custom Farming	Duplicates the provisions of the farm liability coverage form

### ***Broad Form Farm Premises Liability***

This endorsement (FL 04 37) is used in place of the basic farm premises liability form discussed above. It makes all of the coverage modifications to the CGL that are shown in Exhibit 6.1 and includes the provisions relating to pollution that are contained in the limited pollution liability extension endorsement (FL 04 30) discussed in Chapter 2, which is considered the second of the “mandatory amendatory” endorsements in the farm program. Again, the purpose is to mirror the coverage provided under the farm liability coverage form where the endorsement is mandatory.

### ***Personal Liability***

This endorsement (FL 04 12) is used in conjunction with the basic farm premises liability endorsement (FL 04 11) to provide comprehensive personal liability coverage for the personal exposures of the farm owner. Essentially, this is the same liability coverage that is provided under a homeowners policy.

## **Endorsements That Expand Coverage**

Some endorsements expand the scope of coverage by deleting exclusions, modifying how various coverage provisions apply, changing policy definitions, etc. Farmers commonly need a number of endorsements to avoid gaps between the coverage under their farm liability policy and/or CGL policy and their risk exposures. These endorsements typically attach to the farm liability policy; however, some are available under both the farm liability and the CGL policy.

***Coverage for Physical Injury to Crops or Animals Due to Certain Crop Dusting Operations Performed by Licensed Independent Contractors by Aircraft (Limited Crop Dusting Coverage)***

Arguably one of the longest endorsement titles in the farm program, the limited crop dusting coverage endorsement (FL 04 44), pays for physical injury to crops or animals caused by or resulting from crop-dusting operations conducted on behalf of the named insured by a licensed independent crop duster.

The endorsement adds an additional coverage (Coverage N) to the farm liability policy and thus is essentially a “policy within a policy” in that it contains a separate insuring agreement, exclusions, limit of insurance, and conditions.

The insuring agreement of the endorsement is outlined in Exhibit 6.2.

<p align="center"><b>Exhibit 6.2</b> <b>Coverage N Insuring Agreement</b></p>
<p>We will pay those sums that the insured becomes legally obligated to pay as damages for physical injury to crops or animals if:</p> <ul style="list-style-type: none"> <li>a. The injury is caused by or results from a substance released from an aircraft while used in crop dusting, seeding, spraying or fertilizing operations performed for you by an independent contractor and</li> <li>b. The operations are consistent with normal and usual agricultural practice.</li> </ul>

As with the other liability coverages under the farm liability coverage form, the insuring agreement also includes the insurer’s right and duty to defend the insured in a suit seeking damages for any covered physical injury. This is essentially a contingent liability coverage and provides protection for the insured’s vicarious liability for such operations. Primary liability would rest with the independent contractor, so the main function of this endorsement is to provide defense for the insured.

There are seven exclusions that apply to Coverage N:

1. operations performed by an unlicensed or improperly licensed contractor, at a time or place prohibited by federal, state, or local authority or involving the use of a prohibited substance;
2. occurrences in which the aircraft is owned, operated or rented, loaned, or leased by an insured or an employee of an insured;
3. physical injury expected or intended from the standpoint of the insured;
4. injuries to crops or animals arising out of the crash of the aircraft or by fire or spillage or leakage of fuel following a crash;
5. losses arising out of a demand to clean up pollutants;
6. damages assumed in a contract or agreement; and
7. physical injury to crops or animals owned, rented, or borrowed by an insured.

A per occurrence and aggregate limit of \$25,000 applies to the coverage provided under this endorsement. The additional premium for the endorsement is based on the cost of hire multiplied by a

## AFIS 2: Farm Liability

rate per \$1,000 of cost. At the request of the insured or insurer, the final premium may be determined by an audit.

### ***All-Terrain Vehicle Coverage***

The all-terrain vehicle endorsement (FL 04 74) covers legal liability of the insured that arises out of the ownership, maintenance, use, loading, or unloading of specifically scheduled vehicles. Scheduled vehicles may consist of those that are owned by, operated by, rented to, or loaned to an insured. Note that this is liability coverage only and does not provide any coverage for damage to the vehicle.

### ***Owned Snowmobile Coverage***

The owned snowmobile endorsement (FL 04 71) extends coverage under the farm liability coverage form to liability arising out of the ownership, maintenance, use, loading, or unloading of specifically scheduled snowmobiles, which are excluded under the farm liability coverage form. These vehicles may also be insured under a separate policy that applies to recreational motor vehicles and may also provide physical damage coverage for the snowmobile.

