

Exclusions in the Farm Liability Coverage Form
How They Work and Effective Use of Endorsements
and/or Coverage Forms to Address Them

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Overview
ISO Farm Liability Coverage Form (FL 00 20)

The Insurance Services Office, Inc. (ISO), Farm Liability Coverage Form **CAN** be an efficient way to protect our farm clients. Its combination of personal and commercial liability coverages make the form unique among liability forms. Still, there are many exclusions in the form that must be noted in order to understand when our clients may need endorsements—and, at times, additional liability coverage forms to meet their needs.

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Overview of the ISO Farm Liability Coverage Form (FL 00 20)

- Coverage H – Bodily Injury And Property Damage Liability
- Coverage I – Personal And Advertising Injury Liability
- Coverage J – Medical Payments

We will concentrate on Coverage H – Bodily Injury And Property Damage Liability In This Presentation

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The Coverage H – Bodily Injury And Property Damage Insuring Agreement in the ISO Farm Liability Coverage Form (FL 00 20)

- Promises made
 - By whom?
 - To whom?

SECTION I – COVERAGES
COVERAGE H – BODILY INJURY AND PROPERTY DAMAGE LIABILITY
1. Insuring Agreement
 a. We will pay those sums that the "insured" becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies.

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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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Definition of "insured" in the ISO Farm Liability Coverage Form (FL 00 20)

SECTION IV – DEFINITIONS
12. "Insured"
 a. "Insured" means you, and if you are:
 (1) An individual, "insured" also means the following members of your household:
 (a) Your relatives;
 (b) Any other person under the age of 21 who is in your care or in the care of a member of your household who is your relative;
 (c) A student enrolled in school full-time, as defined by the school, who was a member of your household before moving out to attend school, provided the student is under the age of:
 (i) 24 and your relative; or
 (ii) 24 and in your care or in the care of a member of your household who is your relative.
 (2) A partnership or joint venture, "insured" also means your members and your partners and their spouses, but only with respect to the conduct of your "farming" operations.

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Definition of "insured" in the ISO Farm Liability Coverage Form (FL 00 20)

SECTION IV – DEFINITIONS
12. "Insured"
 a. "Insured" means you, and if you are:
 (3) A limited liability company, "insured" also means:
 (a) Your members, but only with respect to the conduct of your "farming" operations; and
 (b) Your managers, but only with respect to their duties as your managers.
 (4) An organization other than a partnership, joint venture, or limited liability company, "insured" also means:
 (a) Your executive officers and directors, but only with respect to their duties as your officers and directors; and
 (b) Your stockholders, but only with respect to their liability as stockholders.
 No person or organization is an "insured" with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

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Definition of "insured" in the ISO Farm Liability Coverage Form (FL 00 20)

SECTION IV – DEFINITIONS

12. "Insured"
- b. "Insured" also means any of your employees other than either your executive officers (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts that:
 - (1) Cause "bodily injury" or "personal injury" to someone other than you, your partners or members (if you are a partnership or joint venture), your members (if you are a limited liability company) or a co-employee; and
 - (2) Are within the scope of the employee's employment by you. The providing of professional health care services or the failure to provide them will not be considered to be within the scope of any employee's employment by you.
 - c. "Insured" also means any person (other than your employee), or any organization while acting as your real estate manager.
 - d. "Insured" also means any person or organization legally responsible for animals or watercraft owned by an "insured" as defined in Paragraph a. above, but only insofar as:
 - (1) The insurance under this Coverage Form applies to "occurrences" involving animals or watercraft;
 - (2) That person's or organization's custody or use of the animals or watercraft does not involve "business" or "agrifairment"; and
 - (3) That person or organization has the custody or use of the animals or watercraft with the owner's permission.
 - e. "Insured" also means any person using a vehicle on the "insured location" with your consent, provided this insurance applies to the vehicle.

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The Coverage H – Bodily Injury And Property Damage Insuring Agreement in the ISO Farm Liability Coverage Form (FL 00 20)

- What is promised?
- What 'triggers' the promise?
 - Bodily injury
 - Property damage

SECTION IV – DEFINITIONS

4. "Bodily injury" means bodily injury, sickness or disease sustained by a person, and includes death resulting from any of these at any time.

