

THE REVISED AAIS BUSINESSOWNERS PROGRAM

New classes and higher limits are features of the new BOP

It's been nearly 50 years since businessowners policies appeared as a commercial lines counterpart to the homeowners package policies that were becoming standard in the personal lines market.

Over those years, the essential characteristics of a BOP—the packaging of property and liability coverage in a single policy, with simplified rating—have appealed to insurers and insureds alike. As a result, both the number and variety of risks insured by BOPs has grown beyond the small retail operations, offices, and apartment buildings originally envisioned.

The newly revised Businessowners Program recently filed by the American Association of Insurance Services (AAIS) reflects the growing use of BOPs for an expanded range of commercial operations, and the growing breadth of coverage offered by the policies. AAIS has filed its revised BOP in most states, with effective dates ranging from October 1, 2004, to May 1, 2005.

Expanded eligibility

One indication of the growing use of BOPs is the increasing size of risks insured by them. The revised AAIS Businessowners Program broadens eligibility for all BOP classes to risks up to 25,000 square feet (up from a previous maximum of 15,000) and up to \$3 million in sales (up from \$1 million).

Another indication of the growing popularity of BOPs is the ever-widening range of eligible classes. The revised AAIS Businessowners Program adds several new classes of eligible risks, including:

- Wholesale operations
- Self-storage “mini-warehouses”
- Home improvement stores
- Convenience stores with food and gasoline
- Office machine and appliance stores
- Printing supply stores
- Medical and surgical supply stores
- Mailbox or packaging outlets

It is important to note that AAIS provides a separate Artisans Program for insuring small contractor operations. More than 60 classes of artisan contractors are eligible for coverage under that program.

Perhaps the most significant new class of eligibility under the revised AAIS BOP is restaurants and similar establishments that have commercial cooking on premises open to the public. To address the unique risks posed by restaurants, the revised BOP introduces separate rating for property and liability coverages for restaurants; all other BOP classes will continue to have unified rating.

Building and personal property coverage for restaurants are rated according to loss costs developed per \$1,000 in property value. Premium credits will be available for establishments that do only limited cooking and that have automatic fire extinguishing systems. Premium debits can be applied to risks that do not have exhaust systems and/or have other unsafe conditions.

Liability rating for the restaurant class is based on loss costs developed for each \$1,000 of the gross amount charged for product sales or per 1,000 square feet for a lessor's operations.

Off-premises rating

Beyond expanding the number of eligible classes, the AAIS BOP introduces a new rating procedure for determining an additional charge for off-premises liability exposures. Upon introduction, this feature will be unique among standard BOPs filed countrywide.

On-premises exposures, the risk of injury and damage to people coming onto insured premises, still constitute the main source of liability for most BOP-eligible businesses. However, for several BOP classifications there is also an off-premises exposure when employees leave the store or shop to perform installation, repair, or other service operations. The revised AAIS BOP recognizes this additional liability exposure by providing an optional additional liability charge based on loss costs developed per \$1,000 of payroll.

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Expanded computer coverage

Another innovation in the revised AAIS BOP is the introduction of property coverage for computers that is similar in scope to that provided in inland marine policies, but written to fit into the policy structure of a BOP.

The revised BOP includes definitions of terms such as “computers,” “hardware,” “software,” “programs and applications,” and “proprietary programs” that are drawn from forms in the Electronic Data Processing section of the AAIS Inland Marine Guide.

Each of these types of computer property is considered business personal property in regard to loss caused by covered perils. The scope of coverage is expanded, however, by excepting physical damage to computers from exclusions for other perils in the Special (open perils) base form.

By exceptions to exclusions in the new BOP, physical damage to computer hardware and software will be covered in the Special form for loss arising from utility failure, electrical currents, mechanical breakdown, and other designated perils.

On the other hand, to avoid a newly emerged and still unquantified exposure, the new BOP also incorporates definitions and an exclusion for “computer hacking” and “computer virus.” An endorsement option is available that allows insurers to provide limited coverage for property and income losses caused by computer viruses or hacking.

Other expansions of coverage under the new AAIS BOP include coverage under separate sub-limits for accounts receivable and valuable papers and records. These two coverages are additional examples of how AAIS has incorporated traditional inland marine coverages into its BOP policies.

Expanded coverage for glass

The revised AAIS BOP also features expanded coverage for building glass. The previous BOP covered damage to building glass for specified perils, except that losses due to vandalism were excluded in the named perils form and limited in the open perils form.