### ***Animals in Contests or Stunting Activities***

This endorsement (FL 04 40) grants coverage for bodily injury or property damage and medical payments arising out of occurrences related to the use of animals in contests or stunting activities, which is excluded under the farm liability coverage form. The most common application of this endorsement would be for persons engaged in rodeo activities.

### ***Animal Rides for Profit or Charity***

Similar to the endorsement above, the animal rides for profit or charity endorsement (FL 04 41) restores coverage that is otherwise excluded by the farm liability coverage form. The endorsement provides coverage for bodily injury or property damage and medical payments arising out of occurrences related to animal rides, with or without a cart or wagon. This would include coverage for hayrides, pony rides, and the like, as well as other similar incidental business pursuits.

### ***Custom Farming Liability Coverage***

An exclusion under the farm liability coverage form applies to bodily injury or property damage that arises out of the insured's performance of custom farming operations when the receipts from these operations exceed \$5,000 in the 12 months prior to the occurrence. This endorsement (FL 04 69) allows the receipts to exceed \$5,000 for certain scheduled custom farming activities. A rate is applied per \$1,000 of receipts, and the final premium is subject to audit.

While there is no limit to the amount of receipts from custom farming that could be included in the endorsement, underwriters may be reluctant to provide the endorsement when the receipts from custom farming are high relative to the insured's other farming operations.

The endorsement deletes some of the exclusions under the farm liability coverage form:

Exclusion 2.j.—custom farming

Exclusion 2.r(5)—personal property in the care, custody, or control of the insured

Exclusion 2.t.—damage to the insureds "work"

Exclusion 2.u.—damage to impaired property



This endorsement is also available under the CGL policy. When attached to a CGL policy, similar modifications are made to the exclusions.

### ***Farm Employers Liability and Farm Employees Medical Payments***

This endorsement can be attached to either the farm liability coverage form or the CGL. It provides coverage for the employers liability exposure associated with the employment of farm workers except in those states where farm employees are subject to the workers compensation law.

The endorsement (FL 04 65) adds two additional insuring agreements to the policy. Separate limits apply to bodily injury (per occurrence) and medical payments (per farm employee). The insured can also opt to provide medical payments coverage for injuries resulting from the use, maintenance, loading, or unloading of a motor vehicle, auto, or watercraft.

The endorsement contains two additional exclusions:

bodily injury sustained by an employee while engaged in the operation or maintenance of an aircraft and

bodily injury to an employee eligible to receive benefits that an insured voluntarily provides or is required to provide under a workers compensation, disability benefits, unemployment compensation, or similar law.

The latter exclusion means that coverage does not apply whether the insured is required to obtain a workers compensation policy or voluntarily does so.

### ***Limited Fungi or Bacteria Coverage—Liability***

The limited fungi or bacteria coverage endorsement (FL 05 32) provides bodily injury or property damage and medical payments for damages and reasonable medical expenses that arise out of a “fungi or bacteria incident” which means:

“Fungi or bacteria incident” means an incident which would not have occurred, in whole or in part, but for the actual, alleged, or threatened inhalation of, or ingestion of, contact with, exposure to, existence of, or presence of, any “fungi” or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.

The endorsement also includes a definition of “fungi,” which means any type or form of fungus including mold or mildew and any mycotoxins, spores, scents, or byproducts produced or released by fungi.

The endorsement contains an aggregate limit selected by the insured. While this endorsement expanding coverage to include such incidents is available, insurers are reluctant to provide high limits due to problems with mold that began in the 1990s. Many insurers do not offer the coverage at all and, in fact, attach exclusion endorsements to their policies. Some environmental liability policies include coverage for these types of losses, but few agricultural clients purchase the coverage.

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### ***Limited Home Day Care Coverage***

This endorsement (FL 04 42) is unique in that it applies to both farm property and farm liability coverage when a home day care business is operated in a farm dwelling or other building on the premises.

With respect to liability coverage, the endorsement extends coverage to liability arising out of day care operations, subject to specific exclusions in the endorsement. In addition to the exclusions in the farm liability coverage form to which it is attached, the home day care coverage endorsement excludes liability arising out of the maintenance, use, loading or unloading, or negligent entrustment of draft or saddle animals, aircraft, motor vehicles, or watercraft and injury to any employee of an insured other than a residence employee that arises out of the day care operation.

