

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

001 FUND TO ADDRESS PFAS CONTAMINATION

Chapter 404: ASSISTANCE OBTAINING NEW LOANS

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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 the provision of short-term assistance to a person whose commercial farm is found to be contaminated by PFAS, including but not limited to mortgage payments. Consistent with the legislatively mandated PFAS Fund Implementation Plan, these rules establish the eligibility criteria and administrative procedures for assistance to commercial farms to offset the costs of obtaining new loans to support commercial farm businesses.

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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 assistance covering the cost of obtaining a guaranteed loan, commercial loan insurance, or environmental site assessments required by a lending institution for new loans when a new loan is necessitated by the discovery of PFAS contamination on the commercial farm and the new loan is related to the farm business.

## § 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. “Cost of obtaining commercial loan insurance” means the fees charged by the Finance Authority of Maine (FAME) or their commercial partners to provide loan guarantees to lenders willing to lend to PFAS-impacted commercial farms (e.g., an initial commitment fee and an annual fee, as well as a deposit in a reserve fund).
3. “Cost of obtaining a guaranteed loan” means the one-time fee charged by the United States Department of Agriculture’s Farm Service Agency to guarantee up to 95 percent of the value of a farm loan through a commercial lender against the risk of potential loss of principal and interest.
4. “Perfluoroalkyl and polyfluoroalkyl substances” or “PFAS” has the same meaning as in Title 32, section 1732, subsection 5-A.
5. “Phase I Environmental Site Assessment” means a report that identifies potential or existing environmental contamination.
6. “Phase II Environmental Site Assessment” means a report that analyzes samples of soil, groundwater, or building materials for quantitative values of various contaminants.

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#### **§ 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.

#### **§ 5. ELIGIBILITY**

Eligibility for assistance from the PFAS Fund for new loans is limited to commercial farms (see 7 M.R.S.A. § 320-K(4)(G)). A commercial farm is eligible for assistance obtaining a new loan 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 assistance obtaining new loans must submit the following documentation:

1. A completed DACF application form, as may be amended from time to time.
2. Supporting financial documentation, such as:
  - a. A completed loan application;
  - b. A statement from a lender identifying fees; and/or
  - c. A statement from a commercial lender advising the applicant that a Phase I and/or Phase II environmental site assessment (ESA) is required before the lender will act on the applicant's loan application.
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 farm requests assistance obtaining a new loan, 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. Applications will be reviewed by DACF's PFAS Fund director. The PFAS Fund director may request staff input based on the staff's knowledge of the applicant's operations. Decision-making authority rests with the PFAS Fund director.
5. 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 RESTRICTIONS**

1. DACF payments to a lender or insurance company shall be in accordance with that entity's published fees.
2. DACF may pay for the cost of a Phase I Environmental Site Assessment when a lender needs the study to make a lending decision.
3. DACF may pay for a Phase II Environmental Site Assessment when the PFAS soil and groundwater samples collected by the State are insufficient for the lender's purposes.
4. DACF shall not pay for costs associated with the investigation of contaminants other than PFAS.
5. Where a third-party entity has paid a fee 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 described herein.

#### **§ 9. RIGHT TO APPEAL**

1. If an application is denied in whole or in part, DACF must 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 notice of 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 DCF may grant the waiver in extenuating circumstances.