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LIABILITY and INSURANCE PROTECTION

**For Farmers Who
Have Income-Producing
Recreational Facilities**



**Farm Production Economics Division
Economic Research Service
U.S. DEPARTMENT OF AGRICULTURE**

PREFACE

As a source of side income, some farmers near cities are providing recreational facilities for the use of fee-paying guests. Additional liability is involved. The ordinary personal liability or "farmowner's" policy does not cover these income-producing recreational facilities. It covers only the basic farm operation. A farmer needs additional insurance on the side activities.

This report discusses the liability involved in operating such recreational facilities and the type of insurance needed to provide financial protection against lawsuits arising from their use by fee-paying guests.

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LIABILITY AND INSURANCE PROTECTION FOR FARMERS WHO HAVE INCOME-PRODUCING RECREATIONAL FACILITIES

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The increasing demand for outdoor recreation has enabled many farmers, particularly those near cities, to derive additional income from acreages that have been converted to recreational uses. Some of these uses are: Vacation farms, camping, trailer sites, hiking, riding, picnicking, skiing (as a winter sport), trap and skeet shooting, hunting, swimming, boating, fishing, archery, and frog gigging.

Other farmers who have wooded areas, lakes, ponds, or streams near population centers may wish to consider a similar course of action. The purpose of this report is (1) to point out some of the legal liability associated with such activities, and (2) to discuss the kind--and cost--of insurance that will provide the financial protection needed.

LIABILITY INVOLVED^{1/}

Both at common law and under statutes, a landowner has a duty to use reasonable care to safeguard the lives and property of others while they are on his premises. The standard of "due care" is most often defined as the ordinary care that a prudent man would take to prevent harm from befalling another whom he is obligated to protect. The general rule is that a person is liable for an act of negligence which results in injury to the person of, or damage to the property of, another. Unless a connecting link of negligence can be proven, a landowner not in immediate control of the premises would not ordinarily be liable for a negligent act of his tenant.

It is often difficult to define negligence precisely. The facts upon which negligence is determined are largely within the province of a jury. As there are degrees of negligence in some jurisdictions, there could be liability even though the person injured might also have been negligent. However, the laws generally require that a claimant in an injury case should have conducted himself in a prudent manner.

The degree of care expected, and thus the liability of the landowner, will depend upon whether others come upon his land as (1) trespassers, (2) licensees, or (3) invitees. A "trespasser" is one who comes upon the land without the consent and even against the will of the landowner. To a trespasser, the landowner owes only the duty of not wilfully or wantonly injuring him. The duty of a landowner to a trespasser is increased by the "attractive nuisance" doctrine, devised to protect children of tender age from harm, and the "dangerous instrumentality" rule, applicable when, for example, dynamite is exploded. In both cases, a landowner could hardly escape liability if injury resulted. Another exception, of much the same order, makes the landowner more liable if he knows of trespassing and lets it continue.

^{1/} W. J. Bray, Office of General Counsel, USDA, contributed to this section of the report.

A "licensee" is one who comes on the landowner's property with permission but primarily for his own benefit--for example, a salesman. A game warden coming on your land to question hunters on compliance with the law also would be a licensee. The landowner must warn such visitors of any known dangers--such as a vicious animal, an open pit, a bog, or perhaps even a sow with pigs if she has attacked before.

An "invitee" would be one who comes on the land at the invitation and for the benefit of the landowner--such as a hunter who pays a fee for the privilege of hunting. All paying guests coming on your land to enjoy your recreational facilities would be invitees. To them, the landowner owes the highest degree of such "ordinary and reasonable" care as a prudent man would exercise.

The law also recognizes social custom as an aspect of liability. A neighbor who calls socially cannot ordinarily recover damages from a host for injury while on the premises, unless it can be proven that the host was grossly negligent and that this negligence contributed to the accident.

After all, the landowner is not the insurer of his guests in every particular. The guest also must conduct himself in a reasonable manner. Strictly speaking, it is only when the landowner is negligent and when the invitee or visitor is not negligent that liability attaches for an untoward event on the premises. In the matter of warning visitors of dangerous situations, the landowner's responsibility attaches only when he knows, or should have known, of the existence of the hazard.

In rare instances, a landowner may be held liable even for the acts of a visitor on his premises. If, for example, he places hunters too close together or where crossfire could occur, he may be held liable for injury of one hunter by another. Other examples are where a landowner has misled an invitee with respect to his property lines, with the result that a neighbor is injured; or where a farmhand is shot by a hunter, if the landowner has negligently allowed or required the farmhand to be in a dangerous situation in connection with his regular farm work.