With respect to property coverage under the policy, the endorsement eliminates the \$2,500 sublimit on business personal property for property that pertains to the home day care business, providing coverage on such property up to the limit for unscheduled household personal property (Coverage C). The endorsement does not increase the limit of the policy.

The schedule in the endorsements indicates the number of persons receiving day care services and the location of dwellings where such services are provided.

### ***Additional Residence—Rented to Others***

Liability associated with rental property at other locations may be insured under this endorsement (FL 04 06). The endorsement modifies the farm liability coverage form to provide coverage for residential property rented to others by the insured. Coverage for the residential structure and personal property contained in it is available as an endorsement to the farm property section of the policy.

### ***Business Activities***

As is the case in the homeowners program, the eligibility rules for the farm program permit certain “incidental” business activities on the insured premises. This endorsement (FL 04 43) modifies certain of the exclusions of the farm liability coverage form that would otherwise limit coverage with respect to these incidental occupancies.

The endorsement can be used for virtually any business exposure acceptable to the insurer. The schedule contained in the endorsement requires entry of the specific location where the business activity is conducted, a description of the business, whether or not the liquor liability exclusion of the endorsement applies, whether room and board are provided, or whether the coverage is to apply to the rental of a part of the insured location to others.

### ***Insured’s Liability While Employed by Others in Nonfarm Jobs***

This endorsement (FL 04 77) makes personal liability and medical payments coverage applicable to the business-related activities of an insured who is employed by others in certain specified occupations. The intended occupational categories for which the endorsement is intended include sales, clerical activities, and teaching. Coverage does not apply with respect to a business owned by the insured or in which the insured is a partner. Coverage for teachers can be provided with or without liability for the administration of corporal punishment. Bodily injury to a fellow employee of the insured that occurs in the course of employment is specifically excluded.

Additional exclusions apply to the liability of teachers arising out of the maintenance, use, loading, and unloading or negligent entrustment of draft or saddle animals, aircraft, motor vehicles, or

watercraft for instructional purposes. This excludes, for example, the liability of a drivers' education or riding instructor.

## **Endorsements That Reduce Coverage**

Some endorsements constrict the scope of coverage under the farm liability policy by adding additional exclusions, modifying how various provisions will apply, removing certain standard policy provisions, or changing policy definitions.

### ***Exclusion—Employment Related Practices***

With the advent of employment practices liability insurance, most liability insurers attach a similar exclusion to their policies that eliminates coverage for certain employment-related practices such as wrongful termination, discrimination, harassment, and the like. This endorsement (FL 10 01) makes it clear that such types of actions against an insured are not covered under the farm liability coverage form.

### ***Fungi or Bacteria Exclusion—Liability***

In the section above dealing with endorsements that expand the scope of coverage, we discussed the limited fungi or bacteria coverage endorsement. This endorsement (FL 10 35) is its opposite—it excludes coverage for a fungi or bacteria incident under bodily injury and property damage (Coverage H) and personal and advertising injury (Coverage I). Interestingly, the endorsement does not exclude coverage under the medical payments portion of the farm liability coverage form, so presumably coverage would apply to such an incident.

The endorsement also excludes the costs or expenses associated with abating, testing for, monitoring, cleaning up, or removing any fungi or bacteria.

### ***Exclusion—Silica or Silica-Related Dust***

The exclusion of bodily injury, property damage, and personal and advertising injury arising out of silica or silica-related dust (FL 10 50) is similar to the above exclusion for fungi or bacteria and eliminates coverage for the cost or expense of cleaning up these contaminants.

### ***Exclusion—Migrant and Seasonal Agricultural Worker Protection Act***

This is a mandatory endorsement to the farm liability coverage form. The endorsement (FL 01 16) excludes damages awarded under the federal Migrant and Seasonal Worker Protection Act or any other law or regulation related to the protections afforded certain farm workers.

## **Endorsements That Change Who Is Insured**

Various changes can be made to the farm liability coverage form regarding to whom coverage applies.

### ***Additional Insured—Farm Liability***

At times, a policyholder may be required to add another party to its liability insurance policy as an additional insured. Additional insureds have the rights of an insured, including the right to a defense from the insurer and to file a claim directly against the policy. For example, a rancher might enter into a contract with a land owner for additional land on which to graze cattle. The land owner will likely require the rancher to hold him harmless and indemnify him for any injuries or damage that occurs

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while the insured has his herd on the property. However, the owner of the land would also like to have direct access to the rancher's liability insurance, including the costs of defense. This is accomplished by having the rancher's insurer add the land owner as an additional insured.