In the revised BOP, vandalism damage to glass is covered up to the full building property limit under both the named and open perils forms, as is the case for other specified perils. Also, the open perils form no longer restricts coverage for glass to specified perils.

In a new departure, the revised BOP provides equivalent coverage for building glass owned by or in the care of tenants under the business personal property limit if the policy has been written without a building property limit.

Liability options

AAIS affiliates have been asking for options to increase liability limits, and the revised BOP will provide them. The BOP revision introduces rating information for a new \$2 million each occurrence limit, which will be available in addition to previously existing limits of \$1 million, \$500,000, and \$300,000.

Beyond that, the built-in products and completed work hazard aggregate limit will increase from one to two times the occurrence limit. The general aggregate limit will continue to be set at twice the occurrence limit, but an option will be available to increase it to three times the occurrence limit.

In addition to offering options for higher liability limits, the revised AAIS Businessowners Program provides three new endorsements that expand the pollution liability coverage available under the program.

One new pollution endorsement provides liability coverage for a “short-term pollution event” that begins during the policy period and ends within 48 hours. Another provides liability coverage for pollutants designated in a schedule that accompanies the endorsement. A third endorsement makes limited pollution liability coverage subject to a separate aggregate limit in lieu of the each occurrence and general aggregate limits.

Two other endorsement options broaden the application of the pollution exclusion. One extends the exclusion of coverage for pollution liability to exclude all costs relating to cleanup of pollutants; the other does the same, but includes an exception for bodily injury or property damage that arises out of a hostile fire or building heating equipment.

Liability refinements

Liability provisions in the new AAIS BOP also have been refined to address new exposures of the Internet age.

The revised BOP adopts prevailing industry practice by merging the definitions of “personal injury” and “advertising injury” into a single definition of

“personal and advertising injury” (P/AI). Beyond that, a new definition of “advertisement” clarifies the scope of advertising injury liability coverage.

In earlier BOP policies, the definition of advertising injury included misappropriation of advertising ideas or style of doing business, without explicit restrictions. That language was sufficient to limit exposure when it was relatively difficult to appropriate a competitor’s ideas and style without doing so intentionally.

Since the advent of widespread access to the Internet, it has become relatively easy to appropriate another’s trade style and ideas inadvertently. With that in mind, the definition of advertising injury, for purposes of establishing coverage, specifies that it entails use “in your advertisement” of a misappropriated idea, or of anything that infringes on a copyright, slogan, or trademark of another.

Thus, advertising injury is defined to address advertising activities alone and avoid the potential that an advertising offense may emerge from use of other forms of electronic communication that are experiencing explosive growth.

To further limit potential exposure arising from electronic media, the revised AAIS BOP introduces exclusions for:

- Violations of intellectual property rights, such as infringement of trademark, trade secret, copyright, and patent rights
- Electronic chat rooms or other forums the insured hosts, such as bulletin boards
- Unauthorized use of another’s name or product in electronic communications

Also, the standard P/AI exclusion for someone in the business of advertising is being expanded to include anyone in the business of designing or developing Web pages, developing or providing Internet search capabilities, or providing Internet access. However, the new definition of personal and advertising injury is expanded to include electronic publication of slanderous and libelous material, not just oral or written transmission.

In addition, the definition of the coverage territory, limited to the United States, Canada, and Puerto Rico for most claims, is expanded to include the entire world for personal and advertising offenses that occur through the Internet or electronic communications.

Coinsurance and income coverage

The new AAIS BOP introduces a provision that makes replacement cost valuation subject to an 80% insurance-to-value requirement. Under the new provision, if the insured's limit is less than 80% of full replacement cost at the time of loss, payment (up to policy limits) is limited to the greater of:

- The actual cash value of the lost or damaged property; or
- "That part of the replacement cost which the applicable limit bears to 80% of the full replacement cost."

One feature of the existing AAIS BOP that will remain in the revision is the provision for a limit, entered on the declarations, for income coverage. With that, the AAIS BOP provides two alternatives for providing income coverage:

- Coverage up to a declared limit subject to a 72-hour waiting period for loss of earnings (built into the policy)
- Coverage for loss of earnings sustained subject to a 72-hour waiting period (available by simply entering no limit on the declarations)

In all, the revised AAIS Businessowners Program is a product that provides carriers and agents with the full range of coverage expected by today's growing number of small businesses. For more information on the AAIS BOP revision, go to the AAIS Web site (www.AAISonline.com). ■

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