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SECTION IV – DEFINITIONS

21. "Property damage" means:
- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
 - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.
- For the purposes of this insurance, electronic data is not tangible property.
- As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CDROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

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SECTION I – COVERAGES
COVERAGE H – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement
- a. We will pay those sums that the "insured" becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies.

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The Coverage H – Bodily Injury And Property Damage Insuring Agreement in the ISO Farm Liability Coverage Form (FL 00 20)

- Notice the first condition mentioned here
 - *to which this insurance applies*
- What can eliminate coverage?
 - Exclusions
 - Conditions

SECTION I – COVERAGES
COVERAGE H – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement
- a. We will pay those sums that the "insured" becomes legally obligated to pay as damages because of "bodily injury" or "property damage" *to which this insurance applies.*

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**The Insuring Agreement
in the ISO Farm Liability Coverage Form (FL 00 20)**

- What is the relevance of Limits of Insurance?
 - What happens when the Limits of Insurance have been **'used up'**?
 - What **'uses up'** these limits?
- Note the limitation of obligation or liability
 - To only what is expressly afforded—including what is found in Additional Coverages

SECTION I – COVERAGES
COVERAGE H – BODILY INJURY AND PROPERTY DAMAGE LIABILITY
1. Insuring Agreement
 But:
 (1) The amount we will pay for damages is limited as described in Section II – Limits Of Insurance; and
 (2) Our right and duty to defend end when we have used up the applicable Limit of Insurance in the payment of:
 (a) Judgments or settlements under Coverage H or I; or
 (b) Medical expenses under Coverage J.
 No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under the Additional Coverages.

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**The Insuring Agreement
in the ISO Farm Liability Coverage Form (FL 00 20)**

- What other conditions are found in the Insuring Agreement?
 - As an "occurrence" form, prior bodily injury (BI) or property damage (PD) is not promised.
 - Any continuation, change, or resumption of that BI or PD after the end of the policy period will fall within the provisions of the policy in force when the "occurrence" began.

SECTION I – COVERAGES
COVERAGE H – BODILY INJURY AND PROPERTY DAMAGE LIABILITY
1. Insuring Agreement
 (3) Prior to the policy period, no "insured" listed under Paragraph a. of Definition 12. "Insured" and no employee authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part, if such a listed "insured" or authorized employee knew, prior to the policy period, that the "bodily injury" or "property damage" had occurred or was occurring, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

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Farm Liability versus Commercial General Liability as to Coverage Territory

- An important distinction between the ISO Commercial General Liability Coverage Form (CGL) and the Farm Liability Coverage Form (FL) is the concept of coverage territory.
- The CGL Insuring Agreement is conditional in that it requires that BI or PD take place in the "coverage territory."
 - The CGL has a definition of "coverage territory."
- The FL makes no mention of coverage territory, nor does it have a definition of the term.
 - Unless endorsed, **there is no coverage territory in the Farm Liability Coverage Form**



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Exclusions To Note and Endorsements To Consider

- The FL Pollution Exclusion
 - This exclusion is deep and broad.
 - The exclusion is for BI or PD arising out of the actual, alleged, or threatened discharge, dispersal, seepage, migration, release, or escape of "pollutants."
 - The definition of "pollutants" includes many items routinely produced and/or used by the farmer.
 - For the farmer, the inclusion of **smoke** in this definition is very concerning.

SECTION V – DEFINITIONS
 15. "Pollutants" mean 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.
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Exclusions To Note and Endorsements To Consider

• Amendatory Endorsement (FL 01 63)

- Adds an exception to the pollution exclusion for BI or PD that is the result of an agricultural fire under specific conditions
 - Exception to exclusion includes BI or PD caused by heat, smoke or fumes from a fire—if the fire:
 - Is set by the "insured" on the "insured location"; and
 - Is set for the purpose of burning off crop stubble or other vegetation and is consistent with normal and usual agricultural practices; and
 - Is not set in violation of an ordinance or law



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Exclusions To Note and Endorsements To Consider

• Amendatory Endorsement (FL 01 63)

- Adds **Chemical Drift Liability Coverage**
 - This is a coverage form within an endorsement.
 - Its Insuring Agreement ONLY affords protection for physical injury to crops or animals—it **DOES NOT INCLUDE BI or PD.**
 - Physical injury **DOES NOT INCLUDE** indirect or consequential damages such as loss of market.
 - Injury must be caused by discharge, dispersal, release, or escape **INTO THE AIR** from the "insured location" of chemicals, liquids, or gases used by the "insured" in normal and usual agricultural operations—but cannot be released from aircraft.
 - Coverage is subject to an aggregate limit of insurance of \$25,000 (limit can be increased).
 - Defense is in addition to the coverage limit.