The additional insured—farm liability endorsement (FL 04 50) can extend protection under the farm liability coverage form to the following persons or organizations:

- a person or organization from which the insured leases land (without buildings or structures);
- a person or organization that is the lessor or real estate manager of premises leased to the insured;
- a person who is an independently contracting operator-manager of a farm owned or leased to the insured;
- a person or organization from which the insured leases equipment;
- a person or organization that is a vendor that sells or distributes the insured's products;
- a person or organization that is a nonresident co-owner of a residence away from the farm premises;
- a person or organization that exercises financial control over the insured; or
- a person who is a relative who co-owns and helps operate the farm but resides away from the farm premises and is not a partner or corporate member of the farm business entity.

Provisions in the endorsement limit the scope of coverage for each class of additional insured to liability arising out of the particular relationship for which coverage is granted.

### ***Additional Insured—Executors, Administrators, Trustees or Beneficiaries***

This endorsement (FL 04 32) is provided without charge to extend coverage to executors, administrators, trustees, or beneficiaries of an insured's estate.

### ***Additional Insured and Residence Premises Endorsement***

The farm liability coverage form includes liability coverage for resident relatives who are under the age of 21. Other residents of the insured's household may be added as insureds using this endorsement (FL 04 07). The endorsement can also be used to extend coverage to additional scheduled residence premises maintained by the insured.

## **Endorsements That Remove Designated Liability Exposures**

While not a typical scenario, some insurers will wish to avoid providing some of the standard coverages under the farm liability coverage form. The following endorsements are available to accomplish this.

- Exclusion—personal and advertising injury liability (FL 10 02)
- Exclusion—advertising injury liability (FL 10 03)
- Exclusion—products related to a specific premises or operation (FL 10 06)
- Exclusion—products and completed operations (FL 10 07)

### **Summary**

This chapter has discussed some of the most commonly used endorsements in the farm liability program. Endorsements can be used to both expand and contract the scope of coverage afforded under the farm liability coverage form. In addition, endorsements can be used to modify to whom coverage applies under the policy or to remove designated liability coverages.

When the liability coverage for the farm is provided using the CGL policy, specific endorsements are available to add farm liability coverages similar to those typically provided under the farm liability coverage form (FL 00 20).



### Chapter 6 Review Questions

1. Some of Dollie's policies have endorsements that begin with a "CG" form number. Assuming these endorsements follow customary practice, this indicates that they are

a. commercial general liability endorsements.

**That's correct!** It is conventional practice to use CG to designate commercial general liability endorsements.

b. comprehensive general liability endorsements.

**This answer is incorrect.** This title was dropped years ago because it implied that the policies covered everything. Current policies are called commercial general liability policies.

c. ISO endorsements.

**This answer is incorrect.** Other service organizations, as well as private insurers using their own proprietary forms, follow a similar form-numbering convention.

d. standard manuscript endorsements.

**This answer is incorrect.** Manuscript endorsements are nonstandard forms.

2. Which one of the following is not a characteristic of the all-terrain vehicle endorsement to a farm liability policy?

a. Coverage applies on an all risks basis.

**That's correct!** All-terrain vehicles can be covered for physical damage on an all risks basis by using an inland marine form. However, the farm liability form provides only liability coverage.

b. Coverage may apply to vehicles that an insured does not own.

**This answer is incorrect.** Nonowned vehicles can be scheduled, in which case liability arising out of their ownership, maintenance, or use can be covered.

c. Covered vehicles include those owned by an insured.

**This answer is incorrect.** Liability coverage can apply to all-terrain vehicles an insured owns, so long as they are scheduled.

d. The endorsement covers only specifically scheduled vehicles.

**This answer is incorrect.** Liability coverage applies to the ownership, maintenance, use, loading, or unloading of specifically scheduled vehicles.

3. In which one of the following situations would it be appropriate to add the limited home day care coverage endorsement to a farm liability policy?

a. Bunny works for a day care center in town during the school year and works on her farm during the summer months.

**This answer is incorrect.** This is not the situation for which this endorsement was developed.

b. Flopsy operates a day care business in a converted shed on the farm's premises.

**That's correct!** The endorsement provides both farm property and farm liability coverage when a home day care business is operated in a farm dwelling or other building on the premises.

- c. Mopsy sends her children to a day care center during daylight hours so she is free to take care of her farm.