Some farmers have obtained releases from paying guests. Such releases may not in all instances serve as a defense in case of litigation, though in some cases they may discourage the filing of suits.

LIABILITY INSURANCE

Even if a landowner is later proven not liable, he must go to the expense and trouble of hiring a lawyer and appearing in court to defend his case if a lawsuit is filed against him. With insurance, his company will provide legal aid and pay any judgment awarded by the court, up to the limits of his policy.

Owner's, Landlord's, and Tenant's Policy

The basic contract for covering legal liability to the general public is the owner's, landlord's, and tenant's (OL&T) policy. Under it, commercial enterprises such as archery ranges, boats for hire, skeet- and trap-shooting ranges, ski lifts, and even farms, may be covered. The rates, which vary by enterprise and by State, are usually quoted per \$100 of receipts from the operation insured, subject to a specified minimum annual premium in dollars. There are a few exceptions, however; for example, saddle horses used for hire are covered at a flat rate per animal, subject to a minimum annual premium applicable to the policy.

Because of the many possible combinations of activities involved and the extent and nature of these activities, the consensus of insurance rating organizations is that a "rating" has to be made in each case, based on the "exposure" or risk involved. This means that a farmer should contact his property-insurance agent, who can furnish (or have his home office furnish) more definite information as to the premium.

Just as a rough example, if fees were charged for hunting or fishing, the premium for liability coverage at 5/10/5 might amount to from 50 cents to 65 cents per \$100 of receipts. ^{2/} As a floor on the premium, the company might set a minimum of about \$35, so that the farmer would have to pay at least that much, regardless of his receipts from the hunting or fishing operation. He could obtain higher coverage limits for a slight increase in his premium rate per \$100 of receipts.

The rates per \$100 vary by State as well as by activity involved. Some of the possible activities, such as operating a vacation farm, or providing facilities for camping (family basis), picnicking, and hiking, have not been classified, and rates for them would have to be determined from the individual situations. Even where activities have been classified, an individual rating provides the necessary flexibility whereby more consideration can be given to the circumstances involved. And where two or more activities are involved, particularly if one is more risky than the others and but one admission fee applies to all, an individual rating becomes even more necessary in order for the company to determine an appropriate premium rate and minimum premium.

Available information on a few income-producing recreational projects in the Midwest that have been individually rated, together with the annual premiums paid for liability insurance, is given below:

4 vacation farms . . . no horseback riding

Annual premiums: \$35, \$42, \$50, and \$50

2 vacation farms . . . with horseback riding

Annual premiums: \$180 (includes charge of \$24 per horse for horses used by guests), and \$200

1 camping project

Annual premium: \$26

1 combination project which includes camping, cabins, trailer sites, boat rentals, and retail sales

Annual premium: \$110

3 riding stables

Annual premiums: \$49.84 (ponies, not horses), \$125, and \$200

^{2/} 5/10/5 means that the coverage limits are \$5,000 for bodily injury to 1 person, \$10,000 for injuries to 2 or more persons involved in 1 accident, and \$5,000 for property damage.

Other cases in other parts of the country for which more complete information was available on the scope of activities and size of operations were as follows:

A riding stable in Maryland. . . with 25 horses and 3 instructors, receipts about \$20,000

Annual premium: \$283

A vacation farm in New Hampshire. . . 2 cabins, recreation hall, tenting area; board and lodging; or facilities for campers with own equipment and provisions; receipts, \$9,000

Annual premium: \$120

A dairy farm in Connecticut, 52 acres on lake. . . fishing, boating (10 boats), picnicking, basketball court, play area for children; receipts, \$2,000

Annual premium: \$200

Shooting preserve on farm in Virginia, 265 acres. . . dogs and guide furnished. Coverage limits 50/100/5. 3/

Minimum annual premium: \$44; rate, 71.2 cents per \$100 of receipts

Two recreational projects on farms in Illinois that were rated for OL&T policies are described below. They are given to show some of the detail that is involved in an individual rating and to show something of the range in costs by activities. It will be noted that the inclusion of a picnic area added considerably to the insurance cost in case A, and that the riding and swimming accounted for about 88 percent of the liability insurance cost for the vacation farm listed as case B.

Case A

Activities

Fishing, boating (3 canoes and 3 rowboats), picnicking, hiking, and bird-watching. No outboard motors.

Size of operation

200 acres, including 20 acres of recreational area with pond, woods, picnic tables, and trails. Farm residence occupied only by farm family.

