



STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
BUREAU OF PARKS AND LANDS
22 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0022

PAUL R. LEPAGE
GOVERNOR

WALTER E. WHITCOMB
COMMISSIONER

January 2015

Dear Club Representative/Landowner,

Once again this year we will provide insurance for the State funded ATV trails as the attached memo from David Fitts indicates. The basic insurance coverage we provide for ATV trails is \$400,000 per occurrence.

We feel the existing State law (M.R.S.A. Title 14 159A attached) fully protects all the landowners and authorized trail maintainers in the State of Maine against potential liability. There have been no accident cases involving authorized ATV trails that we are aware of in Maine where a club or landowner has been held liable for the accident since this program started. The "Limited Liability for Recreational or Harvesting Activities" statute is very clear, including the potential reimbursement for attorney's fees in Section 6.

In our opinion, the primary purpose for our trail insurance is to protect landowners and the local trail administrators against the potential costs associated with litigation if a case is brought to court. If a claim develops, each claim for loss or damage shall be adjusted separately. Until such time as additional coverage is determined necessary, the state will not increase the current protection. It is fairly common for clubs to purchase their own liability insurance. A few of those policies do in fact also cover landowners. If a club does have that coverage, the club policy is then the primary carrier and ours is secondary backup.

We feel strongly that private and public landowners in Maine are now and will continue to be fully protected through this program for allowing ATV trails to be maintained on their property. It is very important that we have an accurate map of the maintained trails filed annually as part of the ATV Program's authorized Grant-In-Aid projects. Landowner permission is required in every situation, but heavy equipment use such as excavating or bulldozing new trail or rehabilitation of existing trails as well as any trail on crop land requires written permission. Proof of landowner permission (written and/or verbal) must be submitted for all trails maintained through the ATV Grant-in-Aid Program..

If you have any questions, please don't hesitate to contact us at 287-4957 or David Fitts (see attached).

Sincerely,

Scott D. Ramsay

Scott D. Ramsay, Director
Off Road Vehicles Office

SDR

OFF-ROAD RECREATIONAL VEHICLE OFFICE
18 ELKINS LANE, HARLOW BUILDING

PHONE: 207-287-4957

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STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE & FINANCIAL SERVICES
RISK MANAGEMENT DIVISION
ELKINS BUILDING 2ND FLOOR
85 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0085

PAUL R. LEPAGE
GOVERNOR

RICHARD ROSEN
ACTING COMMISSIONER

DAVID FITTS
DIRECTOR

December 16, 2014

ATV Trail Liability Insurance Program

Our ATV trail liability insurance program will continue for another year -- January 1, 2015 to January 1, 2016. The insurance has an established occurrence limit of \$400,000 per the Maine Tort Claims Act and \$500,000 for those companies with which the Department of Agriculture, Conservation and Forestry is required to have a contract in that amount. It includes defense costs within the limit of liability.

This self-insurance program provides liability insurance for all associations, organizations or individuals who own, maintain, occupy or lease property on which the Department of Agriculture, Conservation and Forestry has approved a trail under its ATV Trails program.

It should be understood that this insurance provides defense and indemnification only for matters pertaining to the maintenance of approved trails and recreational activities as described in the land use laws on those trails. It does not insure the maintenance, ownership or use of any ATV.

All potential claims should be reported to this office at once. If you have any questions with regard to this insurance program, please contact Risk Management Division at 1-800-525-1252.

Sincerely,

David A. Fitts
Director

STATE OF MAINE SELF INSURANCE FUND

POLICY #: IMF15/524

POLICY TERM: January 1, 2015 to January 1, 2016

PRORATED ANNUAL PREMIUM:

NAMED INSURED: Department of Agriculture, Conservation and Forestry (DACF)

RENEWAL OF: IMF15/524 (Short term)

INCEPTION: 12:01 A.M.

