

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

001 FUND TO ADDRESS PFAS CONTAMINATION

Chapter 402: SUPPORT FOR NO-COST TECHNICAL ASSISTANCE

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**SUMMARY:** The 130th Legislature authorized a Fund to Address PFAS Contamination (7 M.R.S.A., Chapter 10-D). Permissible uses include providing short-term assistance to persons whose commercial farm is found to be contaminated by PFAS to develop 1) enterprise budgets for alternative cropping systems, 2) remediation strategies, 3) technological adaptations, and 4) plans to transition to alternative revenue streams. Consistent with the legislatively mandated PFAS Fund Implementation Plan, these rules establish the eligibility criteria and administrative procedures for providing commercial farmers with no-cost technical assistance.

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## **§ 1. OVERVIEW**

Commercial farms that have Department of Agriculture, Conservation and Forestry (DACF) confirmed unsafe levels of perfluoroalkyl and polyfluoroalkyl substances (PFAS) may apply to DACF for no-cost technical assistance to help guide their response to the discovery of PFAS or to implement mitigation strategies. Eligible producers may consult, contract, or work with service providers to obtain expert advice, estimates, drawings, plans, research, and technical or professional assistance related to modifying their operations in response to PFAS contamination.

## **§ 2. CONSISTENT WITH STATUTE**

All terms used in this Chapter shall be defined as indicated in Title 7 M.R.S.A, Chapter 10-B unless specifically provided herein.

## **§ 3. DEFINITIONS**

1. “Commercial farm” means a farm that produces any farm product with the intent that the farm product be sold or otherwise disposed of to generate income.
2. “Perfluoroalkyl and polyfluoroalkyl substances” or “PFAS” has the same meaning as in Title 32, section 1732, subsection 5-A.
3. “Service provider” means the following entities, including but not limited to: individuals, private organizations, public organizations, and agencies of the State; marketing consultants; accounting firms; business support organizations; farm support organizations; engineering firms; law firms; and other organizations that DACF determines may provide valuable services, such as analyzing markets, developing financial forecasts, and recommending production alternatives for the owner or operator of a commercial farm.

## **§ 4. FUNDING**

The Fund to Address PFAS Contamination (PFAS Fund) is funded by an appropriation from State general funds as provided by Maine Public Laws, 2021, Chapter 635, and any subsequent appropriations, and, whenever possible, any additional funding that may be available from other sources.

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**§ 5. ELIGIBILITY**

Eligibility for no-cost technical assistance from the PFAS Fund is limited to commercial farms (see 7 M.R.S.A. §§ 320-K(4)(F-G)). A commercial farm is eligible for technical assistance if:

1. The commercial farm has DACF-confirmed unsafe levels of PFAS contamination, defined as
  - a. one or more samples of farm products showing PFAS exceeding current Action Levels or deemed of concern by the Maine CDC, and/or
  - b. groundwater test results exceeding Maine's enforceable interim drinking water standard for PFAS until superseded by either Maine's Maximum Contaminant Level (MCL) for PFAS or a federal MCL for PFAS, whichever is lowest, for wells servicing the farm or fields; and/or
  - c. soil test results exceeding any current Maine CDC crop-specific screening level; and
2. The commercial farm has partnered with DACF to investigate the scope of contamination at the farm and has granted ongoing access such that DACF staff are able to develop an understanding of the farm, its PFAS contamination, and potentially a strategy for recovery.

**§ 6. REQUIRED DOCUMENTATION**

Applicants to the PFAS Fund for no-cost technical assistance must submit the following documentation:

1. A completed DACF application form, as may be amended from time to time.
2. An estimate, invoice, or receipt from a service provider describing the scope of work and the total cost.
3. Any additional supporting documentation requested by DACF that DACF determines is necessary to review the request for assistance.
4. A completed State of Maine Vendor Authorization Form.

**§ 7. APPLICATION REVIEW**

1. When a commercial farm requests no-cost technical assistance, DACF will rely on all available information it has compiled on the farm to assess the request. Evaluation criteria may include but not be limited to the degree to which the farm has been negatively impacted by PFAS, likelihood of success, return on investment, total cost, timing, alternative options, level of risk, producer's demonstrated lack of available financial capacity, number of other requests for DACF support by the applicant and by other producers, and the farm's capacity and commitment to continue farming on the impacted property.
2. Evaluation criteria will also include an assessment by DACF of whether a given service provider is appropriately qualified to provide the particular type of technical assistance being sought.
3. Applications will be reviewed by DACF's PFAS Fund director. The PFAS Fund director may request staff input based on their knowledge of the applicant's operations. Decision-making authority rests with the PFAS Fund director.
4. DACF reserves the right to limit the amount of funding for all requests based on available resources and the evaluation criteria listed above.

**§ 8. PAYMENT OPTIONS AND RESTRICTIONS**

1. DACF may pay for technical assistance costs directly related to a commercial farm's response to PFAS contamination.
2. DACF will not pay for a commercial farm's technical assistance costs that are associated with routine operations that are unrelated to PFAS response.
3. DACF may reimburse a commercial farm for approved expenses or compensate a service provider directly.
4. Where a third-party entity has paid for technical assistance on behalf of a PFAS-impacted farm and DACF has an existing reimbursement agreement with that third-party entity, DACF is authorized to reimburse the third-party entity according to the same terms as if the payment was made directly to the commercial farm or the service provider.

**§ 9. RIGHT TO APPEAL**

1. If an application is denied in whole or in part, DACF will send the applicant a written notice of its decision. Such notice must include an explanation of why the application was denied.
2. Upon receipt of such notice, an unsuccessful applicant may appeal to DACF. The appeal must be in writing, signed by the applicant, and received by DACF within 45 days of receipt of the denial notice.
3. Within 90 days of the receipt of a written request for appeal, DACF will either grant the appeal or schedule a hearing.
4. Appeal hearings will be held before a DACF hearing officer who has been designated by the Commissioner of the DACF. The hearing officer will make a recommended decision. Final decisions on the appeal will be made by the Commissioner after a review of the record.
5. Appeal hearings will be held in accordance with the adjudicatory proceedings provisions of the Maine Administrative Procedures Act, 5 M.R.S.A. §§ 9051-64.
6. Final decisions will be in writing and contain notice of a right to petition the Superior Court for judicial review.

**§ 10. WAIVER**

Upon the request of any person subject to this Chapter or upon its own motion, the PFAS Fund may, for good cause, request waiver of any requirement of this Chapter that is not required by statute. The waiver may not be inconsistent with the purposes of this Chapter or Title 7, Chapter 10-D. The Commissioner of DACF may grant the waiver in extenuating circumstances.