**This answer is incorrect.** Mopsy does not run the day care center.

- d. Peter operates a day care center in a steel building he rents from the farmer who owns it; Peter's day care center is surrounded on three sides by the farmer's fields.

**This answer is incorrect.** Peter's day care business is in a rural location, but Peter does not seem to need farm liability coverage.

- 4. Edith is concerned that Lionel, Michael, Gloria, and other farm employees might accuse her husband Archie of discrimination or harassment, because he can be rather abrasive at times. What should Edith and Archie do to protect themselves against claims of this type?

- a. Have employees sign a waiver as a condition of their employment

**This answer is incorrect.** A waiver of this type would probably be unenforceable.

- b. Make sure the exclusion—employment related practices endorsement is attached to their farm liability policy

**This answer is incorrect.** This exclusionary endorsement ensures that the coverage they want does not apply under their farm liability policy.

- c. Purchase employment practices liability insurance

**That's correct!** This exposure is usually treated under a separate policy and excluded from farm liability coverage.

- d. Make sure their workers compensation policy includes employers liability coverage

**This answer is incorrect.** In most states, workers compensation insurance includes employers liability coverage, but employers liability coverage does not cover the types of losses with which Archie and Edith are concerned.

- 5. Because of a previous libel judgment against Farmer Jones, Gilbert Insurance is not willing to include libel coverage when renewing Farmer Jones's farm liability policy. How can Gilbert Insurance avoid providing libel coverage while retaining Farmer Jones as a customer?

- a. Add the exclusion—advertising injury liability endorsement to Farmer Jones's farm liability policy

**This answer is incorrect.** The policy's personal injury coverage includes coverage for libel.

- b. Add the exclusion—personal and advertising injury liability endorsement to Farmer Jones's farm liability policy

**That's correct!** Adding this endorsement eliminates Coverage I while preserving the policy's other coverages.

- c. Insure Farmer Jones with a CGL policy rather than a farm liability policy

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**This answer is incorrect.** An unmodified CGL includes personal injury coverage.

- d. Sell Farmer Jones an umbrella policy

**This answer is incorrect.** The personal injury coverage of a typical umbrella covers libel claims and for even higher limits than the farm liability policy.



# Glossary

**additional insured:** A person or organization not automatically included as an insured under an insurance policy but for which insured status is arranged, usually by endorsement. This is usually the result of a contractual relationship between two parties in which one requires additional insured status under the other's liability insurance policy.

**aggregate:** A limit in a liability insurance policy that represents the most that will be paid in a specific time period, typically a year.

**attachment point:** The point at which excess insurance or reinsurance limits apply.

**attractive nuisance:** A legal term that involves a hazard or characteristic to which individuals, especially children, might be drawn and that could result in injury or damage. For example, children will often be attracted by dogs, horses, and other animals that may injure them.

**bacteria:** A foodborne pathogen that can cause illness when ingested, such as *E. coli*, *Salmonella*, or *Listeria*.

**claims-made:** A term used to describe a liability insurance policy that covers claims that are first made against the insured during its term. This is in contrast to an occurrence based policy, which covers an incident occurring while the policy is in force, regardless of when the claim is filed.

**commercial general liability (CGL) policy:** A standard policy issued to a business to protect it against liability claims for bodily injury or property damage arising out of premises and ongoing operations or products and completed operations and personal and advertising injury liability.

**conditions:** Provisions inserted in an insurance policy that state the rights and requirements of the insured and insurer. Examples include transfer of rights of recovery and duties in the event of a loss.

**contractual liability insurance:** Insurance that covers liability of an insured assumed in a contract. Such coverage is limited to that assumed in specifically defined contracts or that the insured would have in the absence of a contract.

**duty to defend:** A term used to describe an insurer's obligation to provide an insured with a defense to claims made under a liability insurance policy. As a general rule, the insurer's duty to defend the insured is bigger than the duty to pay damages and is only extinguished when the limit of liability has been exhausted by payment of claims.

**endorsement:** An addendum to an insurance policy that changes the original policy provisions. An endorsement may serve any number of functions, including broadening the

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scope of coverage, restricting or limiting the scope of coverage, or clarifying the application of coverage under the policy.

**exclusion:** A provision of an insurance policy referring to hazards or circumstances not covered by the policy.

**impaired property:** Property that has sustained loss of use because it incorporates the insured's defective product or work and can be restored to use by the repair, removal, or replacement of the defective product or work.

**liability:** Any legally enforceable obligation. Within the context of insurance, the obligation to pay a monetary award for injury or damage caused by one's negligent or statutorily prohibited action.