RATE: 5817 MILES @ .40 EACH

ADDITIONAL INSUREDS: ATV (all-terrain vehicle) associations, organizations or individuals who (A) own, maintain, occupy or lease property on which DACF has approved ATV trails and (B) have signed an approved DACF agreement for the ATV Trails Program.

LIMIT OF LIABILITY: \$400,000 per occurrence, unless otherwise approved by contract in which case the limit of liability per occurrence is \$500,000, inclusive of defense costs.

DEDUCTIBLE: \$1000 per occurrence.

COVERED LOCATIONS AND/OR ACTIVITIES

Recreational activities conducted out of doors, including, but not limited to hunting, fishing, trapping, camping, hiking, bicycling, sightseeing, operating ATV and snow traveling vehicles, or skiing occurring on ATV trails which at the time of the occurrence were approved and recorded by the named insured, DACF, as part of the ATV Trails Program.

COVERAGE: This program of insurance provides for the defense and or indemnification of third party liability claims that may arise from recreational activities, which the above insureds may be engaged in. This program of insurance does not waive or abrogate any immunities that may exist or expand any liability that may exist under common law, case law, title 14 of the Maine Revised Statutes Annotated (MRSA) section 159-A or the Maine Tort Claims Act title 14 MRSA chapter 741.

EXCESS INSURANCE: This program of insurance is excess over any other insurance, whether primary, excess, contingent or on any other basis. When this insurance is excess, we will have no duty to defend any claim or suit that any other insurer has the duty to defend. If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers. When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of: (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and (2) The total of all deductible and self-insured amounts under all that other insurance.

CONDITIONS

- 1) This insurance coverage does not expand the limits of liability or abrogate the immunities contained in Maine laws, any other State laws or Federal laws.
- 2) When an occurrence which would reasonably be construed to give rise to a claim under this program becomes known to an insured under this program, said insured will submit a written report of the occurrence to Risk Management Division within 10 working days or Risk Management Division will reserve their rights to defend or indemnify the insured.
- 3) No Insured shall, except at his own expense, voluntarily make payment, assume any obligation, or incur any expense. Except for First Aid without the consent of Risk Management Division.

EXCLUSIONS

- 1) Motorized equipment including but not limited to motor vehicles, motorized trail grooming devices, special mobile equipment, trailers, and ATVs are excluded from coverage under this policy.
- 2) Willful or malicious failure by any insured to guard or to warn against a dangerous condition, use, structure or activity.
- 3) Any injury suffered in any case where permission to pursue any recreational or harvesting activities was granted for a consideration other than the consideration, if any, paid to the following:
 - A. The landowner or the landowner's agent by the State; or
 - B. The landowner or the landowner's agent for use of the premises on which the injury was suffered. Provided that the premises are not used primarily for commercial recreational purposes and that the user has not been granted the exclusive right to make use of the premises for recreational activities; or
- 4) Any injury caused by acts of persons to whom permission to pursue any recreational or harvesting activities was granted, to other persons to whom the person granting permission, or the owner, lessee, manager or occupant of the premises, owed a duty to keep the premises safe or to warn of danger.

SUBROGATION

If the Insured Entity or the Insured Person has rights to recover all or part of any payment we have made under this insurance program, those rights are transferred to us. The Insured Entity or Insured Person must do nothing after loss to impair them. At our request, the Insured Entity or Insured Person will bring suit or transfer those rights to us and help us enforce them.

COOPERATION

Any person seeking defense and indemnification under this program of insurance agrees to fully cooperate with Risk Management Division.

The State of Maine, Department of Administrative and Financial Services, Bureau of General Services, Risk Management Division reserves the right to modify all or any part of this program (including the coverage provided) or to cancel this program at any time in writing to the Named Insured, Department of Agriculture, Conservation and Forestry (DACF).



David A. Fitts, Director
Risk Management Division

Any questions on coverage, conditions, or exclusions should be sent to the Risk Management Division in writing (85 State House Station, Augusta, Maine 04333). Telephone number is 1-800-525-1252.