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Exclusions To Note and Endorsements To Consider

- The FL Pollution Exclusion
 - A possible option—Limited Farm Pollution Liability Endorsement (FL 04 63)
 - BI or PD coverage ONLY
 - No coverage for clean up, monitoring, etc.
 - “Pollutants” are limited to smoke or farm chemicals, liquids, or gases used or intended for use in normal or usual farming or agricultural operations.
 - A sublimit may be indicated.
 - Defense would be in addition to coverage limit (even if there is a sublimit).

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Are There Better Options for Farm Pollution Exposures?

- The short answer is **YES**.
- Coverage forms (policies) written specifically for the pollution exposure of your client **MUST** be considered.
- Make certain that these coverage forms are recognized by the farm umbrella (or commercial umbrella).
- Pay close attention to each and every renewal, as this market is constantly “evolving.”



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Exclusions to Note and Endorsements to Consider

- The Business Pursuits Exclusion
 - The importance of the definition of “business” in the FL
 - The “business” definition then feeds this exclusion
- SECTION V – DEFINITIONS**

5. “Business” means a trade, profession, occupation, enterprise or activity, other than:

 - “Agritainment”;
 - “Farming”; or
 - “Custom farming”; which is engaged in for the purpose of monetary or other compensation.

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- 2. Exclusions**

This insurance does not apply to:

1. Business Pursuits

“Bodily injury” or “property damage” arising out of or in connection with a “business” engaged in by an “insured”. This exclusion applies but is not limited to an act or omission, regardless of its nature or circumstance, involving a service or duty rendered, promised, owed, or implied to be provided because of the nature of the “business”. This exclusion does not apply to an “insured” under the age of 21 years involved in a part-time or occasional, self-employed “business” with no employees. But in the event of “property damage” to which this exception may apply, the person who sustains the “property damage” must be someone other than an “insured”

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An Endorsement That May Effectively Address the Business Pursuits Exclusion

- Business Activities (FL 04 43)
 - Required information found in the declarations
 - "Insured Location" Number and Location
 - Description of Business
 - Liquor Liability Exclusion
 - Applies
 - Does Not Apply
 - Room and/or Board Provided
 - Yes/No
 - Rental of a Part of the "Insured Location" to Others
 - Description of the Rented Area

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Addressing the Business Pursuits Exclusion

- Additional options to address business exposures in the FL
 - Business Owner Policy
 - Commercial General Liability Coverage Form



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"Custom Farming" Exposures and Concerns

- Definition of "custom farming"

SECTION V – DEFINITIONS
 6. "Custom farming" means performance of specific planting, cultivating, harvesting or similar specific "farming" operations by an "insured", at a farm that is not an "insured location", when the performance is for, and under the direction or supervision of, the owner or operator of the farm or the authorized representative of the owner or operator. But "custom farming" does not mean:
 a. Operations conducted at a premises rented to, leased to or controlled by an "insured";
 b. Operations for which no compensation in money or goods is received; or
 c. A neighborly exchange of services.

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“Custom Farming” Exposures and Concerns

- The definition of “custom farming” feeds the “custom farming” exclusion.

2. Exclusions
 This insurance does not apply to:
 j. **Custom Farming**
 “Bodily injury” or “property damage” arising out of the “insured’s”:
 (1) Performance of; or
 (2) Failure to perform;
 “custom farming” operations.
 But this exclusion will apply only when your receipts from “custom farming” operations exceed \$5,000 for the 12 months immediately preceding the date of the “occurrence”;

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Addressing the “Custom Farming” Exclusion

- Custom Farming Liability Coverage Endorsement (FL 04 69)
 - Provides BI and PD coverage for “custom farming” operations listed in the endorsement
 - Removes several exclusions
 - This endorsement is one of very few that can be used with **BOTH** the FL and CGL.
 - This endorsement is auditable.