Average of 200 guests on weekends for 4 summer months (17 weeks). Charge, 75 cents per adult (over 12); half the guests are adults. Annual receipts, \$1,275 (or $0.75 \times 100 \times 17$).

3/ \$50,000 for bodily injury to 1 person, \$100,000 for injuries to 2 or more persons involved in 1 accident, and \$5,000 for property damage.

Cost of liability insurance (50/100/5)

	<u>Dollars</u>
Farm residence and 180 acres of farmland-----	8.61
Recreational area, 19 acres including pond but excluding picnic grounds-----	2.80
Canoes and rowboats (6) -----	3.78
Picnic grounds, 1 acre -----	<u>37.20</u>
Subtotal -----	52.39
Dock (if any)-----	<u>7.13</u>
Total -----	59.52

NOTE: If picnic grounds were not included, a minimum annual premium of \$22.50 would still apply with respect to the residence.

Case B

Activities

A vacation farm with 1 rental cabin, in addition to rooms in main dwelling, and riding stable of 4 horses; swimming free.

Size of operation

300 acres. Farm residence occupied by guests in addition to farm family during 4 months (17 weeks) of year. There is also 1 rental cabin. Main dwelling contains 3,000 square feet, charge of \$37.50 each per week for adults, including board; for children, \$25.

Annual receipts from board and room, \$4,250; from riding stable, \$3,000.

Cost of liability insurance (50/100/5)

	<u>Dollars</u>
Farm residence and land (guests 17 weeks during summer months)-----	28.71
Cabin -----	1.44
Saddle horses-----	138.31
Pond (for swimming) -----	<u>77.68</u>
Total-----	246.14

Farmer's Comprehensive Personal Liability Policy

One of the subdivisions of the OL&T contract is the farmer's comprehensive personal liability (FCPL) policy. It was designed to cover typical farming operations, but not the recreational projects covered by this report. The policy usually includes medical payments coverage up to \$250 or \$500. Under a subsection of the policy or as an endorsement to it, and for an extra premium, the farmer may cover most if not all of the following: Employer's liability, custom farming, nonliability medical payments, death of animals from collision, nonliability property damage, accident insurance on employees, and so on. The coverage limits of the basic policy are usually 5/10/5, but for a small additional premium the limits may be increased.

Casualty insurance rating bureaus are studying the possibility of preparing and filing, for use by member companies, endorsements to their FCPL policies with the State insurance commissioners. There would have to be limitations on the scope of activities covered without individual rating (which applies to the OL&T contract), so that the companies would have some idea of the risk they were accepting at a quoted premium. The endorsement might cover something like \$1,000 of receipts or up to so many people per day or per year. If such an arrangement could be worked out for the smaller operations, more farmers might be encouraged to consider sideline recreational activities as a source of supplementary income.

If and when coverage can be obtained on the smaller operations as an adjunct to an FCPL policy, notice of it will be given in a subsequent report, together with the conditions and procedures necessary to obtain such coverage. A farmer not having the FCPL policy would have to obtain it in connection with his basic farming operation in order to obtain the coverage on the sideline recreational activities.

Several of the insurance companies sponsored by one of the national farm organizations have filed with their respective State insurance commissioners an identical schedule of premiums applicable to specified recreational activities, many of which are the type being encouraged under the Rural Areas Development Program. The insurance is available only to members of the farm organization. The liability insurance on the recreational activities is superimposed on an FCPL policy.

For the FCPL policy, the annual premium varies (1) by acreage in the farm, and (2) by man-days of labor involved. For coverage at 25/50/20, with up to \$2,000 of medical payments, on a farm containing 81 to 240 acres and using 145 to 180 man-days of labor a year, the basic annual premium would be \$211.49. ^{4/} Any of the following activities of fee-paying guests then could be insured at the above-mentioned level of coverage at the flat annual premium shown opposite the activity:

Fishing on pond, lake, or from pier-----	\$24
Hunting -----	\$24
Picnic ground, no dance hall or pavilion -----	\$24
Saddle animals, any number-----	\$50
Vacation farm, with board and lodging	
1 to 5 guests -----	\$16
6 to 10 guests -----	\$24

For fishing and a picnic area, for example, the farmer's total annual premium would be:

FCPL policy on basic farming operation -----	\$211.49
Fishing -----	24.00
Picnic ground-----	24.00
Total-----	<u>\$259.49</u>

^{4/} Coverage limits of \$25,000 for bodily injury to 1 person, \$50,000 for injuries to 2 or more persons involved in 1 accident, and \$20,000 for property damage.