**manuscript endorsement:** A unique, nonstandard endorsement to an insurance policy that is negotiated between the insurer and insured.

**mobile equipment:** A term that is defined in both the commercial general liability (CGL) and farm liability policy. It refers to equipment such as earthmovers, tractors, diggers, farm machinery, forklifts, etc., that, even when self-propelled, are not considered automobiles for insurance purposes (unless they are subject to a compulsory or financial responsibility law or other motor vehicle insurance law). Liability arising from mobile equipment is covered in the general liability and farm liability policy.

**named insured:** Any person, firm, or organization, or any of its members specifically designated by name as an insured(s) in an insurance policy, as distinguished from others who, although unnamed, fall within the policy definition of an "insured."

**negligence:** A tort involving failure to use a degree of care considered reasonable under a given set of circumstances. Acts of omission, commission, or both may constitute negligence. The four elements of negligence are a duty owed to a plaintiff, a breach of that duty by the defendant, proximate cause, and an injury or damage suffered by the plaintiff. Liability policies are designed to cover claims of negligence.

**notice of occurrence:** One of the insured's specified duties under a liability policy. Notice to the insurer of an occurrence must include the time, place, and circumstances of the occurrence, a description of any resulting injury or damage, and the names and addresses of injured persons and witnesses.

**occurrence:** In a liability coverage form, an accident, including continuous or repeated exposure to substantially the same general harmful conditions. General and farm liability policies insure liability for bodily injury or property damage that is caused by an occurrence.

**ongoing operations:** Work or other business activity that has not been completed or abandoned.

**other insurance clause:** A provision found in both property and liability insurance policies

establishing how loss is to be apportioned among insurers when more than one policy covers the same loss. These provisions vary: Some policies provide no coverage when other insurance is in place, some pay a pro rata share, and others apply in excess. They are included to comply with the principle of indemnity, which states that an insured should not profit from an insured loss.

**personal injury:** Under general and farm liability coverage, a category of insurable offenses that produce harm other than bodily injury. As covered by both the commercial general liability (CGL) and farm liability policy, personal injury includes false arrest, detention, or imprisonment; malicious prosecution; wrongful eviction; slander; libel; and invasion of privacy. Under umbrella liability insurance, a broad category of insurable offenses that includes both bodily injury and the offenses defined as “personal injury” in CGL or farm policies.

**premises-operations:** One of the categories of hazards ordinarily insured by a general or farm liability policy. Composed of those exposures to loss that fall outside the defined “products-completed operations hazard,” it includes liability for injury or damage arising out of the insured’s premises or out of the insured’s operations while such operations are in progress.

**products-completed operations:** One of the hazards ordinarily insured by a general or farm liability policy. It encompasses liability arising out of the insured’s products while on the farm premises or business operations conducted away from the insured’s premises once those operations have been completed or abandoned.

**property damage:** As defined in the general liability policy, physical injury to tangible property including resulting loss of use and loss of use of tangible property that has not been physically injured.

**railroad sidetrack agreement:** An agreement between a railroad and a business in which the railroad agrees to build a siding on the property of the business, and the business will hold the railroad harmless for certain liability arising out of the use of the sidetrack. Sidetrack agreements are “insured contracts” under the provisions of standard contractual liability insurance coverage.

**separation of insureds clause:** A policy provision clarifying that, except with respect to the coverage limits, insurance applies to each insured as though a separate policy were issued to each. Thus, a policy containing such a clause will cover a claim made by one insured against another insured.

**subrogation:** The assignment to an insurer by terms of the policy or by law, after payment of a loss, of the rights of the insured to recover the amount of the loss from one legally liable for it.

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**supplementary payments:** A term used in liability policies for the costs associated with the investigation and resolution of claims. Supplementary payments are normally defined to include such items as first aid expenses, premiums for appeal and bail bonds, prejudgment and postjudgment interest, and reasonable travel expenses incurred by the insured at the insurer's request when assisting in the defense of a claim. Actual settlements/judgments are considered damages rather than supplementary payments. Attorneys' fees may be considered either damages or supplementary payments, depending on the policy. Most liability policies cover supplementary payments in addition to their limits of liability.

**tort law:** The area of common law that deals with legal wrongs other than crimes or breaches of contract and for which the law provides a remedy, typically money damages.

**vicarious liability:** Liability that is imputed to one party based not on its own actions but on those of others, such as minor children or employees.