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Addressing the “Custom Farming” Exclusion

- If this endorsement is attached to the FL
 - Exclusion 2.j. **does not apply**

2. Exclusions
 This insurance does not apply to:
 j. **Custom Farming**
 “Bodily injury” or “property damage” arising out of the “insured’s”:
 (1) Performance of; or
 (2) Failure to perform;
 “custom farming” operations.
 But this exclusion will apply only when your receipts from “custom farming” operations exceed \$5,000 for the 12 months immediately preceding the date of the “occurrence”;

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Addressing the "Custom Farming" Exclusion

- If this endorsement is attached to the FL
 - Exclusion 2.r.5 does not apply
 - Exclusions 2.t. does not apply

2. Exclusions
 This insurance does not apply to:
r. Damage To Property
 "Property damage" to:
(5) Personal property in the care, custody or control of the "insured".
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2. Exclusions
 This insurance does not apply to:
t. Damage To Your Work
 "Property damage" to:
(1) "Your work", arising out of it or any part of it; or
(2) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.
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Addressing the "Custom Farming" Exclusion

- If this endorsement is attached to the FL
 - Exclusion 2.u. does not apply

2. Exclusions
 This insurance does not apply to:
u. Damage To Impaired Property Or Property Not Physically Injured
 "Property damage" to "impaired property" or property that has not been physically injured, arising out of:
(1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
(2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.
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If this endorsement is attached to the CGL, the same exclusions are eliminated.

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Farm Employer Exposures and Concerns

- Depending upon your state, many farmers are not subject to Workers' Compensation statutes
- A farmer could be sued due to their alleged negligence should a "farm employee" be injured in the course of employment
 - Suit can be brought by the employee himself/herself
 - Suit can be brought by someone closely related to the injured employee
 - Spouse
 - Children
 - Parents

SECTION V – DEFINITIONS
 7. "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 an "insured's" "business", or in an "insured's" "agrifainment".
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SECTION I – COVERAGE H – BODILY INJURY AND PROPERTY DAMAGE LIABILITY
 q. **Bodily Injury To An Insured**
 "Bodily injury" to you or to any "insured" within the meaning of "insured" as defined in Paragraph 12.a.(1) in Section IV – Definitions.
 This exclusion also applies to any claim made or "suit" brought against you or any "insured" to:
(1) Repay; or
(2) Share damages with; another person who may be obligated to pay damages because of such "bodily injury";
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Addressing the Farmer's Employer/Employee Exposure

- Farm Employers' Liability And Farm Employees' Medical Payments Insurance (FL 04 65)
 - This endorsement is available for BOTH the Farm Liability and Commercial General Liability Coverage Forms
 - This endorsement provides payment for damages for **legal liability** as a result of BI sustained by a "farm employee" caused by an "occurrence" arising out of and in the course of employment
 - Damages include care, loss of services or death as a result of the BI
 - Medical Payments for a "farm employee" are available



MAKE A NOTE - THIS COVERAGE IS NOT SYNONYMOUS WITH WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY COVERAGES

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Addressing the Farmer's Employer/Employee Exposure

- Please remember – A Workers Compensation and Employers Liability Insurance Policy has two distinct coverage parts.
 - Part One – Workers Compensation Insurance protects the employer (named insured) for their statutory exposure as an employer in the employer – employee relationship.
 - Part Two – Employers Liability Insurance protects the employer (named insured) for four very distinct exposures:
 - Third party action over claims (**NOT COVERED in the FL 04 65**)
 - Care and loss of services claims (**COVERED in the FL 04 65**)
 - Consequential bodily injury (**NOT COVERED in the FL 04 65**)
 - Dual capacity (**NOT COVERED in the FL 04 65**)

All of these exposures are EXCLUDED in both the Farm Liability and Commercial General Liability coverage forms

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Exclusions in the Farm Liability Coverage Form
How They Work and Effective Use of Endorsements
and/or Coverage Forms to Address Them

Conclusion:

The goal of the insurance professional is to offer the best combination of coverages to meet the risk finance needs of their clients. Careful review of coverage forms will reveal their shortcomings. Understanding available endorsements is vital to meet coverage goals.

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Thank You For Attending

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