

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

001 FUND TO ADDRESS PFAS CONTAMINATION

Chapter 403: INFRASTRUCTURE INVESTMENT GRANTS

---

**SUMMARY:** The 130th Legislature authorized a Fund to Address PFAS Contamination (7 M.R.S.A., Chapter 10-D). Permissible uses include investments in equipment, facilities, and infrastructure to ensure that a commercial farm with land found to be contaminated by PFAS maintains profitability while the commercial farm transitions to an alternative cropping system or implements other modifications to its operations in response to PFAS contamination. Consistent with the legislatively mandated PFAS Fund Implementation Plan, these rules establish the eligibility criteria and administrative procedures for infrastructure investment grants.

---

## **§ 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 grant funding for infrastructure projects that will help the commercial farm transition to new production methods or new types of production.

## **§ 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. “Business plan” means a document that identifies changes in farm management practices and investments in equipment and property that would increase the profitability and net worth of the farm (vitality). A typical plan identifies ways to increase on-farm income through such methods as improved management practices, direct marketing, and value-added initiatives; and describes current operations and future plans for the business, including but not limited to sections on mission/vision, legal organization, management team, product descriptions, market research, market promotion, customer profiles, financial statements, financial analysis of planned changes in the business, and long-term goals for the business.
2. “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.
3. “Grantee” means the recipient of grant funding for an infrastructure project.
4. “Infrastructure” means physical assets and structures that are generally considered permanent (e.g., a greenhouse or barn).
5. “Perfluoroalkyl and polyfluoroalkyl substances” or “PFAS” has the same meaning as in Title 32, section 1732, subsection 5-A.

6. “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.

#### **§ 5. ELIGIBILITY**

Eligibility for infrastructure investment grants from the PFAS Fund is limited to commercial farms (see 7 M.R.S.A. § 320-K(4)(E)). A commercial farm is eligible for an infrastructure grant 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 for an infrastructure investment grant must submit the following documentation:

1. A completed DACF application form, as may be amended from time to time.
2. Supporting documentation, such as:
  - a. A business plan that illustrates how the planned infrastructure will contribute to the farm’s long-term viability (business plans are advisable for all applicants and are required for all requests in excess of \$150,000);
  - b. Building plans and/or engineering drawings; and
  - c. Cost estimates from at least two separate vendors.
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. Applications for projects valued at \$150,000 or less will be reviewed by members of the DACF PFAS Response Program management, including the PFAS Response director. The PFAS Response director may request staff input based on staff's knowledge of the applicant's operations. Decision-making authority for projects valued at \$150,000 or less rests with the PFAS Response director.
2. Applications for projects valued at more than \$150,000 will be reviewed by an ad-hoc application review panel that will be established by the DACF Commissioner and, at a minimum, will be composed of DACF PFAS Response staff, and a case-specific expert based on the scope or type of project. (e.g., dairy, water, finance).
  - a. The role of the application review panel is to advise DACF on the merits of proposals.
  - b. Decision-making authority for projects valued at more than \$150,000 rests with the PFAS Fund director.
3. Evaluation criteria, regardless of cost, will include the 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. Additionally, DACF will consider all available information it has compiled on the farm to assess the request.
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 infrastructure costs directly related to a commercial farm's response to PFAS contamination.
2. DACF will not pay for a commercial farm's infrastructure costs that are associated with routine operations that are unrelated to PFAS response.
3. DACF may reimburse a commercial farm for pre-approved expenses or compensate a service provider directly.
4. Where a third-party entity has paid for infrastructure 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. TERMS AND CONDITIONS**

By applying for an infrastructure investment grant, the applicant agrees to the following conditions:

1. The grantee will continue to ensure that the infrastructure purchased is maintained in a safe condition and in good repair.
2. DACF has the sole discretion to determine if expenditures are reasonable and prudent, and whether the grantee has complied with these terms and conditions and all applicable laws, rules, and regulations.

3. The State shall have no responsibility for the use, maintenance, or fitness of the infrastructure.
4. The grantee agrees not to assign, transfer, lease or encumber its rights or obligations under the agreement without DACF's prior written consent. The grantee shall indemnify, defend, save and hold the State and its employees harmless from and against any claims, losses, liabilities, costs, expenses, damages, or other obligations of any nature in any way arising out of the use, operation, maintenance, or repair of the infrastructure.
5. The grantee must retain ownership and use the infrastructure for a period consistent with the relevant recovery period for standard farming assets as depicted in Internal Revenue Service (IRS) Publication 225 (Farmer's Tax Guide), Table 7-1, Farm Property Recovery Periods; or the grantee must notify DACF in writing within 30 days of any sale, trade, destruction, or abandonment of infrastructure purchased under the infrastructure investment grant program if such sale, trade, destruction, or abandonment occurs within the relevant recovery period for standard farming assets as depicted in IRS Publication 225 (Farmer's Tax Guide), Table 7-1, Farm Property Recovery Periods.
6. If a grantee ceases to operate a commercial farm or the infrastructure is sold, traded, abandoned, or destroyed within the relevant recovery period noted in Section 9.5, the grantee must reimburse DACF for the remaining value of the infrastructure as calculated using generally accepted accounting principles.
7. The State may inspect any facilities or infrastructure funded through an infrastructure investment grant at any time within the relevant recovery period noted in Section 9.5.
8. All grantees will purchase and maintain insurance to cover the value of the infrastructure from loss during the relevant recovery period noted in Section 9.5.

## **§ 10. 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 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.